

Rangappa and Others Vs. Nagappa and Others

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Court : Karnataka Dharwad

Decided On : Sep-02-2015

Judge : B. Veerappa

Appeal No. : RSA No. 6159 of 2012 (DECLN. & POSSN)

Appellant : Rangappa and Others

Respondent : Nagappa and Others

Advocate for Pet/Ap. : Sri. Chandrashekar P. Patil

Judgement :

(Prayer: This RSA is filed under Section 100 of C.P.C. Praying to set-aside the order dated 6.10.2012 passed by the learned district judge, Koppal, dismissing the I.A.No.1 for condonation of delay in filing the appeal and consequently dismissing the RA.83/2011, by confirming the judgment and decree dated 26.7.2010 passed by the learned senior Civil Judge, Koppal, in O.S.No.69/2007, and Etc.)

1. Though the matter is listed for admission, by content the matter is taken up for final hearing.

2. This is a appellants/plaintiffssecond appeal against the judgment and decree dated 6.10.2012 made in R.A.No.83/2011 on the file of the District Judge, Koppal, dismissing the appeal on the ground of delay of 380 days in filing the appeal and confirming the judgment and decree dated 26.07.2010 made in O.S.No.69/2007

on the file of the Senior Civil Judge, Koppal, dismissing the suit for declaration and permanent injunction.

3. The plaintiffs filed the suit for declaration that the sale deed dated 19.02.2005 executed by Commissioner appointed by the Court in favour of defendant-1 is not binding on the plaintiffs and to restrain the defendants from interfering with the peaceful possession and enjoyment of the suit property, contending that the land bearing Sy.No.19/A, totally measuring 8 acres 30 guntas is situated at Allanagar village, Koppal taluk and the dispute is only in respect of 4 acres 15 guntas. Plaintiffs 1 to 5 are children of defendant No.2, Plaintiff No.6 is wife of defendant No.3. Defendant Nos.7 to 9 are the children of defendant No.3. Defendant No.1 purchased the suit property under registered sale deed dated 19.02.2005. It is further case of the plaintiffs that the suit schedule property is ancestral property of plaintiffs and defendants 2 and 3 and defendants 2 and 3 have inherited the suit property from their father by name Badiyappa. Defendant Nos.2 and 3 had addicted to bad habits like drinking of alcohol, gambling, etc and to meet out their bad habits the plaintiffs sold the land to an extent of 4 acres 15 guntas for a meagre amount of Rs.18,000/- to defendant No.1 by colluding each other. It is further contended that as on the date of alleged sale deed, the plaintiffs were minors and the defendants did not care the rights of minor plaintiffs at the time of execution of alleged sale deed. Further the defendants Nos.2 and 3 have entered into an agreement for sale with defendant no.1 on 22.5.1992 under registered deed No.242/92-93. Thereafter, the 1st defendant filed O.S.168/97 for specific performance and the suit was decreed and the said decree came to be final and also contended that defendant Nos.2 and 3 without any legal necessity has entered into agreement of sale with the 1st defendant. Therefore, the sale deed executed by defendants is not binding on the plaintiffs, etc. Therefore, they filed the suit.

4. The defendants filed the written statement denying the entire plaint averments and specifically contended that in pursuance of the agreement entered into by defendants 2 and 3 in favour of defendant-1, he had filed suit in O.S.No.168/1997 and the said suit came to be decreed and reached a finality. Thereafter, in pursuance of the decree the 1st defendant filed E.P.No.5/2002 to execute the

decree and in the execution petition through Court Commissioner he got the sale deed registered and the same is binding on the plaintiffs. Therefore, defendants sought for dismissal of the suit.

