

Gurappa Reddy Vs. Kalappa Reddy

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Court : Karnataka

Decided On : Jan-22-1993

Reported in : ILR1993KAR1350; 1993(2)KarLJ90

Judge : Hanumanthappa, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151 - Order 1, Rule 10 - Order 23, Rule 3

Appeal No. : R.F.A. No. 18 of 1983

Appellant : Gurappa Reddy

Respondent : Kalappa Reddy

Advocate for Def. : S.P. Shankar and ;D.S. Dwarakanath, Advs.

Advocate for Pet/Ap. : K.S. Desai, Adv. and ;T.S. Ramachandra, Adv. for Applicant in I.A. Nos. III and IV

Judgement :

Hanumanthappa, J.

1. A few facts which are necessary to dispose of these I.As are detailed as under- Regular First Appeal No, 18/1983 had arisen out of the Judgment and decree passed by the XIV Additional City Civil Court, Bangalore, in 3065/1980 dated

27.7.1982. Sri Gurappa Reddy was the plaintiff in the said suit and he filed a suit against one Sri Kalappa Reddy for declaration and possession of the suit property. The said suit was instituted on 23.3.1974. After contesting the said suit for declaration and possession a Judgment and decree was passed on 27.7.1982. Hence, on 2.11.1982 R.F.A.No.18/1983 was filed in this Court by Sri Gurappa against Sri Kalappa Reddy.

2. Sri Kalappa Reddy died on 17.10.1982 that was during the pendency of the said appeal. On 17.11.1983 Gurappa Reddy filed an application to bring on record the widow of Kalappa Reddy and his sons as L.Rs. stating that except these three there are no other L.Rs. On 31.5.1984 the said application was allowed. Accordingly, the wife and two sons of late Kalappa Reddy were brought on record as his L.Rs. On 22.11.1990 L.Rs of appellant Gurappa and Kalappa Reddy filed a compromise petition under Order 23 Rule 3 of C.P.C. whereby item No.6 of 'B' Schedule property was agreed to be given to the plaintiff-appellant Gurappa Reddy. The particulars of the said property as noted in the decree as Item No.6 of 'B' Scheduled property is extracted here under:-

'B' SCHEDULE

'(Item No.6) site shown as site No. 2 in sketch enclosed situated at Appareddy Palya, Old Corporation No.15 vacant space (Sy.No.8 of Dookanahalli) measuring 35' East to West and $(74' + 71'6'')/2$ North to South and bounded as follows:-

East by:

Land belonging to joint family and encroached by Gurappa Reddy shown as ABC in the annexure sketch followed by Corporation No.1 Gurappa's House

West by:

BDA 60' Road

North by:

Proposed 10' road belonging to joint family

South by:

Side No.3 A.K.Chandrashekar Reddy's vacant land.

On the basis of the said compromise petition the suit was disposed of on the same day and subsequently decree was drawn as per the terms of the compromise.

3. Subsequent to drawing the decree in O.S.No.3065/1980 pursuant to order dated 22.11.1990 two I.As were filed, by one Smt.Savithamma one under Order 1 Rule 10 and another under Section 151 C.P.C. requesting that compromise decree made on 22.11.1990 be recalled for the reason being that the parties in R.F.A.No.18/1983 by playing fraud on the Court obtained a decree viz., in getting item No.6 of 'B'. Scheduled property allotted to appellant Gurappa Reddy. Even though the parties to the said appeals were quite aware that the said property became the property of Smt.Savithamma. It was also mentioned that L.R.application that was filed in R.F.A. No. 18/1983 to bring only the wife and 2 sons of late Kalappa Reddy was again with an intention to play fraud on this applicant in order to deprive her right on the property in question viz., as on the date of filing the application, the appellant and as well as so-called three L.Rs were quite aware that Kalappa Reddy died on 17.10.1983 leaving behind him not only his wife and two sons but also four daughters namely Savithamma and Bhagyamma and two other daughters. Her further case in both I.As is that Smt.Bhagyamma one of the daughters of late Kalappa Reddy filed a suit on 16.12.1983 in O.S.No.3939/1983 on the file of the City Civil Judge, Bangalore City (C.C.H.No.10) for partition and possession of some of the properties including the property under dispute. Smt.Bhagyamma made her mother viz., wife of Kalappa Reddy and her two brothers Chandrashekar Reddy and Purushothamma Reddy and other three sisters including the brother and applicant Savithamma as parties. The suit was contested and the same was decreed on 29.3.1984 whereby disputed site was assigned to the share of Savithamma which includes Item No.6 in 'B' Schedule property of O.S.No.3065/1980.

