

B.T. Krishnappa Vs. Principal Munsiff, Kolar and ors.

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Court : Karnataka

Decided On : Jul-06-1979

Reported in : AIR1980Kant106

Judge : K.A. Swami, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 18, Rule 18; [Constitution of India](#) - Article 14

Appeal No. : Writ Petn. No. 4285 of 1979

Appellant : B.T. Krishnappa

Respondent : Principal Munsiff, Kolar and ors.

Advocate for Def. : U.N. Narayana Rao, Sr. Central Government Standing Counsel

Advocate for Pet/Ap. : G.N. Seshagiri Rao, Adv.

Judgement :

ORDER

1. In this petition, under Articles 226(1)(a) (b) and (c) of the Constitution, the petitioner who is the plaintiff in Original Suit No. 125/77 on the file of the Principal Munsiff, Kolar has challenged the constitutional validity of the provisions contained in O. 18 R ' 18 Civil P. C. as amended by Act No. 104 of 1976, on the ground that

the said provisions are opposed to Article 14 of the Constitution.

2. An interesting argument was advanced by Shri G. N. Seshagiri Rao, the learned Counsel appearing for the petitioner, that O. 18 R. 18 empowers the Court to make an inspection and record the fact observed by the Court at such an inspection and such a record shall form a part of the record of the suit and that being so, the party will not have an opportunity to challenge the same before the Court and thereby, the Court will be exercising an absolute power, hence it was submitted that it will be opposed to Article 14 of the Constitution.

3. I have not been able to comprehend how the provisions of Order 18, Rule 18, are opposed to Article 14 of the Constitution. Inspection is made by the Court in the presence of the parties and the relevant facts observed in the presence of the parties during the course of inspection will be recorded. That being so, there is no reason whatsoever to think that the Court will be exercising an absolute power, It is nothing but recording the facts -as found during the course of inspection. This provision is intended to advance -the cause of justice and to avoid unnecessary evidence being adduced in the case. Further, the record made of the facts observed during the course of observation enables the Court to give its verdict in conformity with the real nature of things. Thus the inspection by the Court in cases which are required to be decided on the preference to certain things alleged to exist will greatly help the Court to arrive at a correct decision. If the Court acts arbitrarily during the course of inspection, it is always open for correction either in the if appeal preferred against the decree passed in the suit or in revision in deserving cases. The application of the provision is not confined to a particular class of persons or to a particular class of suits that being so, the contention of Shri Seshagiri Rao that the provisions contained in O. 18 R. 18 of the C, P. Code, are opposed to Article 14 of the Constitution, is untenable. It was also further submitted that by reason of such power, the Court will be playing a role of a witness which is incompatible with the function of the Court' to adjudicate the dispute between the parties. This contention also is equally untenable. As already pointed out, the court makes the inspection in the presence of the parties as a Court and not as a witness. The inspection is made for the purpose of enabling the Court to decide the case and to arrive at a just decision. That being so, there is no

ground to issue Rule. Hence, the writ petition is rejected.

4. Petition dismissed.

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