

Chikkaveeregowda Vs. Devegowda

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Court : Karnataka

Decided On : Jun-14-1974

Reported in : AIR1975Kant145; ILR1974KAR1403; 1974(2)KarLJ373

Judge : B. Venkataswami, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 14, Rule 5; Land Reforms (Amendment) Act, 1974

Appeal No. : Civil Revn. Petn. No. 735 of 1974

Appellant : Chikkaveeregowda

Respondent : Devegowda

Advocate for Def. : S. Shivaramiah, Adv. for Kesvy and Co.

Advocate for Pet/Ap. : B.V. Deshpande and ;T.J. Chouta, Adv.

Judgement :

ORDER

1. This petition under Section 115 C. P. C. is by the plaintiff in original Suit No, 246 of 1969 on the file of the Munsiff, Srirangapatna. He is aggrieved by an order made by the learned Munsiff on 18-3-1974 whereby, he deleted an issue which had been framed earlier, relative to the tenancy pleaded by the parties.

2. On behalf of the petitioner-plaintiff it had been contended before the learned Munsiff that when once the Karnataka Land Reforms (Amendment) Act 1 of 1974 came into force, the issue of tenancy raised therein could not be tried by him at all. Further, he had no power to delete that issue either. The learned Munsiff relying on the decision of this Court in Tara Bai v. Krishna Pandurang Powar (1972) 1 Mysore LJ 216 = (AIR 1972 Mys 214) came to the conclusion that such an issue would not at all arise in a suit for permanent injunction simpliciter. Therefore, he directed the deletion of that issue overruling the objection urged on behalf of the revision petitioner.

3. On behalf of the petitioner, Sri T. J. Chouta, the learned counsel, placing reliance on a learned single Judge's decision of the Gujarat High Court in Babar Somla Kamli v. Ganpat Narayan Mohite. : AIR 1970 Guj 148, contended that when once an issue regarding tenancy came to be framed and when the Court had jurisdiction to frame such an issue, it was not open to delete that issue after the jurisdiction it had earlier had been taken away by the amendment to the Land Reforms Act. On behalf of the respondent Sri S. Shivaramaiah, the learned counsel, relied principally on the decision of this Court in Tara Bai's case, (1972) 1 Mys, LJ 216 = (AIR 1972 Mys 214) and contended that even in the first instance such an issue had been unnecessarily raised. He further contended that the jurisdiction to frame an issue stems from the provisions of the Civil Procedure Code and not by any provision contained in the Land Reforms Act. In that view, he argued that such power would be available to a Court to delete any such issue in proper cases.

4. On a careful examination of the question, I am not persuaded to agree with the contention of Sri Chouta. In Babar's case : AIR 1970 Guj 148 the facts were different from the case on hand. In the said case there is no doubt that the decision was more or less analogous to the one obtaining in the instant case, so far as some of the facts were concerned. In that case it is observed as follows:--

'Having framed the issue it is not open to the Court to say that it was not necessary to frame the issue merely because the court had passed a decree in another Civil Suit No. 43 of 1963. The learned Judge (referring to the lower Court) deleted the issue on the ground that the party had applied to the Mamlatdar.

'These are not good grounds.'

In the context of the above circumstances the learned Judge observed:

'Once an issue is framed which cannot be tried by the Civil Court it must be decided by the Tenancy Court. It was obligatory on the part of the Court to refer the issue to the Tenancy Court.'

It is therefore clear that the latter enunciation must be understood in the context of the facts referred to in the passage reproduced earlier. In the instant case, the question raised by Sri Chouta has, in my opinion, reference more to the jurisdiction exercisable by a Court under the appropriate provisions of Civil Procedure Code than any other. It is, however, clear that the Court has got ample power to delete any issue framed by it at any time before the judgment is actually rendered. In the instant case, as pointed out by the learned counsel for the respondent, an issue relative to tenancy would not at all arise, having regard to the ratio of the decision in Tara Bai's case, in a suit for permanent injunction only. Sri Chouta more or less sought to distinguish this decision on the ground that when a tenant sues for permanent injunction on the strength of lawful possession, traceable to his title as a tenant, and such tenancy is denied, such an issue might arise in conceivable cases, one such case being the present, and any determination thereof has relevance to the ultimate determination of the question of lawful possession. In this view, any conclusion as regards such tenancy would at times operate as presumptive proof of such lawful possession. Whatever may be the merits of this submission, I am bound by the decision of the division bench of this Court in Tara Bai's case. For all these reasons, I do not feel persuaded to interfere with the order impugned.

5. Civil Revision Petition therefore is dismissed. No costs.

6. Revision dismissed.