

The Govt. of Karnataka and Another Vs. Paramanna and Others

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Court : Karnataka

Decided On : Jan-29-1992

Reported in : AIR1992Kant237; ILR1992KAR739

Judge : K.A. Swami and ;L. Sreenivasa Reddy, JJ.

Acts : Karnataka Civil Courts Act, 1964 - Sections 17 and 19; Karnataka Civil Courts (Amendment) Act, 1964 - Sections 4; Karnataka Small Causes Courts Act, 1964 - Sections 8(2)

Appeal No. : R.F.A. (FR) No. 9443 of 1991

Appellant : The Govt. of Karnataka and Another

Respondent : Paramanna and Others

Judgement :

ORDER

Swami, J.

1. This appeal is preferred against the judgment and decree dated 31st July, 1991 passed by the Civil Judge, Raichur in O.S. No. 145/89.

2. The suit was filed by the respondents for a declaration that they are the owners of the suit land and for a permanent injunction. They also sought for a declaration that the order passed by the Tahsildar was null and void and ineffective. The

subject matter of the suit was valued at Rs. 55,000/-.

3. The office has raised an objection that as the subject matter of the suit was valued at less than Rs. one lakh; that as on the date, the suit was decided, the Karnataka Civil Courts Act, 1964 was amended by the Karnataka Act No. 13/1989 with effect from 17th April, 1989, the appeal would lie to the District Court and not to the High Court.

4. The Karnataka Act No. 13/1989 came into force on 17-4-1989. It amended certain provisions contained in the Karnataka Civil-Courts Act, 1964 and Karnataka Small Cause Courts Act, 1964. In this case we are concerned with the amendments effected to the Karnataka Civil Courts Act, 1964 (hereinafter referred to as the 'Act'). Karnataka Act 13/89 amended Sections 17 and 19 of the Act and also made a provision for transfer of pending suits and appeals consequent to such amendment.

5. Prior to Karnataka Act 13/89, the pecuniary jurisdiction of Munsiffs Court as per Section 17 of the Act extended to; all original suits and proceedings of civil nature not otherwise excluded from the Munsiff's jurisdiction of which the amount of value of the subject matter did not exceed ten thousand rupees. This upper limit of ten thousand rupees was enhanced to fifty thousand rupees by the Karnataka Act 13/89 by substituting the words 'ten thousand rupees' in Section 17 of the Act with the words 'fifty thousand rupees'. Section 19(1) of the Act as it stood prior to the coming into force of Karnataka Act 13/89 provided for appeals from decrees and orders passed by a Civil Judge in original suits and proceedings of a civil nature when such appeals were allowed by law to the District Court when the amount or value of the subject matter of the original suit or proceeding was less than twenty-thousand rupees and in other cases, as per sub-section (2) thereof to the High Court. The Karnataka Act 13/89 amended this provision by substituting the words 'twenty thousand rupees' with the words 'one lakh rupees'.

6. Thus as a result of these amendments effected to Ss. 17 and 19 of the Act, the suits filed from the date of coming into force of Karnataka Act 13/89 will be governed by the amended provisions; similarly the appeals from decrees and orders passed in such suits.

7. Section 4 of Karnataka Act 13/89 provides for transfer of pending suits and appeals from the Court of a Civil Judge to the Munsiff Court and from the High Court to the District Court respectively. The said provision reads thus :

'4. Transfer of Suits and Appeals :--(1) Notwithstanding anything contained in the Karnataka Act 11 of 1964 or Karnataka Act 21 of 1964 or in any other law or provisions having the force of law.-

a) all suits pending on the date of publication of a notification under the proviso to sub-section (2) of Section 8 of the Karnataka Small Cause Courts Act, 1964 (Karnataka Act 11 of 1964) which are triable by a Court of Small Causes by virtue of such notification, shall stand transferred to and be disposed of by the Court of Small Causes as if such suits had been instituted in such Court of Small Causes.

b) original suits and proceedings of a civil nature the amount or value of the subject matter of which does not exceed fifty thousand rupees pending before the Court of a Civil Judge shall, on the date of commencement of this Act, stand transferred to the Court of the Munsiff and shall be disposed of by such Court in accordance with law as if such suits or proceedings concerned had been instituted or commenced in such Court.

c) appeals and proceedings connected therewith pending before the High Court from decrees and orders passed by a Civil Judge in original suits or proceedings of a civil nature the amount or value of the subject matter of which is less than one lakhs rupees shall, on the date of commencement of this Act, stand transferred to the District Court and shall be disposed of by such Courts in accordance with law as if such appeals or proceedings had been preferred to such Court.

