

Sugappa and Another Vs. Shivashankerappa and Others

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Court : Karnataka Gulbarga

Decided On : Aug-06-2015

Judge : A.V. Chandrashekara

Appeal No. : Regular Second Appeal No.7209 of 2010

Appellant : Sugappa and Another

Respondent : Shivashankerappa and Others

Judgement :

(Prayer: This Regular Second Appeal is filed under Section100 of CPC, against the judgment and decree dated 19.1.2010 passed in R.A.No.135/2007 on the file of I Addl. Dist. Judge at Gulbarga, dismissing the appeal filed against the judgment and decree dated 25.10.2007 passed in O.S.No.40/2006 on the file of the Civil Judge (Sr.Dn) at Shorapur.)

1. Heard the learned counsel for the appellants and Counsel for the respondent Nos.1 and 2 absent.

2. Matter has been admitted to consider the following substantial question of law framed on 04.08.2015 is as follows;

Whether the First Appellate Court has committed serious illegality in not considering IA filed under Order XLI Rule 27 of CPC dated 6.11.2009 and pronouncing the judgment on merits?

The present appeal is arising out of the judgment and decree passed in Regular Appeal filed in R.A.No.135/2007 under Section 96 of CPC before the of I Addl. District Judge at Gulbarga. The appellants herein were the defendant Nos.2 and 3 before the trial Court in O.S.No.40/2006 a suit filed by respondent Nos.1 and 2 herein as plaintiffs for the relief of partition and separate possession. The suit came to be decreed vide the judgment dated 25.10.2007 in part granting relief of partition in respect of agricultural land and one house. Being aggrieved by the said partial decree defendant Nos.2 and 3 chose to file an appeal in terms of Section 96 of CPC before the District Court at Gulbarga in R.A.No.135/2007. During the pendency of the said appeal, appellants had filed an application under Order 41 Rule 27 r/w Section 151 of CPC supported by an affidavit sworn to by defendant No.2 seeking leave to adduce additional evidence. An affidavit stated to have been sworn to by Smt. Siddhamma W/o Bassappa Hunasgi the mother of plaintiffs and defendant No.2, was sought to be marked as an additional document on behalf of defendant Nos.2 and 3. That application is not at all considered by the First Appellate Court and judgment has been passed on merits. Hence, the above substantial question of law is framed by this Court for consideration.

3. Whenever an application is filed under Order 41 Rule 27 r/w Section 151 of CPC, it is incumbent upon the Court to hear arguments not only on the merits but also on the application filed under Order 41 Rule 27 r/w Section 151 of CPC. If the appellate Court intends to dismiss the said application, it has to pronounce the judgment on merits. If the appellate Court intends to allow the application, then it has to allow the application and permit the concerned parties to lead additional evidence and defer the decision on merits. This established procedure has been reiterated by the Hon'ble Apex Court in the case of Malayalam Plantations Limited Vs State of Karnataka and Another reported in 2010 (13) SCC 487. The learned Judge of the First Appellate Court has not at all considered this important application and therefore the procedure adopted is contrary to the law reiterated by the Hon'ble Apex Court in the case of Malayalam Plantations Limited Vs State of Karnataka and Another. Accordingly, the appeal will have to be allowed and matter is to be remitted to the First Appellate Court to consider the pending application filed under Order 41 Rule 27 r/w Section 151 of CPC filed on 06.11.2009 vide IA-3.

ORDER

Appeal is allowed. Judgment of the First Appellate Court is set aside. Matter is remitted to the First Appellate Court to consider the appeal afresh in the light of the law reiterated by the Hon'ble Apex Court in the case of Malayalam Plantations Limited Vs State of Karnataka and Another.

Parties to appear before the Lower Appellate Court on 14.09.2015 without fail and the learned Judge to dispose of the appeal preferably within three months from 14.09.2005.

No order as to costs.

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