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Court : Karnataka

Decided On : Jan-19-2009

Reported in : ILR2009KAR918::2009(4)KCCRSN268.

Judge : S. Abdul Nazeer, J.

Acts : Bombay Public Trust Act - Sections 50, 51 and 52(1); Code of Civil Procedure (CPC) - Sections 91, 92 and 93 - Order 8, Rule 1 - Order 23 Rule 3B and 3B(1)

Appeal No. : Orders on I.A. Nos. I/2008 and III/2008 in Regular First Appeal No. 1600 of 2003

Appellant : Prahalad Srinivas Devale and ors.

Respondent : The Model Education Board and ors.

Advocate for Pet/Ap. : C.S. Patil, Adv. for Appellant Nos. 1 and 3

Judgement :

ORDER

ABDUL NAZEER, J.

Orders on I.A.NOs. I/2008 & III/2008

1. Respondent No. 15 has filed the above application for recalling of the order dated 20.2.2008 made in the above case whereby the appeal was compromised by appellant Nos. 1 and 3 and some of the respondents and to restore the appeal for disposal according to law.

2. This appeal arises out of the judgment and decree in O.S.No. 1/2001 dated 20.12.2003 passed by the Principal District Judge, Dharwad. The first appellant was plaintiff No. 1 and the third appellant was plaintiff No. 8 in the said suit. Appellant Nos. 2 and 4 are deleted since they are no more. The suit filed by the plaintiffs was a representative suit. Some of the respondents were defendants in the said suit and the other respondents were the plaintiffs. The court below by the impugned judgment and decree has framed a scheme known as “Scheme for Management of Model Education Board”, Navalgund, Dharwad District. The applicant in I.A.No. I/2008 was plaintiff No. 9 in the suit and respondent No. 15 in the appeal. He was deleted from the array of the parties by the order dated 20.2.2008.

3. I have heard the learned Counsel for the parties on this application.

4. Sri P.D. Surana, learned Counsel appearing for the applicant/respondent No. 15 contends that the scheme could not have been accepted by this Court having regard to the original scheme which was handed over by the author of the Trust. It is further contended that the parties to the above proceedings have not compromised the matter for the benefit of the institution. The compromise was entered into only to take over the institution. It is argued that the suit filed by the plaintiffs was a representative suit. The suit was filed after taking permission from the Charity Commissioner under Section 51 of the Bombay Public Trust Act (for short ‘Act’), 1950. Having regard to Order 23 Rule 3-B of the Code of Civil Procedure (‘for short ‘CPC’), the appeal could not have been compromised without the leave of the Court expressly recorded in the proceedings. Thus, the order passed by this Court is void, which requires to be recalled.

5. On the other hand, Sri Krishna S. Dixit, learned Counsel appearing for respondent Nos. 2 and 7 contends that the suit in question was filed by the plaintiffs after taking permission from the Charity Commissioner under Section 51

of the Act. Having regard to sub-Section (1) of Section 52 of the Act, the provisions of Sections 92 and 93 of the CPC do not apply to a Public Trust. Explanation to Order 23 Rule 3-B of the CPC explains a 'representative suit' as a suit under Sections 91 and 92 of the CPC or a suit under Order 8 Rule 1 or a suit in which the manager of an undivided Hindu family sues or is sued as representing the other members of the family, or any other suit in which the decree passed, may by virtue of the provisions of the CPC or any other law for the time being in force, bind any person who is not named as party to the suit. Though the suit in question was a representative suit, it does not come within the explanation of Order 23 Rule 3-B of the CPC. Therefore, taking permission of the Court to compromise the suit under sub-Rule (1) of Order 23 Rule 3-B does not arise. In the circumstances, the compromise decree entered into between the parties is valid. Sri C.S. Patil, learned Counsel for the appellants has supported the stand taken by Sri Krishna S. Dixit.

6. It is not in dispute that the suit in question was a representative suit. It was instituted after taking permission from the Charity Commissioner under Section 51 of the Act. It is also not in dispute that the Trust in question is a Public Trust. Section 50 of the Act for all purposes substitutes Section 92 of the CPC and excludes applicability of Section 92 of the Code to the Public Trust. The test for applicability of Section 50 of the Act is whether the suit was brought not in an individual capacity but as a representative of all the beneficiaries of the Trust. Therefore, though Section 92 of the CPC is not applicable to a Public Trust, still the suit continues to be a representative suit, which falls under explanation (d) of Order 23 Rule 3-B of the CPC. Order 23 Rule 3-B of the CPC is as under:

"3-B. No agreement or compromise to be entered in a representative suit without leave of Court: (1) No agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings; and any such agreement or compromise entered into without the leave of the Court so recorded shall be void.

(2) Before granting such leave, the Court shall give notice in such manner as it may think fit to such persons as may appear to it to be interested in the suit.

Explanation: In this rule, “representative suit” means,-

(a) a suit under Section 91 or Section 92,

(b) a suit under Order 8 of Rule 11,

(c) a suit in which the manager of an undivided Hindu family sues or is sued as representing the other members of the family,

(d) any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for the time being in force, bind any person who is not named as party to the suit.”

7. An explanation is at times appended to a Section to explain the meaning of the words contained in the Section, and it becomes a part and parcel of the enactment. The explanation to Order 23 Rule 3-B of CPC explains the meaning of the words ‘representative suit’ employed in sub-Rule (1) of Order 23 Rule 3-B of the CPC. Explanation (d) of Order 23 Rule 3-B of the CPC states that a representative suit means, any other suit in law in which the decree passed may, by virtue of the provisions of the CPC or of any other law for the time being in force, bind any person who is not named as party to the suit. Bombay Public Trust Act comes within the expression ‘any other law for time being in force’. It is settled that the decision under Section 50 of the Act binds not only the parties to the suit but also those who are interested in the Trust. The judgment operates as a judgment in rem and is not merely a judgment in personem. That is why the suit in question is a representative suit, which comes within explanation (d) of Order 23 Rule 3-B of the CPC.

8. Admittedly, the compromise has been entered into by the parties without the leave of the Court. In the circumstances, the compromise entered into between the parties is void and it requires to be recalled.

9. In the result, application-I.A.No. I/2008 is hereby allowed. The order dated 20.2.2008 in RFANo. 1600/2003 is hereby recalled. Consequently, I.A.No. III/2008 filed for vacation of the interim order also does not survive for consideration and it is accordingly dismissed.

Post the appeal for hearing before the appropriate Court.

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