2) If there be any doubt as to which Court a suit, an appeal or proceedings shall stand transferred in accordance with the provisions of sub-section (1), the Court designated by the High Court shall be the Court to which such suit, appeal or proceeding shall be transferred and the decision of the High Court shall be final.'

We are not concerned with Section 4(1)(a), therefore, it is not considered. From the aforesaid provisions contained in Section 4(1)(b) and (c), it is clear that on and

from the date of coming into force of Karnataka Act 13/1989, all original suits and proceedings of a civil nature the amount or the value of the subject matter of which did not exceed fifty thousand rupees, pending before the Court of a Civil Judge stood transferred to the Court of the Munsiff and they were to be disposed of by the Munsiff Court in accordance with law as if such suits or proceedings had been instituted or commenced in such Court. Similarly, the appeals and proceedings connected with the appeals pending on the file of the High Court on the date the Karnataka Act 13/89 came into force which arose from the decrees and orders passed by a Civil Judge in original suits and proceedings of a civil nature, the amount or the value of the subject matter of which was less than one lakh rupees, stood transferred to the District Court and were to be decided by the District Court in accordance with law as if such appeals or proceedings had been preferred to such Court.

8. But there is no specific provision made in Karnataka Act 13/89 as to whether the original suits and proceedings of civil nature, the amount or the value of the subject matter of which exceeds fifty thousand rupees but does not exceed one lakh rupees pending on the file of the Court of Civil Judge on the date the Karnataka Act 13/89 came into force are also governed by the provisions of Karnataka Act 13/89 and if so, whether an appeal allowed by law, would lie from the decrees and orders passed in such suits and proceedings by the Court of a Civil Judge would lie to the District Court notwithstanding the fact that such suits or proceedings of civil nature had been filed and pending on the date of Karnataka Act 13/89 came into force. Therefore, the question that arises for consideration is as to whether such suits and proceedings of a civil nature are governed by the provisions of clause (1) of Section 19 of the Act as amended by Karnataka Act 13/89. If clause (1) of Section 19 of the Act as amended by Karnataka Act 13/89 governs such suits and proceedings of civil nature, appeals would lie to the District Court as the amount or the value of the subject matter is more than fifty thousand rupees but less than one lakh rupees. On the other hand, if clause (1) of Section 19 as amended by Karnataka Act 13/89 does not govern such suits and proceedings of civil nature and they are governed by sub-section (1) of Section 19 of the Act as it stood prior to the coming into force of Karnataka Act 13/89, an appeal would lie to the High Court as per sub-section (2) of Section 19 of the Act.

9. It is settled position of law that the right of appeal is a vested right and it accrues to a party to the original suit or proceeding on the date the original suit or proceeding is instituted and is governed by the law prevailing on the date of institution of the suit or proceeding unless it is specifically or by necessary intendment taken away by a subsequent enactment.

10. It is also a settled position of law that :

i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

ii) The right of appeal is not a mere matter of procedure but is a substantive right.

iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

iv) The right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the list commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise'.

(See Garikapati Veeraya v. N. Subbaiah Choudhry, : [1957]1SCR488).

11. Therefore, we have now to see whether Karnataka Act 13/89 has taken away the vested right of a party to a suit or proceeding of civil nature to enter the superior Court by way of an appeal expressly or by necessary intendment. Of course, there is no specific provision made with regard to such original suits and proceedings of civil nature the amount or the value of the subject matter of which exceeded fifty thousand rupees but did not exceed one lakh rupees and pending in

