

Devakka Vs. Veerappa Virbasappa Palled

Devakka Vs. Veerappa Virbasappa Palled

SooperKanoon Citation : sooperkanoon.com/381023

Court : Karnataka

Decided On : Dec-02-1985

Reported in : ILR1986KAR1701

Judge : Puttaswamy, J.

Acts : Karnataka Court fees and Suits Valuation Act, 1958 - Sections 115

Appeal No. : C.R.P. No. 2066 of 1980 and W.P. No. 21482 of 1981

Appellant : Devakka

Respondent : Veerappa Virbasappa Palled

Advocate for Def. : M. Rama Bhat Adv. for Respondents 1 to 3

Advocate for Pet/Ap. : Mahabaleshwar Gowd Adv. for ;Mr. Shivaraj Patil, Adv.

Judgement :

ORDER

Puttaswamy, J.

1. As the questions that arise for determination in these cases between the principal contesting parties are interconnected, I propose to dispose of them by a common Order.

2. Devakka, the petitioner in C.R.P. No. 2066 of 1980, who is respondent-2 in W. P. No-21482 of 1981, is the daughter of Lakshnavva who is respondent-4 in that Civil Revision Petition and respondent-1 in that Writ Petition. Lakshnavva was the plaintiff in O.S. No. 25 of 1957 on the file of the Civil Judge, Dharwad, and in that suit, respondents 1 to 3 in CRP. No. 2066 of 1980, who are the petitioners in W.P. No. 21482 of 1981 were defendants 1 to 3. Devakka was defendant-4 in the said suit. In the course of my order, hereafter I will refer to them to their Array in the said suit.

3 In W. P. No. 21482 of 1981, the Revenue Authorities viz., the Karnataka Appellate Tribunal, Bangalore, ('Tribunal'), Assistant Commissioner, Savanur Sub-Division, Savanur ('AC'), Vatap Circle Inspector attached to the Office of the Assistant Superintendent for Survey Settlement and Land Records, Savanur Sub-Division, Savanur ('Inspector') are respondents 3 to 5 and I will hereafter to them as above.

4. On the death of her husband, the plaintiff instituted O.S No 25 of 1957 in the Court of the Civil Judge, Dharwad ('Dharwad Court') which then exercised jurisdiction for partition and possession of her 1/4th share in the plaint schedule properties. Defendant-4 supported the plaintiff and sought for allotment of her 1/4th share in the plaint schedule properties. But, defendants 1 to 3 who are the brothers of deceased husband of the plaintiff, seriously contested the said suit on a large number of grounds. On 30-7-1960, the learned Civil Judge decreed the said suit, inter alia, directing the allotment of 1/4th share to the plaintiff and 1/4th share to defendant-4 which decree has been affirmed by all the appellate Courts of the land dismissing the appeals of defendants 1 to 3.

5. While claiming her 1/4th share in her written Statement in the said suit, defendant-4 did pay the requisite court-fee. She did not pay the requisite court-fee on her 1/4th share before the said Court granted a preliminary decree in the said suit in her favour and the plaintiff. We are now primarily concerned with the non-payment of such court-fee by defendant-4 before such decree, an order of that Court for accepting such payment, but still more directly with an order by the successor Court declaring that the earlier order was a nullity to appreciate which it

is necessary to notice those facts also.

6. While R.S.A. No. 53 of 1971 filed by defendants 1 to 3 was pending before this Court, defendant-4 made an interlocutory application called Diary Application No. 29 of 1961 before the Dharwad Court seeking its permission for payment of the Court-fee due by her on her 1/4th share in terms of the preliminary decree made by that Court in her favour. Sometime in 1977, the Dharwad Court allowed the said application made by defendant-4 and then directed its execution also in the very execution filed by the plaintiff in accordance with law. Before the execution of that, decree could reach its ultimate finality, unfortunately for defendant-4, but fortunately for defendants 1 to 3, a new Civil Judge's Court at Gadag with jurisdiction over the area where the properties were situated was constituted under the Karnataka Civil Courts Act to which Court the aforesaid decree stood transferred and was being executed in Execution Case No. 11 of 1971. In that case, defendants 1 to 3 who had by then lost in all the Courts, objected and urged that the order made by the Dharwad Court in Diary Application No. 29 of 1961 was without jurisdiction and a nullity and that the decree made in favour of defendant-4 must be declared as inexecutable. On 19-9-1977, the Learned Civil Judge has upheld those objections of defendants 1 to 3 and has declared that the decree in favour of defendant-4 was inexecutable.

