

Munivenkatappa Vs. Venkateshappa

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Court : Karnataka

Decided On : Jun-13-1991

Reported in : ILR1991KAR3255; 1991(3)KarLJ407

Judge : B. Jagannatha Hegde, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rule 25

Appeal No. : M.S.A. No. 3 of 1990

Appellant : Munivenkatappa

Respondent : Venkateshappa

Advocate for Def. : B. Veerappa, Adv. for ;M.S. Gopal, Adv.

Advocate for Pet/Ap. : B.A. Reddappa, Adv.

Disposition : Appeal allowed

Judgement :

B. Jagannatha Hegde, J.

1. This is a Miscellaneous Second Appeal filed under Order 43 Rule 1(u) read with Section 104 CPC against the Judgment and decree dated 1-8-1989 passed in R.A. No. 69 of 1988 on the file of the Additional Civil Judge, Kolar, allowing the appeal, setting aside the Judgment and decree dated 30-11-1987 in O.S. No. 419

of 1981 on the file of the Principal Munsiff, Kolar, remanding the matter to him for fresh disposal in accordance with law,

2. The appellant filed a suit in O.S. No. 419 of 1981 before the Principal Munsiff, Kolar, for declaration of his title to the suit property and permanent injunction. The trial Court held that the appellant did not prove his title and therefore rejected his prayer for declaration of his title. However, his prayer for permanent injunction was granted on the ground that he was in actual possession and enjoyment of the suit property. Aggrieved by the findings of the learned trial Judge, respondent herein, who was 6th defendant before the trial Court, filed an appeal in R.A. No. 69 of 1988 before the Additional Civil Judge, Kolar. By the Judgment and decree dated 1-8-1989 the Civil Judge allowed the appeal, set aside the Judgment and decree of the trial Court, and the suit was remitted back to the trial Court for fresh disposal in accordance with law after recording necessary evidence on an issue framed by him.

3. The learned Civil Judge remanded the matter to the trial Court solely on the ground that the trial Court had not framed an issue on a specific plea raised by the respondent herein in his pleading to the effect that occupancy right had been granted to his father in respect of the suit schedule property and that was confirmed by the Special Deputy Commissioner for Inam Abolition and that he inherited the property as absolute owner and in possession of the same. The Civil Judge, therefore, framed the following issue:

'Whether the 6th defendant proves that the occupancy right of his father in respect of the suit schedule property has been confirmed by the Special Deputy Commissioner for Inam Abolition and thereafter he inherited the property as absolute owner in possession?'

He then remitted the suit as aforesaid.

4. The learned Advocate for the appellant contends that it was impermissible for the learned Civil Judge to remand the entire matter for fresh disposal in accordance with law without following the provisions of Rule 25 of Order XLI CPC which reads as follows:

'25. Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred and in such case shall direct such Court to take additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor within such time as may be fixed by the Appellate Court or extended by it from time to time.'

5. While exercising power under Rule 25 Order 41 C.P.C. the Appellate Court need not remit the entire matter to the trial Court if the Appellate Court is of the opinion that a particular issue should have been framed and tried or that certain findings of fact are necessary for disposal of the appeal and that further evidence should be recorded on that issue. The proper procedure is to take steps as provided under Rule 25 Order XLI CPC and not to remand the entire matter.

6. The contention of the learned Counsel for the respondent is that the learned Civil Judge directed the trial Court to decide the issue framed by him and not the entire suit. But the order of the Civil Judge is quite clear that the matter was remitted back to the trial Court for fresh disposal in accordance with law after setting aside the Judgment and decree passed by the trial Court. Nowhere he has stated that the trial Court is required to send the findings recorded on the additional issue framed by him.

7. I, therefore, set aside the impugned Judgment and decree dated 1-8-1989 passed by the Additional Civil Judge, Kolar. The Appeal is allowed and the Civil Judge is directed to dispose of the appeal afresh in accordance with law and in the light of the observations made herein. No costs.