

(2002) 05 KAR CK 0006
In the Karnataka High Court
Case No : C.R.P. No. 1319 of 2002

A.P. Madanna (deceased) by L.Rs.

APPELLANT

Vs

A.P. Kushalappa and Others

RESPONDENT

Date of Decision : 29-05-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, 115
Registration Act, 1908 — Section 23

Citation : AIR 2002 Kar 439 : (2002) 6 KarLJ 250 : (2002) 4 KCCR 2160

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : G.K.V. Murthy, for the Appellant; P.B. Appaiah, for Respondent 1 and M. Narayanappa, HCGP for Respondent 5, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—This Civil Revision Petition is directed against the order dated 7th March, 2002 passed in Ex. C. No. 15/01, wherein the Executing Court rejected the objections raised by some of the judgment debtors as to the tenability of the execution.

2. The said objections were raised mainly on two grounds: that the decree that had been drawn up pursuant to a compromise that had been entered into between the par ties in the appeal before this Court had not been drawn up on stamp paper of sufficient value commensurate to the nature of trans actions and the value of the properties which were the subject matter of the decree and also on the ground that the said decree which had been drawn up pursuant to the compromise entered into between the parties which had been presented for registration is beyond the period of four months, whereas as per Section 23 of the Registration Act it should have been presented for registration within 4 months from the date of the decree.

3. The Executing Court overruled these objections having found that the Registrar had actually collected the deficit value of stamp duty by issuing notice

to the party who is seeking for registration. The other question regarding limitation was not exactly answered in the sense that the objections were treated as not serious but frivolous which have been raised for the purpose of protracting the execution proceeding only. In fact the decree had been passed on a compromise petition according to the terms and understandings between the parties. The judgment debtor being aggrieved by this order is in revision before this Court invoking the jurisdiction u/s 115 of C.P.C.

4. A few more facts to appreciate the rival issues are that the respondent in this revision had filed O.S. No. 15/90 before the Court of Civil Judge (Sr. Dn.), Madikeri and inter alia against the petitioner and other defendants praying for a share by partition in respect of A schedule properties and in respect of B schedule properties for the relief of permanent injunction. The suit in respect of A schedule properties was dismissed holding that the plaintiff was not entitled to any share in those properties, while the suit was decreed in respect of B schedule properties granting the relief of injunction on the finding that they were the self acquired properties of the plaintiff.

5. This matter was carried in an appeal to this Court by the plaintiff and the same was pending. The parties arrived at a compromise and filed a compromise petition before this Court. The said compromise petition was entertained by this Court under Order 23 Rule 3 of C.P.C. In terms of the compromise petition, the judgment and decree was pronounced on 8-4-1999 and this Court issued directions to draw up a final decree. It appears that necessary stamp papers were furnished by the Appellant some where during the month of December 2000 and a decree was made up by engrossing the decree on the stamp papers and the same was issued by the Registrar under his signature as on 7-12-2000. It appears thereafter the said decree which was made up on 7-12-2000 was presented for registration as on 22-12-2000 and was registered on that day.

6. Sri G. K. V. Murthy, learned Counsel for the petitioner assails the validity of the order of the Executing Court mainly on two grounds; that the decree drawn up was not on stamp paper of sufficient value and as such was not a valid decree. Secondly and more seriously that the said decree was in fact presented beyond the period of 4 months i.e., from 8-4-1999, the date on which the compromise decree was passed by this Court and as such beyond the period of 4 months as required u/s 23 of the Registration Act and the registration is not valid in the eye of law. The said registration is null and void in view of Section 23 of the Registration Act and due to such invalid registration the decree also becomes invalid in the eye of law. Therefore such an invalid decree cannot be executed by the Court. It is the submission of Mr. Murthy that Executing Court cannot execute any invalid decree of this nature. The Court below after hearing overruled the objections of the petitioner and has proceeded ahead for enforcement or execution of the decree.

7. In support of his submission, learned Counsel has relied upon the decision of the Supreme Court reported in Hameed Joharan (d) and Others Vs. Abdul Salam

(d) by L.rs. and Others, In the case of Hameed Joharan v. Abdul Salam which points out that the period of limitation for executing a decree is 12 years u/s 136 of the Limitation Act. The limitation starts from the date of drawing up of the decree and the intervening acts like supplying of stamp papers, engrossing of decree on the stamp paper and issuing of decree by the Registrar does not arrest the period of limitation which begins to run from the date of final decree in a partition suit. The learned Counsel for the respondent submits that the principle enunciated by the Supreme Court is in the context of enforcing a decree of the Court by suing out execution. The Supreme Court was interpreting the scope of Article 136 of the Limitation Act which prescribes 12 years as the period of limitation from the date of the decree for its execution. This ratio is not directly applicable to the case of registration of a document u/s 23 of the Registration Act.

