

Veerabhadraiah Vs. Muddamma

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Court : Karnataka

Decided On : Mar-18-1974

Reported in : ILR1974KAR794; 1974(2)KarLJ187

Judge : Malimath, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 41, Rule 31

Appeal No. : Second Appeal No. 396 of 1974

Appellant : Veerabhadraiah

Respondent : Muddamma

Advocate for Pet/Ap. : P. Krishnappa, Adv.

Judgement :

1. I have heard Sri P. Krishnappa, learned counsel appearing for the appellant in support of the admission of the appeal. The learned counsel submitted that the judgment of the Prl. Civil Judge at Tumkur passed in R. A. 59 of 1971 is not a judgment in accordance with law, inasmuch as it does not conform with Order 41, Rule 31, C. P. C. It was urged that though no arguments were advanced on behalf of the appellant in the lower appellate Court, the Court was bound to look into the grounds of appeal, and to record a judgment. The judgment of the Court below is a brief one and reads as follows:

'HSRS states that the matter may be taken as heard and that the Court may proceed to judgment on perusing the grounds of appeal. Perused the grounds of appeal and from the submission made, it is patently clear that the appellant has no arguments to advance in support of the grounds urged in the appeal. Hence in my view no grounds are substantiated and there is no merit in the appeal. Hence appeal dismissed.

Sd. D. P. Hiremath,

Prl. Civil Judge, 6-7-73.'

The appellant was represented by counsel, whose initials are noted in the judgment as HSRS. It is not disputed that when the case was posted for hearing on the 6th July, 19Y3, the appellant's counsel HSRS was present in court, and he made a statement to the Court that the matter may be taken as heard and that the Court may proceed to judgment on perusing the grounds of appeal. This is precisely what the Civil Judge has recorded in his judgment. It is clear from these admitted facts that the counsel appearing for the appellant did not submit any argument in support of the appeal, when the same came up for hearing before the learned Civil Judge. It is, no doubt, true that the learned counsel appearing for the appellant submitted to the Court that the Court may proceed to judgment on perusing the grounds of appeal. This submission of the learned counsel appearing for the appellant is not a substitute for the arguments in support of the appeal. It is the duty of the appellant or his counsel, who is aggrieved by the decree passed by the Court below, to advance reasons by way of arguments, before the appellate Court, to convince it that the conclusions arrived at by the Court below are wrong for the reasons advanced by him. If no arguments at all are advanced, and no reasons are given by the appellant's counsel in support of the appeal, the Court is not under an obligation to look into the grounds of appeal, and to decide the case on merits and in accordance with Order 41, Rule 31, C. P. C. in such circumstances, the Court can proceed to dismiss the appeal for default. The judgment of the lower Appellate Court, in the circumstances, must be regarded as having the effect of dismissal of the appeal filed by the appellant for default, as no arguments at all were advanced on behalf of the appellant, before the lower

Appellate Court. The Supreme Court in *Thakur Sukhpal Singh v. Thakur Kalyan Singh*, : [1963]2SCR733 has laid down that the Appellate Court is not bound to decide an appeal on merits on the basis of the material on record when the appellant appears at the hearing but does not address the Court, and that the Appellate Court under such circumstances can dismiss the appeal for default. The Supreme Court has further observed as follows:

'It is the duty of the appellant to show that the judgment under appeal is erroneous for certain reasons and it is only after the appellant has shown this that the appellate Court would call upon the respondent to reply to the contention. It is only then that the judgment of the Appellate Court can fully contain all the various matters mentioned in Rule 31, Order 41. If the appellant submits nothing for its consideration, the Appellate Court can decide the appeal without any reference to any proceedings of the Courts below and, in doing so, it can simply say that the appellants have not urged anything which would tend to show that the judgment and decree under appeal were wrong.'

2. In view of this authoritative pronouncement of the Supreme Court. it is impossible to accept the contention of Sri Krishnappa, learned counsel appearing for the appellant, that as the judgment of the lower Appellate Court is not in accordance with Order 41, Rule 31 of the C.P.C., this appeal merits admission.

3. For the reasons stated above, this appeal is dismissed.

4. Appeal dismissed.

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