

Gavadu and ors. Vs. Suresh Kallappa Makavi and ors.

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Court : Karnataka

Decided On : Nov-09-2004

Reported in : 2005(1)KarLJ381

Judge : N.K. Patil, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 20, Rule 18(1)

Appeal No. : C.R.P. No. 985/2001

Appellant : Gavadu and ors.

Respondent : Suresh Kallappa Makavi and ors.

Advocate for Def. : Vigneshwar S. Shastry, Adv. for R1 and 2, R-3, R4D, R4C, R4B(1) R4B(2), R4B(4), R4(D), R4(E), R5, R6(A), R6(B), R6(C), R6(D), R6(E), R6(F) and R6(G) are Sd.

Advocate for Pet/Ap. : M.B. Nargund and ;Sona Vakkund, Advs.

Disposition : Petition allowed

Judgement :

ORDER

N.K. Patil, J.

1. The petitioner, being aggrieved by the order dated 5th June 2000 on the file of the Principal Civil Judge, (Junior Division), Khanapur at Khanapur in R.D.P. No. 5/1995, has presented the instant civil revision petition.

2. The petitioner herein had filed O.S. No. 63/1972 on the file of the Principal Civil Judge, Belgaum for partition and separate possession. The said suit has been decreed holding that, the petitioner is entitled to 1/20th share of the schedule property. Being aggrieved by the judgment and decree passed by the Principal Civil Judge, Belgaum, the petitioner herein filed a Regular Appeal No. 18/ 1981 on the file of the Additional District Judge, Belgaum. The learned District Judge, Belgaum heard the Regular Appeal and confirmed the order passed by the Principal Civil Judge, Belgaum in O.S.No. 63/1972, allowing the 60/20th share out of all the schedule properties. Further, it is the case of the petitioner that, the respondents 1 and 2 herein claim to be the purchasers from defendant Nos. 1 to 3. The first respondent herein, viz. Sri Suresh Kallappa Makavi had filed F.D.P. No. 5/1995 on the file of the Principal Civil Judge, Junior Division, Khanapur. The said final decree proceedings had come up for consideration before the Trial Court on 5th June 2000. The defendant's Counsel prayed for time but the said request has been rejected and further, the Trial Court has observed that, the objections taken not filed. Draw final decree as per the preliminary decree. Being aggrieved by the said order passed by the Trial Court, as stated supra, the petitioner felt necessitated to present the instant revision petition.

3. The principal submission canvassed by the learned Counsel appearing for petitioner is that, when the petitioner has sought for time, the same has been rejected by observing that, the objection taken not filed. The Trial Court has straight away directed to draw the final decree as per the preliminary decree, without considering the request of the counsel for granting time, contrary to the well settled principles of law laid down by the Apex Court as well as this Court. To substantiate her submission, she placed reliance on in the case of A. MANJUNDAPPA v. SONNAPPA and Ors., AIR 1965 Mysore 73 (Vol 52 C 22) and pointed out that, as per the procedure envisaged under Order XX Rule 18(1) and Section 54 of the Code of Civil Procedure, the Trial Court is required to provide for two matters in the preliminary decree viz. (i) it should embody a declaration of the

rights of the several parties interested in the immovable property and (ii) it should also embody a direction that in respect of property assessed to or any officer deputed by him shall effect the division in accordance with the provisions of Section 54. Therefore, she submitted that, the Trial Court has passed the impugned order without following the well settled law laid down by this Court and contrary to the mandatory provisions of the Civil Procedure Code referred above. The order passed by the Trial Court is not sustainable and hence, it is liable to be set aside.

4. Per contra, the learned Counsel appearing for respondents, inter alia, contended and submitted that, the revision petition filed by the petitioner before this Court is not maintainable on the ground that, already the final decree proceedings has been drawn in pursuance of the order dated 5th June 2000 and if at all the petitioner is aggrieved, then, the petitioner is supposed to assail the same before the appropriate forum. Further, he vehemently submitted that, so far as Sy. No. 370 measuring 11 acres 32 guntas situated at Dukkarwadi village, Khanapur taluk, is concerned, the petitioner has got no right or claim in view of the finding given in the operative portion of the order passed by the Principal Civil Judge, Belgaum in O.S.No. 63/1972. Further he submitted that, in pursuance of the final decree drawn, the respondents 1 and 2 have been put into possession under a mahazar. Therefore, he submitted that, the revision petition filed by the petitioner is liable to be dismissed in limine, as not maintainable.