8. However, Sri Murthy, learned Counsel for the petitioner submits that the period of 4 months stipulated u/s 23 of the Registration Act should be reckoned from the date on which the compromise decree was passed by the Court i.e., as on 8-4-1999 and if so the decree engrossed on the stamp paper having been presented undisputedly beyond the period of 4 months from the date of decree could not have been registered by the Sub-Registrar and accordingly the said registration is an invalid registration and the Court cannot act on such decree, which is not registered in accordance with law.

9. Learned Counsel for the petitioner has also placed reliance on the decision of the Punjab High Court reported in AIR 1963 P&h 105. This case relates to the validity of registering a sale deed dated 11-2-1943. The sale deed though was sought to be registered by presenting it on the same day, was not registered as it had been presented at the Office of the Sub-Registrar after office hours. The parties were asked to come on the next day. For one or the other reason they did not appear. However, the parties to the sale deed, particularly the purchaser had filed a suit on 23-12-1943 against the seller u/s 77 of the Registration Act for a decree to direct the sale deed dated 11-2-1943 be registered. This suit came to be compromised and a consent decree was passed on 4-1-1944 pursuant to the consent decree the sale deed in fact was registered on 11-2-1944.

10. In the meanwhile, it appears immediately after passing of the consent decree i.e., on 10-1-1944 a suit was filed against the purchaser for a declaration that the decree obtained by the purchaser purporting to be u/s 77 of the Act was void and the consequent registration was also of no effect and it may not affect their rights. The suit that was decreed by the trial Court was reversed in appeal by the District Judge and confirmed in second appeal by the High Court. In the meanwhile the purchasers based on the sale deed registered on 11-2-1944 had filed a suit for recovery of possession of the land purchased by them. The suit for recovery of possession was decreed by the trial Court. However, in appeal the District Court set aside the decree and dismissed the suit for recovery of possession. The Second Appeal filed by the plaintiff was dismissed by the High Court and a Division Bench of that Court while dismissing the appeal filed by the

plaintiff observed that the decree for registration of the documents itself was contrary to the statutory provisions, the registration being beyond the period of 4 months from the date of execution of the sale deed, was in contravention of the provisions of Section 23 of the Registration Act and as such the sale deed could not have been registered by the Registering Authority and in such circumstances no right flowed in favour of the purchaser under the sale deed dated 11-2-1942 registered on 11-2-1944 and consequently the plaintiff was not entitled to a decree for recovery of possession and as such dismissal of the suit was confirmed.

11. Learned Counsel relying upon this decision submits that the presentation being beyond the period of 4 months it should not have been registered at all; that the said registration will not confer any right in favour of the respondent decree holder, the registration of the decree being null and void, the Executing Court cannot act upon such a decree for enforcement of the same, the Executing Court following such legal principles ought to have declined the request of the petitioner for execution and dismissed the execution petition. The Executing Court not having done so, the petitioner is compelled to approach this court in the revisional jurisdiction. Learned Counsel submits that the revision petition be allowed and execution case be rejected by declaring that the registration in itself was null and void.

12. The learned Counsel submits that in view of such rulings, the Executing Court cannot proceed ahead with a decree and the order calls for interference. Sri Murthy, has also submitted that the question of validity of the document namely as to whether the compromise decree that had been entered into between the parties which had been drawn up by issuing notice to one of the parties has been validly registered or not can be gone into by the Executing Court for the purpose of executing the said decree or to determine the question of enforcement of the decree. The learned Counsel submits that the very registration is in contravention of Section 23 of the Act and the Executing Court should have answered this issue in favour of the judgment debtor-petitioner and should have declined to execute the decree.

