

Shivarama Bhat and ors. Vs. Thimma Poojary and ors.

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Court : Karnataka

Decided On : Apr-08-2003

Reported in : AIR2003Kant455

Judge : V. Gopala Gowda, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11; [Limitation Act, 1963](#) - Sections 3; Karnataka Land Reforms Act, 1962 - Sections 122

Appeal No. : L.R.R.P. No. 6294 of 1989

Appellant : Shivarama Bhat and ors.

Respondent : Thimma Poojary and ors.

Advocate for Def. : H. Jayakara Shetty, Adv. and ;Tajuddin, HCGP

Advocate for Pet/Ap. : Sriyuths Rajanna, ;Udaya Holla, ;Mayaholla and ;K.A. Ariga, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

V. Gopala Gowda, J.

1. This revision petition is filed against the order dated 21-4-1989 passed by the Land Reforms Appellate Authority dismissing the appeal of the petitioners. That appeal was filed against the order of the Land Tribunal dated 27-5-1988. The Appellate Authority noticed that earlier the petitioners had filed Appeal No. 8/89 challenging the very same order of the Land Tribunal. The said appeal was dismissed on 21-2-1989 on the ground of limitation.

2. It was contended that the second appeal will not operate as res judicata. The said contention was negatived following the decision of the Supreme Court reported in : [1966]3SCR300 Sheodan Singh v. Daryao Kunwar, wherein it has been held that dismissal of appeal on the ground of limitation amounts to final decision confirming the decision of the subordinate Court, on merits. Hence, the dismissal of the appeal filed by the petitioners for the second time against, the same order, is in accordance with the law laid down by the Apex Court. No interference is warranted in this case.

3. The contention that the first appeal filed producing the copy of the order sent by the Land Tribunal was not a valid appeal and the appeal filed for the second time along with certified copy of the order of the land tribunal is a valid appeal and therefore the Appellate Authority committed an error by dismissing the second appeal, is wholly untenable and deserves rejection. When the first appeal itself was dismissed on the ground of limitation, the appeal filed for the second time is in a worst position as the same was much more belated than the first appeal. Even assuming that the contention is correct, when the first appeal itself was dismissed on the ground of limitation, the second appeal also liable to be dismissed on the same ground. Thus, in any event the appeal filed for the second time deserves dismissal. Consequently, it makes no difference for the petitioners if the same is dismissed on the ground of res judicata or on the ground of limitation. In any event, having suffered an adverse order in the first appeal, the appeal filed for the second time is not maintainable and the same was bad in law. On this ground also the order under revision is legal and valid and no interference is warranted.

4. Had the first appeal was dismissed on the ground that it was not a valid appeal as authenticated copy of the order was not produced, with liberty to file a valid

appeal, probably the appeal filed for the second time would have been valid and maintainable. But the first appeal was not dismissed as not a valid appeal. Hence, the ground sought to be availed by the petitioners on the ground that the appeal filed for the second time was valid and dismissal of the same in view of dismissal of first appeal is not correct, is not available to the petitioners.

5. For the reasons stated supra, the decisions relied upon by the learned counsel for the petitioners are not helpful and they are not applicable to the fact situation. Therevision is devoid of merit and is liable to be dismissed.

6. Accordingly, the revision petition is dismissed.

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