5. Based on the pleadings, the trial court framed the following issues:

1. Whether the plaintiffs prove that the genealogy given in the plaint is true and correct?
2. Whether the plaintiffs further prove that defendant Nos.2 and 3 have attached to bad habits, such as drinking and gambling, therefore they have sold the suit property for their bad habits?
3. Whether the plaintiffs further prove that the sale deed executed by defendant Nos.2 and 3 is null and void and not binding on them?
4. Whether the plaintiffs further prove that they are in lawful possession and enjoyment of the suit property?
5. Whether defendant No.1 proves that defendants Nos.2 and 3 are the owners of Sy.No.19/A, measuring 08 acres 30 guntas, out of it they have sold 04 acres 15 guntas for their family legal necessities, therefore the sale deed is binding on the plaintiffs?
6. Whether the plaintiffs prove that they are entitled for the relief of declaration and injunction, as prayed for?
7. What decree or order?

Additional Issue as per the order on I.A.No.II

Whether defendant No.1 proves that this court has no pecuniary jurisdiction to try the suit? ?

6. In order to establish the plaintiff's case, the 2nd plaintiff was examined as PW.1 and two witnesses as PW.2 and PW.3 and marked documents as Ex.P.1 to P.12. The defendant No.1 was examined as D.W.1 and no documents produced.

7. After considering the entire material on record, the trial court recorded a finding that the plaintiff proved that the genealogy given in the plaint are true and correct and the plaintiffs failed to prove that defendants 2 and 3 were addicted to bad habits, like drinking and gambling and had sold the suit property to satisfy their bad habits and the sale deed executed by defendant Nos. 2 and 3 is not binding on them and also failed to prove that they are in lawful possession and enjoyment of the suit property. The trial court further held that the defendants 2 and 3 sold 4 acres 15 guntas of land for their legal necessity to defendant No.1 and therefore, the sale deed is binding on the plaintiffs. The trial court also held that the plaintiffs failed to prove that they are entitled to relief of declaration and injunction. Accordingly, the suit came to be dismissed.

8. Aggrieved by the judgment and decree, the plaintiffs filed R.A.83/2011 before the District Judge at Koppal, and there was delay of 380 days in filing the appeal. The learned District Judge, considering the evidence of PW.1 and material on record rejected the application for condonation of delay and consequently, dismissed the appeal. Therefore, the present appeal is filed.

9. I have heard the learned Counsel for the parties to the lis.

10. Sri. Chandrashekar P. Patil, learned Counsel for appellants has strenuously contended that the suit is filed in respect of immovable property and the suit was dismissed on 26.07.2010. Thereafter, there was delay of 380 days in filing the appeal and the appellants have explained the delay stating that after posting the case for judgment, some of the appellants had gone to Ratnagiri for their livelihood and some had gone to Bijapur and some of the plaintiffs recently attained the age of majority and due to poverty in the family, they could not file appeal within time and after obtaining certified copies and after consulting their learned advocate they have approached the court and in that process, there was a delay of 380 days. The delay was due to bonafide reasons and poverty and not intentional and therefore, sought for condoning the delay by setting aside the impugned judgment and decree and to provide an opportunity and decide the case on merits. He relied upon the decision of the Hon'ble Supreme Court in the case of Collector (LA) vs. Katiji, reported in 1987 (SC) 3053 and also the unreported judgment of this Court

made in the case of Sabadevappa Goolappa Goolannanavar vs. Basavanthappa Doddashivappa Majjagi and others, made in RSA.2402/07 and also in the case of Basangouda and another vs. Halawwa and Others, made in RSA.No.5793/2011 dated 17.7.2014. Accordingly, he sought to set aside the judgment and decree passed by the appellate court.

11. Per contra, Sri.P.G. Mogali, the learned Counsel for respondent sought to justify the impugned judgment and decree of the appellate court and contended that the appeal is only an afterthought and they have got other lands and there is no poverty as contended. There is no document produced to prove that they had gone to Ratnagiri Bijapur for their livelihood. He also relied upon the decision of the Hon'ble Supreme Court in the case of basawaraj Vs. Special Land Acquisition Officer, reported in AIR 2014 S.C. 746 and in the case of P. K. Ramachandran vs. State of Kerala, reported in AIR 1998 S.C.2276. The said application for delay was resisted by contending that there is no sufficient cause to condone the delay of 380 days and accordingly sought to dismiss the appeal.

