

Bettamma Vs. Narayanamurthy

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Court : Karnataka

Decided On : Apr-04-1986

Reported in : ILR1986KAR2124

Judge : Chandrakantaraj Urs, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 22, Rules 4 and 9

Appeal No. : CRP No. 80 of 1983 and IA VI to IX

Appellant : Bettamma

Respondent : Narayanamurthy

Advocate for Def. : W.K. Joshi, Adv.

Advocate for Pet/Ap. : T.N. Raghupathy, Adv.

Judgement :

ORDER

Chandrakantaraj Urs, J.

1. Applicant in these various interlocutory applications was the tenant/revision petitioner in Civil Revision Petition No. 80/1983. That Petition came to be disposed of by me on 16th day of September 1985 by a considered order. I am informed that, that order has been taken up in appeal to Supreme Court under Article 136

and pending there. In the meanwhile, the petitioner/applicant has discovered that respondent/landlord Narayana Murthy had died long before 16th September 1985. In this circumstance it is now contended that these applications to bring L. Rs on record, to set aside the abatement and to recall the order made on 16th day of September 1985 as one without jurisdiction are maintainable.

2. Neither the deceased landlord's Counsel nor the applicant/petitioner's Counsel were aware of the death when they appeared on 16th day of September 1985. Petition of the revision petitioner was taken up and disposed of as if respondent was alive. It is only now that his death has been alleged. The death certificate produced establishes that Narayana Murthy died on 22-7-1985. Under Rule 30 of the Rent Control Rules, 1961 the petitioner ought to have brought the legal representatives on record on or before 8-8-1985 as the period of limitation prescribed is only 15 days. Apparently, that was not done, on account of the ignorance of the death of said Narayana Murthy the respondent/landlord in the Revision Petition. The question now is whether there is any compelling reason for this Court to reopen the question at the instance of the revision petitioner by recalling the order made, set aside the abatement which has taken place on or after 6-8-1985, condone the delay pleaded in presenting the application for bringing the L.Rs on record. In the case of *Pendyala Basawanjanayalu & ors. v. Lingamalhi Ramalingayya* : AIR1938 Mad115 somewhat similar situation was considered by Stodara, J. In that case the defendant who suffered a decree had preferred a revision before the High Court which came to be allowed and the matter was remanded to the Trial Court for disposal in accordance with the directions given by the High Court. It was at the stage of considering the remanded case, the Trial Court came to know of the death of the revision petitioner/defendant long before the High Court allowed his revision. In that circumstance, the Trial Court refused to proceed with the case on the ground that the order of the High Court was illegal. That matter was agitated by the legal representatives of the deceased original defendant in the High Court once again. The High Court having regard to the statutory abatement after the lapse of the period of limitation came to the conclusion that the High Court's order allowing the earlier Revision Petition was without jurisdiction as the legal representatives had not come on record within 90 days and had allowed the Petition to abate and if

there was no Petition before the High Court then no order could have been passed.

3. Undoubtedly, it is very accurate in its logic though the High Court was not to blame as it was not brought to its notice that the party was dead. But the question is whether the facts of that case in which the plaintiff had acquired a decree would not have induced such a view. Even otherwise, I would not like to consider the said decision a good authority because, the revision (second one) should have been rejected on the sole ground that a subordinate Court cannot disobey even an unlawful order of the High Court.

4. In the present case it was a tenant's Revision Petition which was dismissed. The landlord who had already acquired a right by the order for eviction in the Courts below had nothing to lose nor his legal representatives if they were not on record by the dismissal. In other words, their cause of action had been concluded in their favour and that was only confirmed by the dismissal. The same would have been the legal effect if the respondent/landlord had remained *exparte*. In that view of the matter whatever may be the logic of the Madras decision to which reference is made, on the facts of this case, by passing the order dismissing revision petition of the respondent has not seriously prejudiced the case of the applicant/petitioner. Even if L. Rs. had been brought on record the result would have been the same. The technical error is no criteria to recall the order. Hence. I.As VI to IX are dismissed.

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