7. Aggrieved by the said order of the learned Civil Judge, defendant-4 filed on appeal in Execution Appeal No. 11 of 1977 before the District Judge, Dharwad, who, by his order dated 11-2-1980 dismissed the same as not maintainable.

8. Aggrieved by the said orders of the learned District Judge and the Civil Judge, defendant-4 has filed C.R.P. No. 2066 of 1980 which I propose to deal first and then deal the connected Writ Petition.

9. Sri M. Mahabaleshwara Gowd, Learned Counsel for defendant-4, in my opinion, rightly did not seek to assail the unassailable order made by the District Judge in Execution Appeal No. 11 of 1977.

10. On a detailed examination, the learned District Judge had held that the order made by the learned Civil Judge on 19-9-1977 was not a decree within the

meaning of the term 'decree' occurring in Section 2(2) of the Civil Procedure Code as amended from 16-2-1977 and was not appealable under Section 96 of the Code. In my view, this conclusion of the learned District Judge is correct and the challenge of defendant-4 to the contrary is liable to be rejected. With this, I pass on to consider the order made by the learned Civil Judge.

11. Sri Gowd contends that the learned Civil Judge in holding that the earlier order made by Dharwad Court on Diary Application No. 29 of 1961 was without jurisdiction, honest and the decree made in favour of defendant-4 was inexecutable, had exercised a jurisdiction not vested in him by law or had committed a grave illegality or material irregularity occasioning grave failure of justice in the exercise of his jurisdiction, if any, and his order calls for my interference under Section 115 of the Code. In support of his contention, Sri Gowd strongly relies on a Division Bench ruling of this Court in Premchand and ors. v. IAC of Income-Tax, ILR 1985 KAR 1151

12. Sri M. Rama Bhat, Learned Counsel for defendants 1 to 3 sought to support the order on the very grounds that commended to the learned Civil Judge and certain other grounds also.

13. Sri Bhat at the very threshold contends that the petitioner had only challenged the order of the learned District Judge and not the order of the learned Civil Judge and this Court cannot therefore examine the validity of the latter's order and grant any relief to the petitioner.

14. In her revision petition, the petitioner has challenged the orders of the learned District Judge as also the order of the learned Civil Judge and has specifically sought for setting aside them on the grounds urged therein. Sri Bhat is not right in contending that there is no challenge to the order of the learned Civil Judge. Even, in the absence of a specific challenge also, it is open to this Court to examine the validity of the order of the learned Civil Judge and interfere with the same if the Court is satisfied with the circumstances stipulated in Section 115 CPC. For all these reasons, I see no merit in this objection of Sri Bhat and I reject the same.

15. In his order, the learned Civil Judge has held that the order, made by the Dharwad Court or his predecessor -in-office on Diary Application No. 29/61 was without jurisdiction, honest and inexecutable. But, in reaching that conclusion, the learned Civil Judge somewhat regretfully had not found as to how and for what reason, the Dharwad Court had no jurisdiction or had not ascertained the true meaning of the term 'jurisdiction' and its application to the objection urged before him as it was necessary to do in the first instance.

16. In Premchand's case¹, a Division Bench of this Court of which I was a member, had occasion to examine the jurisdiction of the IAC to make an order under Chapter XX-A of the Income-Tax Act, 1961 before publishing a notification under Section 269D of that Act in the Gazette of India. In that context, this Court on a review of the legal position expressed on the true meaning of the term 'jurisdiction' thus ;

' In pure legal theory 'jurisdiction' as meaning 'power to decide' 'or competence to decide' a cause or subject can be conferred on a Court, Tribunal or an authority as is the case only by the Constitution of the country or by a Law made by a competent legislature and not by Act or consent of parties. When a Court, Tribunal or an authority has not been invested with jurisdiction meaning 'the power to decide' or 'competence to decide' but still decides a matter, it is outside its jurisdiction or in excess of its jurisdiction and that cannot be cured by the Act or consent of parties. Rubinstein clearly explains this principle neatly, in his treatise 'Jurisdiction and Illegality' in these words :

'Want of jurisdiction denotes action taken beyond the sphere allotted to the Tribunal by Law, and therefore, outside the area within which the Law recognises a privilege to err. Furthermore, want of jurisdiction is regarded as usurpation of power unwarranted by Law. Consequently, it is considered so radical a defect that it cannot be cured by the acquiescent or consent of the parties concerned. Jurisdiction does not originate in the consent of the parties and cannot be re-established, where it is absent, by such consent or acquiescence. Being independent of the parties' behaviour, want of jurisdiction can be raised by any person wherever the resulting Act is relied upon.