12. This Court while admitting the above appeal has framed the following substantial question of law for determination:

(1) Whether the lower appellate court is justified in dismissing the appeal only on the ground of delay of 380 days in filing the appeal?

13. I have given my thoughtful consideration to the arguments advanced by the learned Counsel for the parties with reference to the issue framed and perused the entire material on record carefully.

14. The appellants/plaintiffs have filed suit for declaration and injunction in respect of 4 acres 15 guntas of immovable properties and contended that the sale deed executed by defendants 2 and 3 by the vendors of plaintiffs is not binding on them and suit schedule property is ancestral property and defendants have no right to alienate the minorsshare, etc. The said claim of plaintiffs was resisted by defendant-1, stating that he is the bonafide purchaser and in pursuance of the agreement entered into between the 1st defendant and defendants 2 and 3, and the 1st defendant was forced to file suit in O.S..No.168/1997 for specific

performance of agreement of sale and the suit came to be decreed in favour of defendant No.1 and in pursuance of execution proceedings he got the sale deed executed through Court Commissioner on 19.2.2005 and therefore, alienation is binding on them. The trial court considering the entire material on record dismissed the suit holding that the plaintiffs failed to prove that defendants have addicted to bad habits and also failed to prove that sale deed executed by defendants 2 and 3 is null and void and not binding on them and plaintiffs are not in possession of the suit schedule property. The trial court also held that the 1st defendant proved that defendants 2 and 3 are the owners of suit schedule property and they have sold for their legal necessity and therefore, sale deed is binding on the plaintiffs.

15. The said judgment and decree was questioned before the lower appellate court after a delay of 380 days in filing appeal. The appellant specifically contended that the suit filed for declaration against the defendants in respect of immovable property on the ground that they are minors and representations made by their father is not binding on them. The lower appellate court dismissed the appeal mainly on the ground of delay and laches holding that, in the cross-examination admission of P.W.1 is sufficient to show that inspite of availability employment opportunity since there are number of factories in Ginigera village the appellants have not chosen to use the opportunity and there is no evidence to show that the appellants or any one of them have employed at Bijapur or Ratnagiri and therefore, the lower appellate court dismissed the appeal on the ground of delay, and relying upon the decision of the Hon'ble Supreme Court in the case of Balwant singh Vs. Jagdish Singh and Others, holding that the party has to explain delay by assigning sufficient cause and no such sufficient cause is shown in the present case. Therefore, the lower appellate court dismissed the appeal.

16. The lower appellate court failed to notice that the suit filed is in respect of immovable property and the rights of the parties should not be deprived in respect of immovable property only on technicality. When substantial justice and technical considerations are pitted against each other, only the substantial justice should prevail. Admittedly, in the present case the delay is only of 380 days in filing the appeal and if the delay is condoned it will in no way prejudice the rights of

defendants or respondents by giving right to appellants to put forth their case and appeal will be decided on merits. Admittedly the appellants are coming from rural area and in a country like ours where there is so much poverty, ignorance, illiteracy, that it will not be possible to presume that every one knows the law of limitation to file appeal and other legal proceedings within the period prescribed by law and the ends of justice require that the application for condonation of delay should have been granted by the lower appellate court.

17. The Hon'ble Supreme Court while considering the provisions of Section 5 of the Limitation Act in the case of Collector (LA) vs. Katiji, reported in 1987 (2) SCC 107 has held that:

3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act, 1963, in order to enable the Courts to do substantial justice to the parties by disposing of matters on merits'. The expression sufficient cause employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. it is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late.

(2) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) Every day's delay must be explained does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

(4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or an account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

(6) It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

(7) Making a justice oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. ?