Sri T.S.Ramachandra, learned Counsel for the applicant submitted that as on the date of entering into compromise the plaintiff-appellant and as well as so-called wife and two other sons of late. Kalappa Reddy were quite aware that this

Savithramma the applicant and other three daughters also L.Rs and as far as Savithramma the applicant is concerned had acquired right and interest in the property described above. Though aware of the said position with a view to deprive her of right on the property a portion of the same came to be given to the plaintiff. The property which was not available to allot to any one or to transfer somebody's rights on the property to others with their consent was nothing but a clear case of fraud. Though decree has been made on compromise petition, the same deserves to be recalled and she be permitted to contest the appeal so that she can demonstrate how she is entitled to the property now shown to have been given to the appellant-plaintiff.

3. Sri T.S.Ramachandra, further contended that under normal circumstances when the compromise has been effected and decree has been drawn accordingly suit has to be disposed of. But the instant case is the resultant of fraud played not only on his client but also on the Court. As such when directing the party to challenge the so-called correctness of the compromise petition by filing separate suit or by preferring an appeal before the Supreme Court not efficacious and proper but it is just and reasonable that his request for recalling be granted. In support of his contentions he relied upon a Decision reported in the case of DAYA RAM AND ORS. v. SHYANT SUNDARI AND ORS., : [1965]1SCR231 wherein paras 11 and 12 reads as under:-

'Where a plaintiff or an appellant after diligent and bonafide enquiry ascertains who the legal representatives of a deceased defendant or respondent are and brings them on record within the time limited by law, there is no abatement of the suit or appeal, the impleaded legal representatives sufficiently represent the estate of the deceased and a decision obtained with them on record will bind not merely those impleaded but the entire estate including those not brought on record. In a case where the person brought on record is a legal representative it would be consonant with justice and principle that in the absence of fraud or collusion the bringing on record of such a legal representative is sufficient to prove the suit or the appeal from abating. : [1962]2SCR636 and : [1963]3SCR858 , Dist. ILR 26 Mad 230 Approved. Case Law Refd.

Though the appeal has not abated, when once it is brought to the notice of the Court hearing the appeal that some of the legal representatives of the deceased respondent have not been brought on record, and the appellant is thus made aware of this default on his part, it would be his duty to bring these others on record, so that the appeal could be properly constituted. In other words if the appellant should succeed in the appeal it would be necessary for him to bring on record these other representatives whom he has omitted to implead originally.'

For the similar proposition he also placed reliance on Decision in the case of DOLAI MALIKO AND ORS. v. KRUSHNA CHANDRA PATNAIK AND ORS., : AIR 1967 SC49 wherein it is held as follows as under: -

'This is not to say that where the heirs of an appellant are to be brought on record all of them should not be brought on record and any of them should be deliberately left out. But if by oversight or on account of some doubt as to who are the heirs, any heir of a deceased is left out, that in itself would be no reason for holding that the entire estate of the deceased is not represented unless circumstances like fraud or collusion exist.'

So contending Sri T.S. Ramachandra, submitted that both the applications be allowed and her client be given a chance to contest the Appeal on merits.

4. As an answer to these contentions Sri K.S.Desai, learned Counsel for appellant submitted as follows:-

- 1) There is no merit in any one of the contentions raised by Sri T.S. Ramachandra.
- 2) When identity of the property is in dispute viz., the property alleged to have been acquired by Smt.Savithramma the applicant in Partition Suit No.3939/1983 dated 29.3.1981 is different from the one given to the plaintiff-appellant by compromise decree, there is no justification for the applicant to contend that her right has been deprived of.
- 3) None of the parties to appeal No.18/1983 played fraud on the Court to get the compromise entered into. Even if it is felt so, the proper thing for the applicant is either to file an appeal or to file a separate suit.

4) When the compromise petition was filed in R.F.A.No.18/1983 the applicant was quite aware of the developments. She did not take any steps to get herself impleaded. But she opened her eyes only after the suit was decreed. The plaintiff-appellant is a stranger to the proceedings in O.S.No.3939/1983. Hence, the decree that was passed in the said suit or right alleged to have been acquired by Smt.Savithamma the applicant is not binding on the plaintiff-appellant.

5. Thus arguing Sri Desai, contended that both the applications are not maintainable and the same deserve to be rejected.

