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Siddalingamma Vs. Puttamadappa

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Court : Karnataka

Decided On : Dec-01-1950

Reported in : AIR1951Kant31; AIR1951Mys31; ILR1951KAR374

Judge : Balakrishnaiya and ;Vasudevamurthy, JJ.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 100 and 101; Registration Act, 1908 - Sections 77

Appeal No. : Second Appeal No. 258 of 1950-51

Appellant : Siddalingamma

Respondent : Puttamadappa

Advocate for Pet/Ap. : V. Krishnamurthy, Adv.

Disposition : Appeal dismissed

Judgement :

Vasudevamurthy, J.

1. The plaintiff filed a suit in the Court of the Munsiff of Nanjangud for a decree directing a karar dated 20-8-1944 (which has been marked as EX B.) said to have been executed by defendant 1 in his favour to be registered. The plaintiff's case is that when he presented the document for registration before the Sub-Registrar,

defendant 1 denied its execution and the Sub-Registrar refused to register it. Consequently he preferred an appeal to the District Registrar who held an enquiry; and he also refused to order the registration of the document as he was not satisfied about its genuineness. That order, according to the plaintiff, was on 17-2-1947 when the District Registrar dismissed the appeal and the suit was brought under Section 77, Mysore Registration Act, within 30 days of that order and its communication to the plaintiff. Defendant 1 denied execution of the document. He also contended that the suit was barred by limitation. He pleaded that during the course of the hearing of the appeal the District Registrar had once dismissed the plaintiff's appeal for default on 16-5-1946, but later on had on an application by the plaintiff restored it to file on 30-5-1946, and thereafter he had after enquiry passed an order against the plaintiff on 17-2-1947; that the period of 30 days within which a suit could be filed under Section 77, Registration Act, to have the document registered was to be counted from 30-6-1946 when the appeal wag dismissed and not from the later date when the District Registrar passed his final order. The Munsiff of Nanjangud passed a decree as prayed for in favour of the plaintiff and the same baa been confirmed on appeal by the Additional District Judge Mysore. Defendant 1 haa now preferred this second appeal.

2. Both the Courts below have fully discussed the evidence including that of p. W. 5 the thumb impression expert, called by the plaintiff and have come to the conclusion that Ex. B is genuine. That concurrent finding of fact is binding on us in point appeal and can-not be questioned by the appellant.

3. Regarding the question of limitation, Mr. V. Krishnamurthi, learned counsel for the appellant, contends that the District Registrar had no power to review his previous order dismissing for default the appeal before him and that the proceedings had before him subsequent to that order were all without jurisdiction and invalid and that this suit which is filed within 30 days, not of the first order of dismissal but of the second order is beyond time. There is no substance in this contention. It has been held in Sajad v. Saroda Prosad. 17 0. W. N. 585 : (18 I. C. 450) that in such a case the final order of the Registrar made after the restoration of the case was the order of refusal in respect of which the plaintiff was entitled to institute a suit in the civil Court and the plaintiff's suit which had been brought

within 30 days of the later order was within time. In that case the plaintiff applied to the Registrar for compulsory registration of a deed of sale. The case was struck off, but on the plaintiff's application for review, the case was restored and the Registrar after taking evidence on both sides made his final order refusing to register the deed and the plaintiff instituted a suit in the civil Court under Section 77, Registration Act, within 30 days from the date of that order. In the course of the judgment their Lordships observe as follows :

'It is conceded by the learned pleader for the defendants (and, indeed, his argument is based upon it) that the Registrar is not a civil Court governed in all repeats by the rules of the Code of Civil Procedure. He is an executive officer and as such there is no rule of law so far as we know, to prevent him from reviving an application which may have been struck off his list by reason of the non-appearance or failure to prosecute the applicant. This he appeals in this case to have done and what is more, when notice was issued to the defendants, instead of raising any objection to such a course, the defendants did not object. On the contrary they accepted the position and adduced evidence in Court. We think, therefore, that the order of 27 8-1908 was not the order of refusal, but that the order of 23-1-1909 was the order of refusal in respect of which the plaintiff was entitled to institute the suit in the civil Court.'

In the present cage also the defendants have after the restoration of the appeal by the District Registrar been notified of the appeal. They have appeared before him and taken part in the proceedings without raising any objection.

4. If the date of the refusal of the District Registrar, which is the basis for the suit under Section 77 is taken as 17-2-47 it is not disputed that the suit will be within time. In this matter we agree with the decision in Sajad v. Saroda Prosad, 17 C. W. N. 585 : (18 I c. 450), and are of the opinion that the District Registrar's order of 17-2-47 in the appeal before him is the order of refusal to register the document on the basis of which the plaintiff was entitled to file his suit in the civil Court and not his earlier order dismissing the appeal for default of appearance.

5. There are, therefore, no grounds to admit this second appeal and it is accordingly dismissed.

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