
(1999) 03 KAR CK 0023

In the Karnataka High Court

Case No : Regular First Appeal No. 334 of 1993

Ambanna

APPELLANT

Vs

Ghanteappa

RESPONDENT

Date of Decision : 23-03-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 3

Citation : AIR 1999 Kar 421

Hon'ble Judges : T.N. Vallinayagam, J

Bench : Single Bench

Advocate : Rajeev, for G.S. Visweswar, for the Appellant; Praveenkumar Raikote, for the Respondent

Judgement

T.N. Vallinayagam, J.—I find in the appeal preferred by the plaintiff against the dismissal of the suit for partition, the trial Court has declared to grant the decree giving the following reasons :

"Assuming that the defendant had failed to prove the factum of partition, I am of the considered opinion that in this suit no effective decree for partition could have been passed. This is because plaintiff has claimed portion in respect of portions of lands in Sy. Nos. 258 to 261. He has claimed partition in respect of various portions of these survey numbers. It is not in respect of entire survey numbers. Hence, it was necessary for the plaintiff to furnish the boundaries of the area of these survey numbers in which the partition is claimed. In the absence of the boundaries of the areas of these survey numbers, no effective decree for partition could have been passed."

2. When I verified the description given I find it is too vague. Order VII, Rule 3 reads as follows :

"Order 7, Rule 3:-- Where the subject-matter of the suit is Immovable property: Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such

property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers."

It is seen that the plaint or plaints are numbered without the proper description of the property by boundaries, numbers and records of statement or certificate. Without that it is not possible to identify the property. Consequently no effective decree can be passed which can be finally put into execution for the benefit of the succeeding party. Take for example, the description of the property given as item No. 1 and item No. 3 in the present suit.

3. In paragraph 3 of the plaint it shows that out of Sy. No. 258, 6 acres and 7 guntas as item No. 1 and item No. 3 out of Sy. No. 260 measuring 7 guntas and given out of Sy. No. 261, 59 acres and 9 guntas. What is the total extent of survey numbers and what are the boundaries of the property are not given. Therefore, it is not possible to identify the property leaving alone granting a decree in respect of a definite property.

4. Whenever, Order VII, Rule 3 is violated and particulars are absent in a plaint, the plaint shall be rejected and ought not to have been numbered.

5. However, the learned counsel for the appellant would seek permission to amend the plaint to give particulars of the property so that a really effective decree in the event of his success can be passed. I am inclined to grant his request and remit the case back to the trial Court and set aside the judgment now passed. I make it clear that I am not expressing any view on merits and only to cure the defect of the improper description of the property, the case is remitted back to the trial Court. The plaintiff shall file an application for amendment of the plaint giving particulars of the property and the Court shall permit him to give correct description of the property after giving an opportunity to the defendant as well to have his say in the matter.

6. In this view, the matter is remitted back to the trial Court, all the contentions are left open and both parties are permitted to adduce evidence, both oral and documentary if they so choose.

Parties to appear before the trial Court by 26th May, 1999.

I.A.I. filed along with the appeal for additional documents shall be sent to the trial Court and the Court shall consider these documents after hearing the objections of the parties.

The trial Court is directed to dispose of the matter on or before the 31st December, 1999.