These symptoms are generally accepted as characterising want of jurisdiction. Accordingly, as will be seen later, bias cannot be considered as going to jurisdiction since it is a defect which can be waived and which cannot be raised by the person who 'benefited' by the alleged bias.

Nevertheless, as one would suspect, this Rule is not without its exceptions. In certain circumstances, a party may be precluded, by his behaviour, from raising an objection to jurisdiction, though, admittedly, such an objection would have nullified the disputed proceedings. The Courts have not evolved, with regard to this matter, a general guiding principle. A distinction is sometimes made between total or general principle. A distinction is some times made between total or general want of jurisdiction, which cannot be cured by consent and acquiescence, and other jurisdictional defects which can be thus cured. General want of jurisdiction is taken to relate to the subject matter over which the Tribunal has jurisdiction. But, this distinction has never been clearly formulated.'

A case of inherent want of jurisdiction can be set up at any stage of the proceedings. But, an irregularity in the exercise of jurisdiction cannot be set up at any and every stage of the proceedings (vide *Ledgard and anr. v. Bull and Hira Lal Patni v. Sri Kali Nath*). Bearing these principles it is necessary to examine whether the defect in the issue of notice under Section 269D(2)(a) of the Act before the publication of the same in the Official Gazette has effected the assumption of jurisdiction or is a case of inherent want of jurisdiction or is only an error in the exercise of jurisdiction of the IAC.'

These principles equally apply in ascertaining whether the Dharwad Court had or had no jurisdiction to make its order on Diary Application No. 29 of 1961. While this is the meaning of the term 'jurisdiction', the learned Civil Judge without even attempting to ascertain its meaning has examined the question on assumptions that was not sound and impermissible also.

17. When the plaintiff filed her suit and the Court granted a preliminary decree in her favour and defendant-4, that stands affirmed by the highest Court in the country, indisputedly the Dharwad Court had jurisdiction to make the same, that too in the manner it did. When that Court made that decree and order, that Court

had pecuniary and territorial jurisdiction or competence to decide the same or had jurisdiction over the same. What is true of the decree is also true of the order made on Diary Application No. 29 of 1961 filed by defendant-4. If that is so, then that order was within the jurisdiction of that Court. But the learned Civil Judge in holding to the contrary had committed an error of jurisdiction.

18. Assuming that there were errors on both the occasions committed by the Dharwad Court, they were errors committed within its jurisdiction and were not outside its jurisdiction at all. At any rate, in the executions it was not open to the learned Civil Judge to entertain and accept these objections urged by defendants 1 to 3. In this view, the order of the learned Civil Judge suffers from an error of jurisdiction and illegality in the exercise of his jurisdiction, if any, and calls for my interference under Section 115 of the CPC.

19. Sri Bhat relying on a Division Bench ruling of this Court in *Narasu and ors. v. Narayana Krishnaji and ors.*, AIR 1959 Mys. 233 followed in later cases, contends that after the Dharwad Court made its preliminary decree, it became functus officio and therefore, the order made on Diary Application No. 29 of 1961 was without its jurisdiction and the order of the learned Civil Judge was justified.

20. In examining the true effect of a preliminary decree in a partition suit involving revenue lands, the Division Bench in *Narasu's case*² had expressed that on making such a decree, the Court becomes functus officio. But, as pointed out by a later Division Bench of this Court in *Shivaramiah v. Mallikarjuniah*, : AIR1978 Kant76 the decision in *Narasu's case*² cannot be read as completely precluding a Civil Court from making such orders as circumstances justify from time to time. On the ratio in *Shivaramiah's case*, : AIR1978 Kant76 which is apposite, the Dharwad Court was competent to entertain Diary Application No. 29 of 1961 and make its order. Even otherwise, on the principles noticed by me earlier, the error, if any, committed by the Dharwad Court was only an error within its own jurisdiction and was not an error of jurisdiction or an error committed outside its own jurisdiction. I see no merit in this contention of Sri Bhat and I reject the same.

