

Narayanamma Vs. District Registrar and Special Deputy Commissioner

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Court : Karnataka

Decided On : Aug-28-1985

Reported in : ILR1987KAR1064

Judge : Chandrakataraj Urs, J.

Acts : Karnataka Registration Rules - Rule 179

Appeal No. : W.P.No. 12800 of 1985

Appellant : Narayanamma

Respondent : District Registrar and Special Deputy Commissioner

Advocate for Pet/Ap. : G.S. Visweswara, Adv.

Disposition : Petition rejected

Judgement :

ORDER

Chandrakantaraj Urs, J.

1. The petitioner was aggrieved by the refusal of the registration of a document by the concerned Sub-Registrar. On that refusal, he preferred an appeal under Section 72 of the Registration Act to the Registrar. That appeal was filed within the time prescribed. The notice was issued to the parties and after several adjournments the case was posted for orders on 17-8-1984. On the representation made by the Counsel for the appellant it was re-opened and further adjournments were granted and finally came up for hearing on 23-2-1985 before the Appellate Authority, namely, District Registrar, the first respondent herein. On that day, neither the petitioner nor the Counsel was present. Therefore the first respondent dismissed the appeal for non-prosecution. Aggrieved by that order which is at Annexure-B to the petition, the petitioner has approached this Court for redress, inter alia, contending that the order of dismissal for non-prosecution is without jurisdiction, contrary to prescribed procedure and otherwise unlawful, having failed to get a restoration of the appeal as is evident from Annexure-E to the petition. The above facts set out are not disputed and are apparent from the contents of the impugned order.

2. Sri G. S. Visweswara, learned Counsel appearing for the petitioner has drawn my attention to Rule 179 of the Karnataka Registration Rules, which provides for the procedure for disposing of appeal. That rule has altogether six sub-rules, none of which provide specifically for dismissal for default. Sub-rule (5) reads as follows :

'If on the date of hearing :

(a) an applicant does not appear and the respondent appears and contest the registration of the document, or

(b) the respondent does not appear and it is found that notice has not been served upon him in consequence of failure of the applicant to pay the requisite fee for sub-service, the registrar shall make an order refusing to direct registration of the document. Provided that it shall be open to the Registrar to adjourn the enquiry from time to time for sufficient cause.'

3. I do not think any other sub-rule or Rule 179 has even a remote connection with what has happened in the petitioner's case.

4. The Code of Civil Procedure is also not made applicable to the proceedings before the Registrar in appeal. Therefore, the initial question is whether in the case of every appeal presented, the Registrar is bound to record a refusal or a reversal of refusal made by the Sub-Registrar irrespective of the presence of the parties.

5. Sri Visweswara, learned Counsel for the petitioner also drew my attention to the principle underlying Explanation to to Rule 2 of Order 17 of the Civil Procedure Code. That explanation provides that ;

'Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion, proceed with the case as if such party were present.'

In other words, the Court in a similar circumstance, if evidence is partially recorded may in its discretion proceed to dispose of the case on merits, if he does not choose to proceed under Order 9 of the Civil Procedure Code as a mandate under Rule 2 of Order 17. Similarly, Rule 3 of Order 17, merely directs the Court to proceed under Rule 2 if the parties are not present. To take advantage of the explanation to Rule 2 of Order 17 C.P.C., learned Counsel for the petitioner must place material that evidence should have been adduced on the basis of which disposal of the appeal on merits is possible by the Appellate Authority if he choose to proceed exercising discretion vested in him to dispose of the appeal.

6. The only evidence recorded appears to be that of the petitioner herself, who was the appellant. It is useful to extract Annexure-A

From the above, it is clear that the Sub-Registrar refused the registration as no body was present to admit execution of the document and receive the consideration for the same. Beyond that information nothing else was available to the Appellate Authority to dispose of the appeal before him on merit. Therefore, the choice before the Appellate Authority was to dispose of the appeal holding that in the absence of the executant, the Sub-Registrar had no choice but to refuse registration, or dismiss for default on the principle of Order 9 of the C.P.C. He has chosen the latter.

7. The crux of the argument of Sri Visweswara was that under Rule 179 of the Registration Rules, the only power conferred upon the Appellate Authority was either to refuse registration that is, confirm the refusal or direct registration and therefore he was left with no choice but to pass an order on merit. He further supported that argument based on the fact that the respondent who was the executant in the sale deed in question did not enter appearance and deny it. These were the arguments which were advanced before the first respondent.

8. I do not express my views on merits.

9. The order is clear that both the parties and the Counsel were absent. But in proceedings which are quasi judicial in character, whether the C.P.C. is expressly made applicable to the extent it is possible or not or such proceedings must be governed by rules of natural justice and fair play and to that extent one would not be committing an error if principles of the C.P.C. are borrowed in exercising the power vested in the authority. I do not think that having regard to the language of Rule 179, it is mandatory that in every appeal though not prosecuted the Appellate Authority must record a finding on merits of the appeal. Right of appeal is provided for the aggrieved person so that he may prosecute the appeal with diligence. Appearance of Counsel is permitted. Pleadings are permitted. Notice to the parties are permitted. When these are provided by the

statute, this Court must view as if it is a judicial proceeding rather than a quasi judicial proceeding. If an oral hearing is contemplated then it is for the person who has to address arguments or adduce evidence to appear on all the dates of hearing. In exercise of that appellate power, I am of the view that the appellate authority had inherent power to dismiss it for non-prosecution and that this Court cannot find fault with the exercise of that power.

10. No merit in the Writ Petition and no good grounds to interfere.

11. Petition is rejected.

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