SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Meera Vs. Nagesh and Others

Meera Vs. Nagesh and Others

SooperKanoon Citation : sooperkanoon.com/1182856

Court : Karnataka Dharwad

Decided On : Jun-02-2016

Judge : A.N. Venugopala Gowda

Appeal No. : M.S.A.No. 100002 of 2015

Appellant : Meera

Respondent : Nagesh and Others

Judgement :

(Prayer: This MSA is filed u/Sec. 43 Rule 1(U) of the CPC, against the Judgement and Award dtd: 18.08.2014 passed in RA. NO. 31/2010 on the file of the Senior Civil Judge, Kumta, partly allowing the appeal filed against the Judgement and award dtd: 19.07.2006 passed in FDP. NO. 03/1996, on the file of the Additional Civil Judge (Jr.Dn.) Kumta, decreeing the FDP.)

1. This appeal is directed against the Judgment and Order dated 18.08.2014 in R.A. No. 31/2010 passed by Senior Civil Judge, Kumta. By the impugned Judgment, the learned Appellate Judge remitted the matter to the trial Court to hold an enquiry with regard to mesne profits and also consider the division of the movable properties as per the preliminary decree and to draw final decree by following the procedure as per law.

2. The facts of the case relevant for deciding this appeal are that O.S. No. 68/1980 filed by the appellant for partition and separate possession was allowed and a

preliminary decree was passed. The said decree having become final, FDP No. 3/1996 was filed to pass the final decree. As against the decree passed therein, R.A. No. 31/2010 was filed in the Court of the Senior Civil Judge, Kumta. An application was filed in R.A. No. 31/2010, seeking permission to lead evidence, in view of the amendment effected to S.6 of the Hindu Succession Act. The Appellate Court by a Judgment and Order dated 31.10.2011, remanded the case to the trial Court. Assailing the said Judgment and Order, MSA No. 535/2012 was filed. Said appeal was allowed on 27.01.2014 and the impugned Judgment/Order was set aside and the lower Appellate Court was directed to consider the matter, in so far as the alteration of shares is concerned, by keeping in mind the principles enunciated in the case of PREMA Vs. NANJEGOWDA, (2011) 6 SCC 462. The Appellate Court was directed to decide the matter with within 6 months period commencing from 01.03.2014. It was made clear that if a decision is to be taken only after recording evidence, opportunity be provided to the parties to lead additional evidence, if any or evidence afresh as the case may be. The lower Appellate Court having passed the Judgment and Order dated 18.08.2014, allowing the appeal and setting aside order dated 19.07.2006 passed in FDP No. 3/1996 and remanded the matter to the trial Court, this appeal was filed.

3. Sri Jagadish Patil, learned advocate, contended that the court below has committed error and illegality in passing the impugned Order. He submitted that in view of the Judgment dated 27.01.2014 passed in MSA 535/2012, it is not open to the court below to remand the case again to the Trial Court. He submitted that there is abdication of duty by the lower Appellate Court and hence, interference is called for.

4. Sriyuths Shriharsh A. Neelopant and S.S. Bhat, learned advocates, on the other hand made submissions in support of the impugned

JUDGMENT / ORDER

and sought dismissal of this appeal.

5. Respondent No. 1 had filed MSA 535/2012 assailing an order passed on 18.08.2014 in R.A. No. 31/2010 by the Senior Civil Judge, Kumta, remanding the

case to the Trial Court to pass orders in FDP No. 3/1996. While allowing MSA No. 535/2012, the lower Appellate Court was directed to consider the matter afresh and decide the case by itself, within the stipulated period. The lower Appellate Court, which is bound by the said Judgment, has passed the impugned Order.

6. It was noticed in the Judgment dated 27.01.2014 passed in MSA 535/2012, that the lower Appellate Court has virtually abdicated its responsibility by remanding the matter to the Trial Court. Despite the said categorical finding and the direction issued, lower Appellate Court has repeated the erroneous and illegal act, i.e., by again remanding the matter to the Trial court. In view of the specific direction issued in MSA 535/2012, impugned Order of remand to the Trial Court is wholly impermissible. The Court below being the First Appellate Court is a court of both fact and law and therefore, in the interest of justice, it should decide the controversy, instead of prolonging the lis by repeated remand of the case. Remand would mean needless expenditure and prolonged consumption of time. An unwarranted order of remand gives the litigation an undeserved lease of life and therefore, must be avoided. The Court below has adopted flawed procedure and there is abdication of its duty.

In the result, appeal is allowed and the impugned Judgment is set aside. The parties are directed to appear in the Court of Senior Civil Judge, Kumta on 13.06.2016 and receive further orders. The Court below is directed to decided R.A. No. 31/2010 by keeping in view the Judgment dated 27.01.2014 passed in MSA No. 535/2012 and in accordance with law, with expedition and before 31.08.2016.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com