

Puttappa Vs. Maligamma and ors.

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Court : Karnataka

Decided On : Mar-11-1953

Reported in : AIR1954Kant147; AIR1954Mys147; ILR1954KAR113

Judge : Mallappa, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115 - Order 47, Rule 7 and 7(1)

Appeal No. : Civil Revn. Petn. No. 389 of 1952-53

Appellant : Puttappa

Respondent : Maligamma and ors.

Advocate for Def. : R.V. Srinivasaiya, Adv.

Advocate for Pet/Ap. : E. Kanakasabhapathy, Adv.

Judgement :

ORDER

1. This is a revision petition against the decision in Misc. Appeal No. 7/51-52 on the file of the Subordinate Judge, Hassan, setting aside the order of review in Mis. 142 of 49-50 on the file of the Munsiff, Hassan, granting review of the decree in O. S. No. 351 of 48-49.

2. The property in dispute was purchased by Puttappa, the present petitioner, from one Mahadeviah and his son Renukaradhya. Bramarambha, their minor daughter, filed a suit claiming the property as belonging to her deceased mother and after her death Malligamma respondent 1 in this case was brought on record, as the L. R. of Bramarambha. The ultimate decision of the High Court in that case is that Malligamma was entitled to 1/4th share of the property while Puttappa the present petitioner was entitled to 3/4th share. When Malligamma was executing the decree in her favour, the three younger brothers of Puttappa, the petitioner in this case, filed a suit for declaration of their title to the property in dispute and for an injunction restraining Malligamma from executing the decree in her favour. Puttappa, the present petitioner, was also made a defendant, but he remained 'ex parte'. Thereafter there was a compromise between the petitioner's brothers and Malligamma, the latter being allowed to take 1/4th share, 3/4th share being allowed to be taken by the three brothers. There was a decree in accordance with this compromise. But Puttappa, the present petitioner, filed a review petition saying that he was not aware of the compromise and that he should get the entire 1/4th share that had fallen to the share of Malligamma or at least 3/4th of her share. The review was granted by the learned Munsiff.

3. It will be noticed that the learned Munsiff was wrong in allowing the review petition and giving the petitioner 3/4th of the 1/4th share that had fallen to the share of Malligamma. The petitioner knew full well that he who had purchased the property got only 3/4th's share and if at all his brothers had any claim to it as members of an undivided family, they could only get 3/4th of the 3/4th's share, which according to the High Court decision he was entitled to in the property. He should have, therefore, sought for getting 1/4th share in the 3/4th share to which he and his brothers were entitled to. But this he did not apply for, as evidently he and his brothers intended to deprive Malligamma of her 1/4th share in the said property. The learned Subordinate Judge was therefore right in setting aside the order passed in review.

4. It is contended that whatever might be the merits of the case, the learned Subordinate Judge was wrong in interfering with the order in review in an appeal filled against it. As has been held in -- '4 Mys LJ 53 (A)':

'If a Court has erroneously granted a review, unless the error falls under Clauses (a), (b) or (c) of Sub-rule (1) of Rule 7 of Order 47, the order granting the review cannot be objected to either by way of appeal or in revision.'

Unfortunately for the petitioner in this case no objection was taken in the Court of appeal, about the maintainability of the appeal, and in the absence of any such objection it must be taken that it was conceded that the error which occasioned the review fell under Clauses (a), (b) or (c) of Sub-rule (1) of Rule 7 of Order 47. Moreover, in this case it has been shown that the order of the appellate Court is just, while the order passed by the learned Munsiff in review is unjust. In such cases the Court of revision is not bound to interfere merely on the ground that the Court of appeal had no jurisdiction to sit in appeal over the order and it is so particularly when the question of lack of jurisdiction was not raised in the Court of appeal. As has been observed in -- 'M. T. T. K. M. M. N. Chettyar Firm v. V. K. P. A. N. M. Firm', AIR 1929 Rang 198 (B) that:

'Where the appellate Court has decided correctly but has decided without jurisdiction by holding that appeal lay where appeal did not lie, High Court will not interfere in revision.'

I may here refer to the decision in -- 'Ganda Ram v. Sundar Lal', AIR 1921 Lah 265 (C) that:

'The High Court is not bound to interfere on the revision side even when there is a defect of jurisdiction unless failure of justice has directly resulted from such a defect.'

It has also been observed in -- 'Doddamallappa Setty v. Khanderaya Setty', 9 Mys LJ 433 (D) that:

'.....the revisional jurisdiction is exercised in the ends of justice, and not in furtherance of purely technical grounds, especially at the instance of a party who had the assistance of counsel and who himself was responsible for the course adopted by the opponent and the lower Court.'

5. No case is, therefore, made out for interference in revision in this case. The revision petition stands dismissed. The parties win bear their own costs.

6. Petition dismissed.

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