5. I have heard the learned Counsel appearing for petitioner and the learned Counsel appearing for respondents 1 and 2 for considerable length of time on 8th November 2004 and today also. After careful evaluation of the material available on record, it is not in dispute that, the petitioner has filed a suit and the said suit has been decreed and thereafter it has been modified in Regular Appeal. The respondents 1 and 2 have filed the F.D.P.No. 5/1995 on the file of the Principal Civil Judge, Junior Division, Khanapur. The said matter had come up for consideration before the Trial Court on 5th June 2000. Learned Counsel appearing for petitioner has prayed for time for filing objections. But, the Trial Court has rejected the said request at the very threshold itself and taken on record that the petitioner has not filed any objections and straightaway has passed a one line

order directing to draw final decree as per the preliminary decree. The said reasoning given by the Trial Court while passing the impugned order is contrary to the mandatory provisions of Order XX Rule 18 (1) of the Code of Civil Procedure. Further, it is significant to note that, the entire order sheet has been produced before this Court at ink page 9 of this petition. It can be seen that, the matter has been posted on 10th September 1991 and no proceedings took place on that day and on 5th June 2000, on the first day of the posting of the matter, the counsel for the defendant has prayed for time, but the Trial Court has straightaway rejected the said request and directed to draw the final decree as per the preliminary decree. The manner in which the Trial Court has proceeded and passed the impugned order cannot be sustained, as rightly pointed out by the learned Counsel appearing for the petitioner. The learned Counsel appearing for the petitioner has relied upon the law laid down by his Court in the case of A. MANJUNDAPPA v. SONNAPPA and Ors.(Supra). In the said judgment, it has been clearly observed as to how the procedure should be followed while drawing the final decree. The relevant portion of the said judgment reads as follows:-

'The preliminary decree determines the moieties of the respective parties and thereby furnishes the basis upon which the division of the property has to be made. There are other matters in addition to the moieties of the parties that have to be considered and decided before an equitable final partition can be effected. Among them are the realisation of common out-standings, the discharge of common liabilities, the distribution of the profits of the properties realised pending the suit, either in cash or by allotment of property of requisite value, the grant of overty, the provisions of maintenance to parties entitled thereto, the allotment of lands on which improvements have been effected to the share who has improved them, the alienated lands to the share of the alienor and other similar matters. Even after the passing of the preliminary decree it is open to the Court to give appropriate directions regarding all or any of these matters either suo motu or on the application of the parties. Order XX Rule 18 Civil Procedure Code does not prohibit the Court from issuing such directions after the stage of a preliminary decree, xxx'.

But, in the instant case, the Trial Court without proper application of mind has straightaway proceeded to pass a one line order, directing to draw final decree proceedings as per the preliminary decree, very much contrary to the judgment and decree passed by both the Courts. It is duty cast on the Trial Court to pass appropriate order as per the decree, stating therein as to which are the survey numbers the petitioner is entitled, which are the agricultural lands entitled by respondents 1 and 2 and others and also in respect of which house property, the decree has to be drawn, etc. The Trial Court must pass the order in consonance with the decree passed in Regular Appeal No. 18/1981 and thereafter, it can direct that, the petitioner and the respondents are entitled to their respective shares in respect of the agricultural lands and the house properties. This settled law has been laid down as early as in the year 1965 and the Trial Court has not looked into this aspect of the matter and has mechanically proceeded to pass the impugned order. Therefore, the manner in which the impugned order has been passed by the Trial Court is not sustainable.

6. However, so far as the submission made by the learned Counsel appearing for respondents 1 and 2 that, if the impugned order is quashed, then, the subsequent orders also will not sustain, is concerned, I am of the view that, the said submission of the learned Counsel cannot be accepted at this stage, in view of the settled law laid down by this Court, as stated supra and also having regard to the facts and circumstances of the instant case.

7. Having regard to the facts and circumstances of the case, as stated above, the revision petition filed by the petitioner is disposed of with the following directions:-

(i) The Revision Petition filed by the petitioner is allowed:

(ii) The order dated 5th June 2000 passed by the Principal Civil Judge, Junior Division Khanapur in F.D.P.No. 5/1995, is hereby set aside and the matter stands remitted to the Principal Civil Judge, (Junior Division), Khanapur to reconsider the matter afresh and decide the same in strict compliance of the mandatory provisions of Order XX Rule 18 (1) of the Code of Civil Procedure, after affording an opportunity to the petitioner and respondents 1 and 2, as expeditiously as possible.

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