Jaishri Vs. Maruthi

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Court : Karnataka

Decided On : Jul-13-1995

Reported in : ILR1995KAR3100; 1995(4)KarLJ638

Judge : M.F. Saldanha, J.

Acts : Code of Civil Procedure (CPC), 1908 - Order 41, Rule 23

Appeal No. : R.F.A. Nos. 186 and 254 of 1995

Appellant : Jaishri

Respondent : Maruthi

Advocate for Def. : C.M. Desai, Adv.

Advocate for Pet/Ap. : Manikappa Patil, Adv.

Disposition : Appeal dismissed

Judgement :

Saldanha, J.

1. These two Appeals are directed against a decree passed by the learned Civil Judge, Basavakalyan, in Suit No. 92/93. R.F.A.No. 254/95 has been filed by the defendants to that suit and the principal contention canvassed is that the decision is almost on par with an expert decree and that therefore, having regard to the fact

that the defendants had seriously contested the proceeding initially, as is apparent from the written statement filed, that they be given a fresh opportunity to contest the matter. Mr. Desai on behalf of the appellants in RFA 254/95 advanced a strong plea to the Court that this is a case in which a large number of properties belonging to the family are sought to be partitioned at the instance of the plaintiff who is the widow of one of the sons by the name of Sharanappa. It is necessary for me, for purposes of this Judgment, to refer to one particular aspect of the case which assumes some importance. Initially, the defence pleaded was the usual one of contending that several of the properties were self-acquired and therefore, do not qualify for partition, but the main thrust of the defence consists of a series of extremely grave, but equally unsavoury allegations made against a young woman. That the plaintiff is the widow of Sharanappa is undisputed, but the allegations proceeded on the footing that immorality and infidelity are attributed to her even during the period when she was married to and staying with deceased Sharanappa. The allegations go to the extent of imputing adulterous conduct with all and sundry in the village and according to the defendants this conduct continued even after she went to stay in her own village and therefore, they question the paternity of the child who is the second plaintiff. There are some vague statements to the effect that Sharanappa and Jaishri who is the plaintiff were divorced and that Sharanappa died in 1984 whereas the child was born in 1985, the imputation therefore, being that the child was illegitimate. Frankly, I do not see the propriety of all the statements being made, because once the marriage with Sharanappa is admitted, his wife or widow virtuous or otherwise, would still qualify for her legal rights in law. The same would apply to the child in whose favour a presumption of legitimacy arises in the absence of conclusive and clinching evidence withregard to the point of time at which the marriage has been dissolved or the death of the husband has taken place. Apart from these vague charges, no evidence was lead in the course of the trial. The issue therefore, arises as to whether in this background, a remand is justified.

2. The second R.F.A. No. 186/95 has been filed by the original plaintiff to whom 1/8th share has been awarded and she has demonstrated that there was an error in the manner in which the learned trial Judge has computed the share which according to the appellants ought to have been 8/42. The correct computation has

been set out in the Appeal Memo which to my mind is faultless. The learned Advocate who represents the appellant in this R.F.A. and the respondent in the earlier one has vehemently opposed the admission of these Appeals because, he submits that it is only a minor rectification that is called for. He has also opposed any remand being granted because, it is his contention that it would result in manifest injustice to his client apart from which, he contends that no case for remand is made out either on facts or in law.

3. On behalf of the appellants in the first of these Appeals, Mr. Desai stated that the record does indicates that all the three witnesses were not cross-examined. He stated that the reason for this was two-fold, the first being that the client was seriously ill and was unable to give any instructions to the learned Advocate and that simultaneously, the learned Advocate himself fell ill and was therefore, unable to conduct the proceedings. It is his contention that therefore, the case has virtually gone by default and the defendants have been precluded from an opportunity of establishing before the trial Court that a substantial part of the property was self-acquired, and furthermore, from adducing evidence in support of the charges against the plaintiff on the basis of which, according to him she would be disqualified from any relief. Mr. Desai submitted that it is a basic requirement of law that a fair opportunity be adduced to establish one's defence and where it is demonstrated to the Appeal Court that no such opportunity was provided for, that a remand is a must. He continues to submit that the defendants would be unfairly deprived of their property because of the present order which does not take cognizance of their defence.

4. It is well-settled law that an Appeal Court is within its discretion to remand a proceeding if the Court is satisfied that there is sufficient justification for doing so and one of the paramount considerations in such cases is the question as to whether the party that is complaining was precluded or prevented from either taking part in the proceeding or from leading evidence or from either prosecuting or defending the proceeding. If it is demonstrated on the other hand to the Appeal Court that an opportunity was made available and that the opportunity was not availed of, then to my mind, a remand is not only contra-indicated, but a remand would be totally precluded in law in so far as it is not the scheme of Judicial

Proceedings that litigants or those who represent them be afforded multiple opportunities and that litigation be re-routed in circles regardless of the effect that this procedure would have on the opposite party. The law must always bear in mind that in showing indulgence to one side, that a Court cannot do violence or injustice to the opposite party. On the facts of the present case, there is absolutely nothing before this Court to indicate that the defendants were precluded from establishing their defence. They filed a detailed written statement, they have taken part in the proceedings, it is not as though the learned trial Judge has disposed of the suit hurriedly, there were several defendants and even if one of them was ill, there were several others capable of instructing their learned Advocates, Also, I refuse to accept the position that if a learned Member of the Bar is handicapped through a prolonged illness, that alternate arrangements were impossible. Nothing of this sort has been demonstrated and in the absence of any such material, it would be incorrect for the Court to hold that the defendants were in any manner either prevented, precluded or handicapped in the course of the trial before the lower Court.

5. Another aspect of the matter that looms large is the fact that no material has been put forward in support of the defence that was pleaded even at this stage. As regards the plea of self-acquisition, no documents are forthcoming to indicate the source of the funds, dates of the transactions etc. all of which would have been reflected from the relevant records. As regards the grave allegations against the plaintiff are concerned, to my mind, these are the common place accusations that are unfortunately made in a large number of similar proceedings and which ought not to be done because, to my mind, itwas quite obvious that even though such allegations were made, the defendants would never have been able to substantiate them. In this background, it would not only be a miscarriage, but a travesty of Justice if the matter were to be remanded to the trial Court to provide an opportunity to the defendants to repeat such charges and attempt to humiliate the plaintiff in a futile attempt to sustain them. The nature of the material that is contained in the written statement is an additional ground that would impel any Court to refuse any discretionary order to the party rather than to grant it. These are serious considerations which an Appeal Court has to bear in mind because, applications for remand are loosely made, but they can only be granted in the

rarest of the rare cases. I have already observed that as far as the Cross Appeal is concerned, the ground on which the rectification in the decree is sought is fully justified and therefore, the second of these two Appeals will have to be allowed.

6. In the result, R.F.A.No. 254/95 fails and stands dismissed. R.F.A.No. 186/95 is allowed. It is directed that the decree passed by the trial Court shall stand amended only to the extent that the share of the plaintiff which was originally computed at 1/8 shall be modified to 8/42. Subject to this modification, the decree in question stands confirmed in the circumstances of the case, there shall be no order as to costs