6. Sri S.P. Shankar, learned Counsel for L.Rs of Kalappa Reddy, submitted that all the contentions of Sri T.S. Ramachandra as untenable.

7. He submitted that this Court can exercise its powers on an application filed under Section 151 C.P.C., only when it is shown that the same requires corrections of any typographical mistake and not to set aside the same. According to him, when once on a compromise application a decree is passed the same is not liable for corrections. Even if it is shown that such decree is resultant of abuse of process of the Court or resultant of fraud played on the Court the aggrieved person can seek for its corrections only either by way of going in an appeal or by way of filing a separate suit.

8. In support of his contentions he placed reliance on the Decision of the Supreme Court in the case of VINOD KUMAR SINGH v. BANARAS HINDU UNIVERSITY AND ORS., : [1988]1SCR941 wherein the scope of Order 20 Rule 3 and its modification has been explained as under:-

'Rule 3 of Order 20, Civil P.C. permits alterations or additions to a judgment so long as it is not signed. It is only after the judgment is both pronounced and signed that alterations or additions are not permissible, except under the provisions of Section 152 or Section 114 of the Civil P.C. or, in very exceptional cases, under Section 151 of the Civil P.C. But, while the Court has undoubted power to alter or modify a judgment, delivered but not signed, such power should be exercised judicially, sparingly and for adequate reasons. When a judgment is pronounced in open Court, parties act on the basis that it is the judgment of the Court and that

the signing is a formality to follow. Ordinarily judgment is not delivered till the hearing is completed by listening to submissions of Counsel and perusal of records and a definite view is reached by the Court in regard to the conclusion. Once that stage is reached and the Court pronounces the judgment, the same should not be reopened unless there be some exceptional circumstance or a review is asked for and is granted. When the judgment is pronounced, parties present in the Court know the conclusion in the matter and often on the basis of such pronouncement, they proceed to conduct their affairs. If what is pronounced in Court is not acted upon, certainly litigants would be prejudiced. Confidence of the litigants in the judicial process would be shaken.'

Sri S.P.Shankar, also submitted that when once the suit and appeal have been disposed of finally there cannot be any application to implead in respect of the subject matter involved in the suit or appeal on the ground such applicant is a necessary party.

9. After hearing the Counsel for the parties concerned and going through the decrees in both the suits referred to above and I.As III and IV, the objections raised by Sri K.S.Desai and Sri S.P.Shankar, and also giving my careful thought to the authorities relied upon by both the sides I am fully convinced that as on the date of entering into compromise the parties were quite aware that the property which was identical to the one given to Gurappa Reddy was in fact allotted as a share of Savithramma the applicant and also one of the L.R's of late Kalappa Reddy. As on the date of filing the application to bring the L.Rs of Kalappa Reddy and also during the pendency of the proceedings and as on the date of filing compromise petition the parties were aware that Smt. Savithramma the applicant was one of the L.Rs. As on the date of entering into compromise wife and two other sons of Kalappa Reddy were quite aware that the property decided to be given to the plaintiff-appellant was in fact the subject matter of suit No.3939/1983 and that was given to Smt. Savithramma the applicant. The wife and two other sons of late Kalappa Reddy were also parties to the said suit. It cannot be said that the plaintiff-appellant played fraud, but it is clear that so-called L.Rs namely, wife and two sons of late Kalappa Reddy suppressed the proceedings in O.S.No.3939/1983 and the result thereon. In fairness the wife and two sons of late

Kalappa Reddy who were the parties to compromise petition should have made known to the Court that there is some dispute in respect of the property to be given to Gurappa Reddy. Apart from this, in order to see that the justice is done the duty was cast on the mother and brothers of the applicant to request the Court to direct the plaintiff-appellant to make other sisters as parties to the proceedings. The object of initiating the proceedings before the Court is to see that the rights of the parties are adjudicated in just manner and substantial justice is done to the parties. Whoever comes to the Court must come to the Court with clean hands. If any party to the proceedings adopts a way just to get the relief on the basis of Suppression veri and suggestio falsi, and if ultimately comes to the Court notice that the party to such proceedings has played a fraud the same shall be held as bad. In addition to this, it is the paramount duty of the Court to see that substantial justice is done. The parties shall not be thrown out from the precincts of the Court on technicalities.