The said law declared in the case of Collector (LA) vs. Katiji, reported in 1987 (2) SCC 10 has been reiterated by the Hon'ble Supreme Court in the latest judgment in the case of Dhiraj Singh vs. State of Haryana, reported in (2014) 14 SCC 127, and held that, it is the obligation of the Court while dealing with the application for condonation of delay, the approach of the court to be pragmatic and not by pedantic substantial rights of the parties cannot be allowed to be defeated on technical grounds by taking hyper technical views of self-imposed limitations.

18. In the present case, the appellants have explained the delay of 380 days was due to the ignorance of law and due to poverty and admittedly the rights of the parties are involved in respect of the immovable property. The loser appellate court ought to have given an opportunity to the appellants by condoning the delay and decided the rights of the parties on merits. Merely dismissing the appeal on the ground of delay of 380 days in filing the appeal would result in throwing out the appellants at the very threshold without considering the merits of the case resulting in cause of justice being defeated. If the delay is condoned the highest that can happen is that the case would be decided on merits after hearing the parties and delay can be condoned by compensating the other side. Therefore, considering the latest judgment of the Hon'ble Supreme Court this Court is of the

opinion that delay of 380 days deserves to be condoned.

19. So far as the judgment relied upon by the learned Counsel for the respondents reported in 2014 SC.746 dated 22.08.2013 in the case of Basawaraj vs. Special Land Acquisition Officer, there was inordinate delay of 5 years in filing the appeal under the provisions of Section 54 of the Land Acquisition Act, and the explanation offered for the delay in approaching the court at a belated stage has been that one of the appellant has taken ill. The Supreme Court took the view that, the applicant has to explain the court as to what was the sufficient cause which prevented him to approach the court within the limitation and no court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. In case no sufficient cause shown to prevent a litigant to approach the court on time, condoning the delay without any justification by putting any condition whatsoever, amounts to passing an order in violation of statutory provisions and it tantamount to showing utter disregard to the legislature. There was delay of 5 years and no sufficient cause was shown and therefore, the delay of 5 years was not condoned. The facts of the aforesaid case and the facts of the present case are entirely different.

20. In so far as decision relied upon by the respondents in the case of P.K. Ramachandran vs. State of Kerala, reported in AIR 1998 (SC) 2276, in the said case there was delay of 565 days in filing the appeal and the facts of the above case and this case are entirely different. More over, the two judgments relied upon by the learned Counsel for respondents are earlier judgments and in view of the latest judgment of the Hon'ble Supreme Court in the case of Dhiraj Singh vs. State of Haryana, reported in (2014) 14 SCC 127, the principles laid down in the said judgment is binding on this Court. Therefore, applying the principle laid down by the Hon'ble Supreme Court in the aforesaid judgment by reiterating the principles laid down in the earlier judgment of the Hon'ble Supreme Court in the case of Collector (LA) vs. Katiji, reported in 1987 (2) SCC 10, wherein it is held that while dealing with the application for condonation of delay the approach of the court to be pragmatic and not by pedantic the substantial rights of the parties cannot be allowed to be defeated on technical grounds by taking hyper technical views of self-imposed limitations. Admittedly, in the present case, the delay is 380 days

only and the rights in respect of immovable property is involved to an extent of 4 acres 15 guntas and hence, the rights of the parties cannot be defeated by way of technicality. Therefore, the substantial question of law is answered in the negative holding that the appellate court is not justified in dismissal the appeal on the delay of 380 days in filing the appeal.

21. In view of the aforesaid reasons, the regular second appeal is allowed. The impugned judgment and decree of the appellate court dated 6.10.2012 is set aside. The Application filed by the appellant in I.A.I under Section 5 of the Limitation Act is allowed. The delay of 380 days in filing the appeal is condoned subject to condition that the appellant shall pay a sum of Rs.9,000/- to the 1st respondent/1st defendant before the lower appellate court and the matter is remanded to the lower appellate court for fresh consideration on merits in accordance with law without being influenced by any of the observations made during the course of this judgment.

Both the parties are directed to appear before the lower appellate court on 14.10.2015 without waiting for any notice from the court.

Ordered accordingly.

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