13. Sri Appaiah, learned Counsel appearing on behalf of the 1st respondent decree holder, on the other hand submits that the compromise decree in fact has been presented within the time permitted u/s 23 of the Act. It is the submission of the learned counsel that the decree was passed by the Court on 8-4-1999 and it is only a preliminary decree and that the preliminary decree is not the end. That decree is required to be drawn up in a proper manner issuing notice to the parties and in the instant case involving immovable properties were required to be engrossed on stamp papers of adequate value. It is only when the parties presented stamp papers the decree was engrossed on it and issued to the party when an executable final decree comes into existence and the period of limitation can be reckoned only from this day and not from any point of time earlier. Learned Counsel submits that in the instant case, such an event having occurred

only as on 7-12-2000, when the Registrar of this Court engrossed the decree on stamp papers, signed the same and issued to the parties when the final decree was made in the instant case for the purposes of Section 23 of the Registration Act and the said decree having been presented for registration as on 22-12-2000 i.e., within the period of 4 months, the said presentation is within the permitted time and the registration is valid according to law and the decree executable before the Court.

14. The learned Counsel in support of his submission has placed reliance on the decision of the Supreme Court reported in Shankar Balwant Lokhande (dead) by L.Rs. Vs. Chandrakant Shankar Lokhande and Another, . In this case, a preliminary decree was drawn up on 2-8-1955 and the directions to draw up final decree was issued by the Court on 19-4-1958. The decree passed by the trial Court granted 1/6th share in favour of one of the parties namely Chandrakant Shankar Lokhande whereas the other party S. B. Lokhande was given 5/6th share.

15. The party who obtained 1/6th share had supplied non judicial stamp papers on 19th December, 1960 to engross and issue a decree to the extent of his 1/6th share. On 11th January, 1961 a final decree in this regard was engrossed on the stamp paper signed by the Court and issued in favour of Chandrakant Lokhande. The other party who had obtained 5/6th share had not supplied any stamp papers and accordingly no final decree had been engrossed on stamp paper to be issued in favour of the party who obtained 5/6th share. On the contrary the party who had 5/6th share had sought for execution of the preliminary decree by filing Darkhast 41/63. The same came to be dismissed as withdrawn. The same person moved another execution Darkhast filed in 1965 and this was dismissed on 13th March, 1968 holding that the execution case was barred by limitation. The appeal preferred to the High Court was however dismissed expressing the view that as no final decree had been passed on non judicial stamp paper as is required under law, there has been no decree in existence as per law to be executed. The appeal was dismissed on 12th August, 1975. Thereafter on 14th August, 1975 the same party filed miscellaneous application 538 of 1975 before the Executing Court praying for accepting the non judicial stamp and to pass a final decree in respect of his 5/6th share. This application was opposed by the 1/6th share inter alia on the ground that it was barred by limitation. The trial Court however, overruled the objections and allowed this application on 3-2-1976 holding that there was no bar of limitation. In the first appeal by order dated 22-9-1976 at the instance of the 1/6th sharer, the High Court held that period of limitation begins from the date when direction for passing a final decree was issued and as such calculating the period of 12 years from that date the application 538/ 1975 was definitely barred by limitation and accordingly allowed the appeal as prayed for. This order was carried in appeal to the Division Bench and the Division Bench having dismissed the appeal to the Division Bench and the Division Bench having dismissed the appeal the matter was carried by the affected person to the Supreme Court. The Supreme Court on a consideration of the entire matter in

issue and the facts of the case observed in paragraphs 4 and 5 as under :

"4. Order 20 rule 18 envisages passing of a decree for partition of property or for separate possession of share therein. Sub-rule (2) is material which provides that "if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required."

Thus, it could be seen that where the decree relates to any immovable property and the partition or separation cannot be conveniently made without further inquiry, then the Court is required to pass a preliminary decree declaring the rights of several parties interested in the property. The Court is also empowered to give such further directions as may be required in this behalf. A preliminary decree in a partition action, is a step in the suit which continues until the final decree is passed. In a suit for partition by a coparcener or co-sharer, the Court should not give a decree only for the plaintiffs share, it should consider shares of all the heirs after making them parties and then to pass a preliminary decree. The words "declaring the rights of the several parties interested in the property" in Sub-rule (2) would indicate that shares of the parties, other than the plaintiff(s), have to be taken into account while passing a preliminary decree. Therefore, preliminary decree for partition is only a declaration of the rights of the parties and the shares they have in the joint family or coparcenary property, which is the subject-matter of the suit. The final decree should specify the division by metes and bounds and if needs to be engrossed on stamped paper.