10. From the above discussions it is clear that when the proceedings were pending before this Court in R.F.A.No.18/1983 and on the date of entering into compromise the applicant had substantial right and interest in the properties involved in the compromise petition. As such she should have been made a party to the proceedings. Having not done so it has to be said that whatever compromise that was entered into as not a fair one, and the rights if any Gurappa Reddy acquired on item No.6 of 'B' Schedule property is not final, unless the same is decided, after giving her an opportunity to establish her case.

11. Now the point for consideration is whether this Court has to direct Smt. Savithramma to challenge the compromise order either by way of filing an appeal or by institution suit, for recalling the order passed by this Court on 22.11.90. It is not in dispute that when once it is shown that compromise is resultant of fraud or misrepresentation etc, the same can be set aside as held by the High Court of Andhra Pradesh in the case of CONUGUNTA SUBBARAYUDU v. ELURI BRHMANANDAN AND ORS., : AIR 1970 AP211 wherein the relevant portion reads as under:-

'The scope of Order 22 Rule 10, C.P.C. is not 'wide enough so as to permit a settlee during pendency of suit to apply to be impleaded as a party in the appeal, because the transfer was not effected pending that proceeding but prior thereof. But the settlee can take benefit of Section 146 and apply to be brought on record, for such a course is not prohibited by any other provision of the Code. Section 146 being a beneficial provisions should be construed liberally so as to advance the cause of justice and not in a restricted or technical sense. The expression 'claiming under' is wide enough to include cases of devolution and assignment mentioned in Order 22, Rule 10. AIR 1958 SC 391 & AIR 1955 SC 376. Rel. on. Case law discussed.

The filing of compromise memo on the next day of making the application by settlee to be brought on record as a person interested in appeal by reason of settlement deed, is no bar to entertaining the application or inquiry into its merits. Filing of a compromise per se does not terminate the proceedings before the appellate Court. The petitioner who has filed his petition earlier than the compromise memo, has a right to about to the compromise and the Court has a duty to inquire into it once he is added as a party. Though addition as party is discretionary with the Court, it is discretion which is to be exercised judicially after duty considering the petition. The application of the settlee pendente lite in such a case is one under Section 146 and it would be entertained notwithstanding that the truth and validity of the settlement was disputed.'

This Court in the case of S.G.THIMMAPPA v. T.ANANTHA AND ORS., : AIR1986 Kant1 held as follows:-

'By lawful, it means it is not contrary to law, public policy or void ab initio, or unlawful, but it cannot include the grounds like fraud, undue influence, coercion, by which the decree can be avoided, treating it as voidable. Till it is avoided and displaced it can be treated as lawful, for the limited purpose of Order 23, Rule 3 C.P.C.

A contract of agreement may be lawful but it can still be challenged on the ground that it was entered into or achieved by exercising fraud, undue influence or coercion and can be avoided. This aspect of the matter is not covered by the

words 'not lawful' occurring in Rule 3A of Order 23, C.P.C. Therefore, to hold that the compromise decree cannot be challenged on the ground of fraud, undue influence or coercion under Rule 3A would not be correct. : AIR 1982 Cal 12 . and : AIR 1981 Bom 357 Ref.'

From the above discussions it is clear that even if the decree is passed if the compromise memo shows that same is resultant of fraud or abuse of process of the Court the same can be challenged.

12. Now the forum is how it has to be challenged, The various High Courts and also the Supreme Court have held that the proper forum is either to go in an appeal or to file a separate suit. In the case of SAILENDRA NATH ROY CHOWDHURY v. MD. ALIM AND ANR., : AIR 1983 Cal 180 it is held as follows:-

'Civil P.C. (5 of 1908), Sections 151, 96, Order 23, Rule 3; Order 43, Rule 1-A - Inherent powers - Compromise decree challenged invoking Section 151 on the ground that it was defective as all parties did not sign the compromise or the terms of compromise were vague or uncertain - Petition invoking inherent powers under Section 151 not maintainable and proper remedy is to prefer an appeal. Case law discussed.'

This view has been affirmed by the Supreme Court in the case reported in AIR 1985 SC 379 referred to earlier. From the principles laid down therein it is true that injustice has been caused to the applicant. But the same can be set right either by way of filing an appeal or by seeking review of the order dated 22.11.1990.

13. I am unable to understand why the applicant though filed application for recalling the order within 30 days and why she did not file review application as it was permissible as observed by the Supreme Court.

14. Hence these I.As are disposed of reserving liberty to the applicant to seek for review of this order and if she files such an application within 60 days from this date the same will be heard on merits.