

Abdul Rasheed and Others Vs. Huligemma and Others

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Court : Karnataka

Decided On : Jan-24-2011

Reported in : 2011(1)KCCR660(DB)

Judge : N.K. Patil & a.N. Venugopala Gowda

Appeal No. : Regular First Appeal No. 361 of 2007 (DEC)

Appellant : Abdul Rasheed and Others

Respondent : Huligemma and Others

Advocate for Def. : Sri. F.V. Patil

Advocate for Pet/Ap. : For the Appellants: Chandrashekar P. Patil, Advocate. For the Respondent: F.V. Patil, Advocate.

Judgement :

A.N. Venugopal Gowda, J

1. Plaintiffs are the appellants. A suit was filed by them for the relief of declaration of title and recovery of possession of the property described in the schedule to the plaint. The suit was contested by the respondents / defendants by filing written statement. The defendants denied the claim of the plaintiffs over the plaint schedule property and by referring to the proceedings in O.S.No. 151/1985 and Misc. Case No. 99/1986 pleaded the bar of res-judicata. The defendants also

questioned the locus standi of the plaintiffs to maintain the suit. Noticing the material pleading of the parties, 15 issues were raised by the Trial Court on 7.10.2006. Issue Nos.10 and 12 were treated as preliminary issues. The said issues were answered in the affirmative without any trial having been taken place in the suit. As a result, suit was dismissed as not maintainable. Aggrieved, the plaintiffs have filed this Appeal.

2. Sri. Chandrashekar P. Patil, learned Counsel for the appellants contended that, Trial Court was not justified in answering issue No.10 and 12 in affirmative in the absence of any evidence having been placed on record by the defendants. Learned Counsel contends that the impugned decree is highly erroneous and illegal. Sri. F.V. Patil, learned Counsel for respondents, on the other hand made submissions in support of the impugned Judgment and decree.

3. We have perused the records. Keeping in view the rival contentions, the point that arise for consideration is:

“Whether the Trial Court was justified in treating Issue Nos. 10 and 12 as preliminary issues and deciding the same in the affirmative and in dismissing the suit as not maintainable?”

4. The plaintiffs / appellants have admitted in the plaint the fact of filing of O.S. No.61/1973 in Munsiff Court, Gangavathi against Hulugappa, for the title and possession. The said Court held that, it has no pecuniary jurisdiction and returned the plaint, on account of which, plaint was withdrawn and refiled in the Court of Civil Judge (Sr.Dn.), Raichur and was numbered as O.S. 30/1976 which was transferred to the Court of Civil Judge (Sr.Dn.), Koppal on its establishment, wherein it was registered as O. S. No. 12/1978. On a petition being filed under Section 24 CPC, the suit was withdrawn and transferred to the Court of Civil Judge (Sr.Dn.), Raichur and was numbered as O.S. 91/1980. On the establishment of a new District i.e., Koppal, the suit was transferred to the Civil Judge at Koppal, wherein it was registered as O. S. 151/1985 and the same was dismissed for non prosecution on 20.08.1986. Plaintiffs filed restoration petition under Order 9, Rule 9 CPC which was registered as Misc. Case 99/1986 on the file of Civil Judge (Sr.Dn.), Koppal. Restoration petition was dismissed as not pressed, allegedly on

account of subsequent events as narrated in para 8 of the plaint.

It is the case of the plaintiffs that possession of the property was taken from them in the proceedings initiated Section 145 Cr.P.C. before the Taluka Executive Magistrate, Gangavathi. Plaintiffs also refer to the proceedings before this Court in Crl. R. P. No. 31/1988 and 67/1986 as well as Crl. P. No. 1707 and 1717/1988 and the conclusion before Apex Court. No doubt, the defendants in written statement have denied the fact of possession of suit property having been re-delivered to the plaintiffs, at any point of time much less as alleged in para-8 of the plaint. The defendants have averred that they are in possession and enjoyment of the suit property and in view of dismissal of O. S. No. 151/1985 for default and non prosecution of Misc. Petition filed seeking restoration, the present suit is hit by principles of res-judicata.

6. The pleading put forth by the plaintiffs / appellants in para-8 of the plaint has been denied by the defendants in the written statement. On account of the assertion and the denial, issue No.10 and 12 were framed casting the burden on defendants. No evidence was adduced by defendants to decide the said issues. In the circumstances there was no necessity to lead rebuttal evidence by the plaintiff regarding issue No.10 and 12. The Trial Court has proceeded to answer the said issues in affirmative and by the impugned judgment and decree, has dismissed the suit.

7. Order 14, Rule 2 contemplates that all issues are to be tried and decided together unless the pure questions of law, not involving disputed facts, arise for consideration, which will determine the result of the suit. Issues 10 and 12 are not pure questions of law, do not fall under Rule 2(2) of Order 14 of CPC. In the circumstances, Trial Court was not justified in treating Issue Nos. 10 and 12 as the preliminary issues and in answering the same. It is settled position of law that, when suit calls for trial, there cannot be any peace meal trial and the decision has to be rendered on the issues. The learned Trial Judge has adjudicated and decided questions of fact and rendered the impugned judgment, without evidence, tested by cross-examination. Since issues were framed, unless the parties agree, the Court cannot deny the right of the parties to lead evidence. The judgment

rendered by denying such opportunity is illegal.

8. In the circumstances, the Trial Court was not justified in passing the impugned decree. Since the suit has been decided only on preliminary issues that too without recording the evidence, we have no other option than to exercise out jurisdiction under Order 41, Rule 23 CPC and remand the suit for trial and disposal in accordance with law. We make it clear that, we have not expressed any opinion even on issue No.10 and 12 framed in the suit.

For the foregoing reasons, Appeal stands allowed in part. Impugned judgment and decree is set-aside. Suit is remitted to the Trial Court for disposal in accordance with law. Contentions of both parties are kept open for consideration.

The matter being quiet old, parties are directed to appear before the Trial Court on 07.02.2011 and receive further orders. The Trial Court is directed to decide the suit expeditiously and at any event within a period of one year from the date of first appearance of the parties, i.e., 07.02.2011.

Return the LCR forthwith.

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