
(2013) 06 KAR CK 0054

In the Karnataka High Court

Case No : Regular Second Appeal No. 373 of 2012 (DEC/INJ)

Abdul Jabbar @ Ameer, Mohammed Hussain and Others

APPELLANT

Vs

Habeeb Pasha

RESPONDENT

Date of Decision : 14-06-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 47 Rule 7(1), 100

Citation : (2013) 3 AKR 702 : (2013) ILR (Kar) 3195 : (2013) 4 KCCR 3149

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : M.K. Bhaskaraiah, for the Appellant;

Judgement

S. Abdul Nazeer, J.—The appellants are the defendants in O.S. No. 177/2006 on the file of the Civil Judge (Jr. Dn.) and JMFC, Sira and the respondent is the plaintiff. The plaintiff filed the suit for a declaration that he is the owner of suit "A" and "B" schedule properties and for delivery of possession of "B" schedule property in his favour. The trial Court partly decreed the suit declaring that the plaintiff is the owner in possession of "A" schedule property. Further, it has granted permanent injunction restraining the defendants from interfering with his possession and enjoyment of the said property. The plaintiff filed an appeal R.A. No. 28/2010 on the file of the Senior Civil Judge, Sira challenging the judgment and decree of the trial Court to the extent of not decreeing the suit in respect of "B" schedule property. The Appellate Court dismissed the appeal on 14.1.2011.

2. Plaintiff filed a review petition in No. 1/2011 under Order 47 Rule 1 of the CPC ("CPC" for short) seeking review of the said judgment and decree. The Appellate Court allowed the review petition on 10.11.2011. The judgment and decree in R.A. No. 28/2010 is modified. The judgment and decree of the trial Court with respect to "B" schedule property is set aside and the suit of the plaintiff in respect of this property is also decreed. The defendants are directed to hand over possession of "B" schedule property to the plaintiff.

3. The appellants have filed this appeal u/s 100 of the CPC challenging the order of the Appellate Court in the said review petition dated 10.11.2011.

4. Office has raised an objection with regard to maintainability of the appeal u/s 100 of CPC.

5. I have heard the learned Counsel for the appellants.

6. Order 47 Rule 1 of CPC provides for filing a review petition. Rule 4(1) of Order 47 states that where it appears to the Court that there is no sufficient ground for review, it shall reject the application. Similarly, Rule 4(2) of Order 47 states that where the Court is of the opinion that the application for review should be granted, it shall grant the same subject to the conditions mentioned in the proviso to the said sub-rule. Order 47 Rule 7(1) as substituted by Act No. 104 of 1976 states that order of rejection of a review petition is not appealable. The said provision is as under:

7. Order of rejection not appealable-Objections to order granting application.

(1) An order of the Court rejecting the application shall not be appealable, but an order granting the application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.

(2) xxxxx xxxxx xxxxx

(3) xxxxx xxxxx xxxxx

7. It is clear that Order 47 Rule 7 gives right of appeal in all cases where order for review of judgment is made on any ground.

8. Order 43 of CPC provides for filing of appeals from orders. Rule 1(w) of Order 43 provides for filing an appeal from an order under Rule 4(1) of Order 47 allowing an application for review. Thus, an order allowing review petition is appealable under this provision.

9. The Karnataka High Court Rules, 1959 provides for the practice and procedure to be followed at the High Court. Chapter VI of these Rules relates to the classification of the appeals presented to the High Court. Rule 2(a) of this Chapter provides for filing of Regular Second Appeals i.e. second appeals arising out of original suits. Rule 2(b) is applicable for execution of second appeals and Rule 2(c) provides for filing of Miscellaneous Second Appeals. Rule 2(c) is as under:

2(c): Miscellaneous Second Appeals, that is, Second Appeals from any judgment, decree or order including any order as to costs, only, other than those falling under sub-clause (a) or (b).

10. A combined reading of Order 43 Rule 1(w) of the CPC and Rule 1(2)(c) of Chapter VI of the High Court Rules, 1959, would clearly indicate that a Miscellaneous Second Appeal has to be filed challenging an order passed under

Order 47 Rule 4 of CPC allowing a review petition.

11. In the instant case, the first Appellate Court has allowed the review petition whereby the judgment and decree passed in exercise of its appellate jurisdiction has been reviewed. I am of the view that Miscellaneous Second Appeal is maintainable as against this order. Therefore, office objection is sustained.

12. At this stage, learned Counsel for the appellants submits that appellants may be permitted to convert this appeal into a Miscellaneous Second Appeal. The submission of the learned Counsel for the appellants is accepted and the appellants are permitted to convert this appeal into Miscellaneous Second Appeal under Order 43 Rule 1(w) of the CPC. No costs.