

Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and ors.

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Court : Karnataka

Decided On : Nov-13-1970

Reported in : AIR1971Kant174; AIR1971Mys174; (1971)1MysLJ154

Judge : E.S. Venkataramiah, J.

Acts : [Evidence Act, 1872](#) - Sections 115

Appeal No. : Ex. Second Appeal No. 62 of 1967

Appellant : Shrinivas Krishnarao Kango

Respondent : Narayan Devji Kango and ors.

Advocate for Def. : K.S. Savanur, Adv.

Advocate for Pet/Ap. : T.J. Chouta, Adv.

Disposition : Appeal allowed

Judgement :

E.S. Venkataramiah, J.

1. This execution Second Appeal arises out of an order passed by the Civil Judge, Senior Division, Bijapur, in Special Darakhast No. 36 of 1958 in which the appellant sued out execution of the decree passed in Civil Appeal No. 164 of 1952 on the file of the Supreme Court.

2. The facts of the case are briefly these:

The appellant instituted a suit for partition and separate possession of certain items of property against the respondents on the basis that he had been adopted to one Krishnarao by his widow Rukminibai. He filed the suit in forma pauperis. The main contention of the defendants in that suit was one relating to the factum and validity of adoption and the effect of the said adoption on the family properties. The said suit was decreed by the trial Court which inter alia ordered that the plaintiff was entitled to a half share 'in the open site occupied by the front house covering C. T. S. Nos. 639 and 640' and that he was entitled to recover half price of the said open site from defendants 1 to 5 after getting its valuation assessed in execution proceedings. The trial court however ordered that the plaintiff should get half of the price of the above properties prevailing on the date of adoption. Aggrieved by the decree of the learned Civil Judge, both the plaintiff and defendants took up the matter in appeal before the High Court of Bombay which modified the decree of the trial Court directing that the plaintiff should get a half portion of certain properties and half price of the open site occupied by the front house covering C. T. S. Nos. 639 and 640, after deleting that part of the decree of the trial Court which directed that the plaintiff was entitled to get the same. The matter was taken up in appeal, before the Supreme Court in Civil Appeal No. 164 of 1952. The relevant part of the decree passed by the Supreme Court on appeal reads as follows:--

'In the result, the decree of the lower court will be modified by granting the plaintiff a decree for half the value of the plots, S. Nos. 634 and 635, S. Nos. 639, 640 and 641 and S. Nos. 642, 644 and 645 as on the date of the suit. Subject to this modification, the decree of the lower court is confirmed, and the appeal is dismissed.'

The judgment of the Supreme Court is reported in : [1955]1SCR1 , Srinivas Krishnarao Kango v. Narayana Devji Kango.

3. In the execution application, out of which this appeal arises, as already stated above, the appellant who was the plaintiff in that suit prayed for the recovery of half the value of sites Nos. 634, 635, 639, 640, 641, 642, 644 and 645 as on the

date of the suit. In the course of the execution application, an advocate of Bijapur Bar, Shri M. M. Sughandhi was appointed as Commissioner to make a valuation of the properties in question on the date of the suit and to report to the court. The Commissioner reported to the court that the sites in question were worth Rupees 17,094/- as on the date of the suit. The judgment-debtors filed objections to the commissioner's report regarding the valuation. The court before which the execution petition was pending came to the conclusion after overruling the objections of the judgment-debtors that the valuation made by the commissioner was proper and just. It however was of the opinion that the appellant was not entitled to get anything more than half of the market value of the above sites which he had furnished as the market value of the above sites in the plaint by which he commenced the suit, and therefore, even though it came to the conclusion that actually the sites in question were worth Rs. 17,094/- on the date of the suit on the basis of the report of the commissioner, it ordered that the judgment debtors should pay the decree holder Rs. 2,000/- only which was half of the market value of these sites furnished in the plaint. Aggrieved by the order of the executing court, the decree-holder preferred an appeal before this Court. That appeal having been transferred by the High Court to the file of the District Judge, Bijapur, in view of the provisions of the Mysore Civil Courts Act, the District Judge of Eijapur heard the appeal. He came to the conclusion that the decree-holder (the appellant before me) was estopped from contending that the market value of the sites in question was anything more than what he had actually stated in his plaint when the suit was instituted. The District Judge however found that the valuation made by the Commissioner, namely that the sites in question were worth only Rs. 17,094/- on the date of the suit, was correct. In view of his finding on the question of estoppel raised by the judgment-debtors he rejected the appeal. The decree holder has filed this appeal against the order passed by the District Judge.

4. Sri T. J. Chouta appearing for the appellant contended that the courts below were wrong in coming to the conclusion that the appellant was precluded from claiming in execution of the decree passed by the Supreme Court half of the price of the sites in question as on the date of the suit. He contended that the valuation of these sites for the purpose of court-fee and jurisdiction furnished by him in the plaint should not have been used by the courts below as a bar against him. He

further urged that the decisions relied on by the courts below to reject the appeal were decisions on the question of valuation of the suit for the purpose of jurisdiction only and they have no bearing on the real question in issue in this case. He argued that when the courts below found that the valuation made by the Commissioner was correct, they should have directed payment of half of the amount on that basis.

5. Sri K. S. Savanur, counsel for the respondents Nos. 1 to 3, supported the judgment of the courts below and he pleaded that a party should not be permitted to take inconsistent stands in the same proceeding. He urged that an execution petition is a continuation of the suit and if at one stage of the suit the plaintiff has furnished a particular valuation with regard to the market value of the sites in question, he should not be allowed to resile from that position, on the principle that a party to a proceeding should not be allowed to approbate and reprobate at the same time.