21. Sri Bhat lastly contends that there was no preliminary decree or executable decree made by the Dharwad Court in favour of defendant-4 who had not paid the

requisite court-fee and therefore, that decree was honest and the later payment of court-fee did not modify that and make it a valid and executable decree. In support of his contention, Sri Bhat strongly relies on a Division Bench ruling of the Calcutta High Court in Smt. Sankaribala Dutta v. Smt. Asita Barani Dasi and ors, : AIR1977 Cal289 .

22. I will examine this contention of Sri Bhat on the basis that defendant-4 had not paid the requisite court - fee before the Dharwad Court granted a preliminary decree in her favour.

23. Whatever may be the infirmity or irregularity committed by defendant-4 or by the Dharwad Court, it cannot be disputed that Court had made a preliminary decree in favour, of defendant-4 of her one-fourth share in the plaint schedule properties. In all the appeals filed by defendants 1 to 3, the last one being before the Supreme Court, that decree of the Dharwad Court was affirmed. In order to overcome the earlier irregularity, if any, defendant-4 filed Diary Application No. 29 of 1961 on which the Dharwad Court made an order in her favour. After all, the Court Fee 'Act does not prohibit a Court from collecting court-fee even after it makes a decree. Section 149 of the CPC and other enabling provisions empowered the Dharwad Court to make its order on Diary Application No. 29 of 1961 and ignore the infirmities it had earlier committed and give life and validity to the decree earlier made in favour of defendant-4. On any view, the objections raised by defendants 1 to 3 were extremely technical in nature and did not affect the competence of the Court or the validity of the order made in Diary Application No. 29 of 1961.

24. In Sarbeswar Panda and Ors. v. Bibhabasu Panda, : AIR1977 Cal288 the High Court of Calcutta was considering the validity of a preliminary decree in the absence of payment of court-fee paid. But, that is not the position in the present case. In this view, the ratio in Sarbeswar Panda's case , : AIR1977 Cal288 does not really bear on the point.

25. On the other hand, the principles stated by the the High Court in Smt. Bittan Devi and ors. v. Rudra Sen Bajpai and ors., AIR 1966 Allahabad 601 with which I am in respectful agreement are more apposite.

26. On the foregoing discussion, I hold that there is no merit in this contention of Sri Bhat and I reject the same.
27. With this, it is necessary to examine W.P. No. 21482 of 1981 filed by defendants 1 to 3.
28. In effecting partition by metes and bounds, the Revenue authority made an order in favour of the plaintiff and defendant-4 against which, defendants 1 to 3 filed an appeal in Appeal No. 493/79 (LRBGM) before the Tribunal. On 29-5-1981 the Tribunal has allowed the same and has remitted the matter to the AC of the area to afford a proper opportunity to them and then complete the proceedings in accordance with law.
29. Sri Bhat contends that the Tribunal should have allowed the appeal filed by defendants 1 to 3 in its entirety and should not have unnecessarily remitted the matter to the AC for fresh disposal.
30. Sri Gowd appearing for respondents 1 and 2 sought to support the order of the Tribunal.
31. While dealing with the Revision Petition, I have found that the decree made in favour of the plaintiff and defendant-4 was valid and executable. Both sides do not dispute that there are many items of properties which are revenue assessed lands or agricultural lands and their partition by metes and bounds has necessarily to be made only by the revenue authorities. After the amendment of Section 49 of the Karnataka Land Revenue Act, 1964, the Tribunal had jurisdiction to entertain the appeal of defendants 1 to 3 and remit the matter to the AC. In remitting the matter, the Tribunal has not committed an error of jurisdiction or an error of law justifying this Court's interference. In any event, the order made by the Tribunal is really in favour of defendants 1 to 3 and the same does not at all justify my interference.
32. In the light of my above discussion, I make the following orders and directions:
- (i) I allow Revision Petition No. 2066/80, set aside the order dated 19-9-1977 of the Civil Judge, Gadag, in Execution Case No. 11 of 1977 and direct that Court to dispose of that execution case in accordance with law, but without entertaining any

more objections on the validity of the order made on Diary Application No. 2.9 of 1961 or jurisdiction of Dharwad Court to make its order on that application.

(ii) I dismiss W.P. No. 21482 of 1981 and discharge the rule issued in this case.

33. Civil Revision Petition and the Writ Petition are disposed of in the above terms. But, in the circumstances of the cases, I direct the parties to bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com