the Court of a Civil Judge on the date the Karnataka Act 13/89 came into force as to the right of appeal from the decrees or orders passed in such original suits and proceedings of civil nature. In the normal course, in the absence of any express provision to the contrary, the right to prefer an appeal from the decrees and orders passed in such suits and proceedings of civil nature would be governed by the provisions of the Act as they stood on the date such suits and proceedings of civil nature were instituted. In the instant case, we are of the view that by necessary intendment Karnataka Act 13/89 has taken away such vested right to prefer an appeal before the High Court against the decrees and orders passed in such original suits and proceedings of civil nature. A reading of S. 4 of Karnataka Act 13/89 makes it abundantly clear that Karnataka Act 13/89 has been made applicable to all original suits and proceedings of civil nature and the appeals arising from such original suits and proceedings of civil nature pending on the date the Karnataka Act 13/89 came into force. If it were not to be so, original suits and other proceedings of civil nature, the amount or the value of the subject matter of which did not exceed fifty thousand rupees and were pending before the Court of a Civil Judge, could not have been statutorily transferred to the Court of the Munsiff with effect from the date the Karnataka Act 13/89 came into force and the same could not have been treated as if such suits or proceedings had been instituted or commenced in the Munsiff Court. Similarly the appeals and proceedings connected therewith pending before the High Court from decrees and orders passed by a Civil Judge in original suits or proceedings of civil nature the amount or the value of the subject matter of which was less than one lakh rupees could not also have been statutorily transferred to the District Court on the date the Karnataka Act 13/89 came into force and could not have been treated as if such appeals or proceedings of civil nature had been preferred to the District Court. This is clear from clauses (b) and (c) of sub-section (1) of Section 4 of Karnataka Act 13/89. Similar provision is also made in clause (a) of Section 4(1) of Karnataka Act 13/89 by statutorily transferring the suits pending on the date of publication of a notification under the proviso to sub-section (2) of Section 8 of the Karnataka Small Cause Courts Act, 1964 which were triable by a Court of Small Causes by virtue of such notification to the Court of Small Causes as if such suits had been instituted in the Court of Small Causes. Therefore, it is clear that the amendments

effected to Sections 17 and 19 of the Act and to the proviso to sub-section (2) of Section 8 of the Karnataka Small Cause Courts Act, 1964 by Karnataka Act 13/89 have been made applicable to the pending suits, appeals and proceedings of civil nature. Consequently, the vested right of appeal to enter the superior Court which had accrued to the litigant on the date the original suits and proceedings of civil nature the amount or the value of the subject matter of which exceeded fifty thousand rupees but did not exceed one lakh rupees and which were instituted before the date the Karnataka Act 13/89 came into force has been taken away by necessary intendment.

12. Any other interpretation would lead to serious anomaly inasmuch as the appeals preferred prior to coming into force of Karnataka Act 13 of 89, from the decrees and orders passed in original suits and proceedings of civil nature the amount or the value of the subject matter of which is less than one lakh rupees have been transferred to the District Court as per the provisions contained in Clause (c) of sub-section (1) of Section 4 of the Karnataka Act 13/89, whereas the appeals from the decrees and orders passed after the coming into force of Karnataka Act 13/89 in original suits and proceedings of civil nature the amount or value of the subject matter of which exceeded fifty thousand rupees but did not exceed one lakh rupees and pending before the Court of the Civil Judge on the date Karnataka Act 13/89 came into force will have to be preferred before the High Court merely because the decrees and orders are passed after the coming into force of Karnataka Act 13/89. There is no doubt that if it is held that such suits are not governed by the amendments effected by Karnataka Act 13/89, it will result in discrimination because a party who had exercised his right of appeal on the date Karnataka Act 13/89 came into force would be placed in a disadvantageous position when compared with the party in whose case the decree is passed subsequent to the coming into force of Karnataka Act 13/ 89 even though the amount or value of the subject matter of both the suits or proceedings of civil nature is not more than one lakh rupees. We are therefore of the view that the legislature cannot be held to have intended such a consequence.

13. Therefore, we are of the view that the appeal is not maintainable before this Court as the appeal lies to the District Court from the decree passed after the

Karnataka Act 13/89 came into force by the Court of a Civil Judge in the original suit or proceeding of civil nature the amount or value of the subject matter of which is less than one lakh rupees pending on the date Karnataka Act 13/89 came into force.

14. Accordingly, the office is directed to return the appeal papers to the appellant by 18-2-1992 for presenting the appeal before a proper Court.

15. Order accordingly.

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