6. The real question that arises for decision in this case is whether the principle of estoppel or acquiescence is really applicable to the facts of this case. The Supreme Court has explained in *Maddanappa v. Chandramma* : [1965]3SCR283 the law relating to estoppel in India as follows:--

'As was pointed out by Garth, C J-in *Ganges Manufacturing Co. v. Souru imull*, (1880) ILR 5 Cal 669 the provisions of S. 115 of the Evidence Act are in one sense a rule of evidence and are founded upon the well-known doctrine laid down in *Pickard v. Sears*, (1837) 6 Ad and El 469 in which the rule was stated thus:

'Where one by his word or conduct wilfully causes another to believe for the existence of a certain state of thing and induced him to act on that behalf so as to alter his own previous position the former is concluded from averring against the latter a different state of things as existing at the first time.'

The object of estoppel is to prevent fraud and secure justice between the parties by promotion of honesty and good faith. Therefore, where one person makes a misrepresentation to the other about a fact he would not be shut out by the rule of estoppel if that other person knew the true state of facts and must consequently

not have been misled by the misrepresentation.' (The underlining is mine).

7. The above view of the Supreme Court becomes clearer if Section 115 of the Indian Evidence Act is read in this context. Section 115 reads as follows:

'115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing,'

It may be noticed here that in Carr. V. London and North Western Rly. Co., (1875) 10 CP 307 one of the propositions laid down concerning estoppel runs thus:

'If a man either in express terras or by conduct makes a representation to another of the existence of a certain state of facts which he intends to be acted upon in a certain way, and it be acted upon in the belief of the existence of such a state of facts, to the damage of him who so believes and acts, the first is estopped from denying the existence of such facts.'

Hence, in order to establish that a party to a proceeding is estopped from making a representation with regard to a matter, it is necessary for the party who is relying upon the bar of estoppel to prove the following facts:

'1. That the party against whom the bar of estoppel is sought to be raised had made a declaration or a representation regarding a particular fact;

2. that he made such a declaration or representation with intention of causing or permitting another person to believe a thing to be true and to act upon such belief; and,

3. that on the basis of such belief, and without the knowledge of the true state of affairs, the other party to whom the representation is made has acted to his prejudice.'

It is only when the above factors are established, it would be open to a party who has altered his position to his detriment on the basis of the declaration or

representation made to him to urge that the person who made such declaration or representation should not be allowed to resile from that position. It follows that if the party who is pleading the rule of estoppel as a bar knows the true state of affairs, then, it would not be open to him to plead estoppel because in the ordinary course of things it could not be presumed that he was actually misled by the representation or declaration made by the other party and he altered his position to his prejudice in view of such declaration or representation. As the Supreme Court observed, the entire law of estoppel and acquiescence is conceived with the object of preventing fraud and securing justice between the parties by promotion of honesty and good faith.

8. In view of what is stated above, it would be necessary to examine the nature of declaration or representation made by the plaintiff to the defendants who are respondents in this case and to find out whether they acted on the basis of such declaration or representation to their prejudice. The property in question was in possession of the defendants. They knew the market value of the property at the time when the suit was filed. It is no doubt true that the plaintiff had given, as it transpires now after the receipt of the commissioner's report, a lower valuation in respect of the sites. But the defendants who filed the written statement and contested the suit up to the Supreme Court never raised any objection regarding the valuation. There was no issue regarding the valuation of the properties. It is also not shown that the defence of the defendants was in any way prejudiced or affected by the under valuation. As already stated, their defence was one mainly in respect of the factum and validity of adoption and its effect on the family properties. It is not shown by Mr. Savanur appearing for the respondents as to how the defendants who are the respondents in this appeal altered their position, to their prejudice in view of the representation made by the plaintiff regarding the valuation of these properties in the plaint. In the above circumstances, it cannot be said that the appellant is barred by the law of estoppel from showing to the court the true value of the property on the date of the suit.

9. It is also significant to note that the Supreme Court did not make an order that the plaintiff should be paid half the price of the properties in question on the basis of the valuation furnished by him in the plaint. If that was the position, the Supreme

Court would have mentioned in the decree itself that the plaintiff should be paid a certain sum of money on the basis of the valuation. What the Supreme Court ordered was only a modification of the decree of the High Court of Bombay. It directed that the plaintiff should be paid half the price of the properties in question but indicated in the course of its order that the relevant date for determining the said price was the date of suit. Nothing would have been easier than to mention the amount on the basis of the plaint in the decree itself. That the Supreme Court did not do.

10. Mr. Savanur contended that the valuation made by the Commissioner was excessive. It may be mentioned here that on this question there are concurrent findings of the two courts below. Mr. Savanur has not shown why that concurrent finding of fact should not be accepted by me. So, it can be safely taken that the value of the properties on the date of the suit was Rs. 17,094/-. Necessarily therefore the plaintiff who is the appellant in this case should get half of Rs. 17,094/-, i. e., Rs. 8,547/- from the judgment-debtors who are liable to pay the amount under the decree.

11. In the result, the judgment of the Court below is set aside and the judgment debtors who are liable to pay under the decree the amount as directed by the Supreme Court are directed to pay the plaintiff the sum of Rs. 8,547/-.

12. The appeal is accordingly allowed with costs throughout.