

Mallari Gowda Vs. Mari Gowda

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Court : Karnataka

Decided On : Jun-30-1952

Reported in : AIR1953Kant55; AIR1953Mys55; ILR1953KAR134;
(1954)32MysLJ128

Judge : Mallappa, J.

Acts : Oaths Act, 1873 - Sections 9

Appeal No. : Second Appeal No. 267 of 1949-50

Appellant : Mallari Gowda

Respondent : Mari Gowda

Advocate for Def. : B.S. Pranesha Rao, Adv.

Advocate for Pet/Ap. : A.R. Somanatha Iyer, Adv.

Judgement :

1. The suit in O. S. No. 171 of 48-49 on the file of the Munsiff, Krishnarajanagar, in respect of which this appeal arises came up for evidence on 4-1-1949. The plaintiff's counsel on that date gave an offer to the defendant in the following terms as is clear from the order sheet :

'That if he (defendant) swears before Hampapur Amma Temple at Hampapur that he (defendant) does not owe anything to the plaintiff, the suit will be dismissed or if

the defendant allows the plaintiff to swear before the said temple that the defendant has taken a loan from him (plaintiff) the suit will be decreed as prayed for. The defendant states that he would: take an oath before the said temple. The plaintiff's counsel admits to it.'

The Court passed an order appointing a commissioner for administering an oath and stated that if the defendant were to swear the suit shall be dismissed with the costs of the defendant and that it should be decreed in case he failed to do so. Before the date on which the oath had to be taken the defendant tiled an application urging that he may be allowed to resile from the agreement to take the oath in the presence of the villagers on the ground that the plaintiff was making elaborate arrangements to humiliate him by inviting his followers to be present at the time the oath is to be taken. The learned Munsiff dismissed the application and as the defendant has failed to take the oath, decreed the suit as prayed for.

2. It will be noticed that so far as the Oaths Act is concerned, it empowers the Court to issue a commission to administer the oath and it also states that the evidence so given shall as against the person who offered to be bound by it be conclusive proof of the matter. There is no provision, however, as to what has to be done if the party who agrees to take the oath does not do so. If there is an agreement that the suit should be decreed or dismissed on a particular person taking an oath or on his refusing to do so nothing conies in the way of the Court disposing of the case in accordance with the terms of the agreement. Before considering, however, the exact terms of the agreement to which the defendant is a party it may be necessary to consider to what extent the Court has discretion in allowing the party to retract from the agreement to be bound by the oath. It is unnecessary to consider this aspect of the matter in detail as I fully agree with respect with the following conclusion arrived at in the case reported in--'4 Mys LJ 217 (A)' after elaborately-considering the case law on the point. 'From the above brief resume of the cases bearing on the point, it appears to be clear that if before the oath is actually administered, a party who offered to be bound by it had valid and sufficient grounds to withdraw, the court had the power to go into the validity or reasonableness of the grounds urged and if it was satisfied that the party had justifiable grounds to resile, the court may permit him to do so, and this power can

be, exercised even after the offer had been accepted by the opposite party. If, however, the oath is made, either without objection, or after the objection is heard and rejected as frivolous or futile, the party who made the proposal is bound by it, and cannot afterwards retract. Where the objection is lodged before the date fixed for the oath being taken, but was not heard and decided before the oath was actually administered, the Court, it would seem according to -- 'Anjanappa v. Moothe Gowda', '17 Mys. L. P.. 18) (B) had the power to permit the party who made the offer to retract provided he had reasonable grounds for doing so'. (3) It may be stated that in this case oath, has not been taken and the Court had ample power to allow the party to resile from the agreement. The defendant it looks as though, agreed to take the oath in the heat of the moment and thereafter considering the effect of taking an oath in a temple in the presence of the villagers and realising the embarrassment to which he might be put to, appears to have filed an application for permission to withdraw from the agreement. I am inclined to think that parties in cases of this kind, should generally be allowed to withdraw from the agreement to take an oath in a temple if it is made soon after the agreement and the application is considered to be a bona fide one, as I think it is in this case, and it is particularly so when the opposite party is not' prejudiced in any way as in cases where the oath has been administered and subsequently the opposite party wants to resile from the agreement. (4). Another point for consideration is what the agreement in this case is and whether the suit could be decreed if it is enforced. The plaintiff's counsel no doubt suggested that in case the defendant takes an oath, the suit might be dismissed with costs and that in case the plaintiff takes an oath the suit should be decreed as prayed for. The defendant did not agree that the suit should be decreed as prayed for in the case the plaintiff takes an oath. He did not agree that in case he failed to take an oath the suit should be decreed. The result is though it was open to the learned Munsiff to have dismissed the suit in case the defendant took the oath, as that was the effect of the agreement, the learned Munsiff was wrong in decreeing the suit as prayed for on the defendant failing to do so, on the basis that there was such an agreement when there was no such agreement. There was no evidence on record justifying a decree as prayed for'. The orders of the Courts below have proceeded on the wrong presumption that the suit should be decreed as prayed for in case the

defendant failed to take the oath. (5) In the circumstances, the appeal is allowed and the judgment and decree of the lower Courts are set aside. The learned Munsiff will post the case for evidence on merits and dispose of the case according to law. Parties will bear their own costs throughout in respect of these proceedings. The court-fee paid on this appeal memo is ordered to be refunded.

3. Case remanded.

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