5. The preliminary decree, in these appeals, declared that the properties belong to the joint family of the plaintiffs and defendant No. 1 set out in Schedules "A" and "B". The details of the properties have been enumerated and they are liable to partition as per the right of the parties mentioned in the preliminary decree. In other words, Chandrakant has 1/6th share and the appellants have 5/6th share. The former is directed to pay certain sum towards marriage expenses of his sisters with a charge on the property allotted to his share. He is also entitled to mesne profits from the date of the institution of the suit in respect of certain properties specified in para 7 of the preliminary decree. A Commissioner was directed to be appointed to partition the properties mentioned in paragraph 8 of the decree. Para 9 declares certain charges in respect of specified properties. It would, thus, be seen that except declaration of the rights of the parties and the charge on the shares, there is no final decree. The partition is to be effected by the Commissioner to be appointed and as per directions from the Court in that behalf. A preliminary decree in respect of 1/6th share of the first respondent was engrossed on the stamped papers submitted by him. The question is whether the decree then became final and the rights of the parties stood crystallised, as envisaged u/s 2(2) of CPC and, if so, when the limitation would begin to run for execution thereof ?"

16. The supreme Court went on to answer the question that in a partition suit it is only when a final decree proceedings are drawn after demarcating the property by metes and bounds pursuant to the appointment of a Commissioner that an executable decree comes into existence and in fact it is only when this decree is engrossed on stamp papers of proper value signed by the Court and issued to the parties, executable decree comes into existence for the first time. It is only thereafter the period of limitation begins to run for the purposes of executing such a decree. The Court held that in that case no executable decree having come into existence at any time prior to the trial Court allowing the application for accepting the non judicial stamp papers and to pass a final decree and it is only thereafter the period of limitation could have been reckoned. The Supreme Court reversed the decision of the High Court and held that the decree had not been barred by limitation as it has not been drawn up. The Supreme Court allowed the appeal and directed the trial Court to pass a final decree and then to engross the decree on the stamp paper supplied by the appellant before it. It has also observed that if the stamp papers were not adequate, reasonable time may also be given to the party to produce the deficit stamp papers and then to engross the decree and proceed to execute that decree in accordance with law. Placing reliance on this decision learned counsel for the respondent submits that in the present case executable decree had come into existence only on 7-12-2000 when the Court had engrossed the decree on the stamp papers supplied by the respondent and signed the same.

17. The suit undoubtedly was one for partition. The trial Court having dismissed the suit, the matter was carried in appeal to this Court. During the pendency of this appeal parties entered into a compromise and a compromise decree was passed in terms of the compromise petition. The compromise petition filed by the parties and ordered by the Court is in the nature of a preliminary decree. It is only pursuant to this sharing agreed to between the parties and when the parties to the dispute present stamp papers commensurate to the value of the properties that had fallen to their share the decree can be engrossed on it and issued to the parties when an executable final decree comes into existence. In the instant case this event has occurred only on 7-12-2000. Therefore presentation of this decree for registration as on 22-12-2000 is well within the period of 4 months from the passing of the final decree. There is no invalidity in the act of registration.

18. The Supreme Court in fact had occasion to refer the decision in the case of Shankar Balwant Lokhande (dead) by L.Rs. Vs. Chandrakant Shankar Lokhande and Another, and the subsequent decision in the case of West Bengal Essential Commodities Supply Corporation Vs. Swadesh Agro Farming and Storage Pvt. Ltd. and Another, and observed that in the context of executability of a decree at para 17 of the judgment as under :

"Thirdly, in a suit for partition of immovable properties after passing of preliminary decree when, in final decree proceedings, an order is passed by the

Court declaring the rights of the parties in the suit properties, it is not executable till final decree is engrossed on non judicial stamp paper supplied by the parties within the time specified by the Court and the same is signed by the Judge and sealed. It is in this context that the observations of this Court in Shankar Balwant Lokhande v. Chandrakant Shankar Lokhande have to be understood."

19. The Court made a distinction between a money decree and a decree in a suit for partition and held that the principles applicable to a decree in a partition suit are not applicable to a money decree. In the subsequent case of Hameed Joharan v. Abdul Salam yet again the Supreme Court referred to its earlier decisions in S. B. Lokhande v. C. S. Lokhande and reiterated the position that the final decree in a partition suit comes into existence for the purpose of Order 20 Rule 18(2) only when it is engrossed on stamp papers of sufficient value and the period of limitation prescribed within which it could be executed begins to run only from that point of time.

20. Following the above referred decisions of the Supreme Court I am of the view that in the instant case the period of limitation for the purposes of execution of the final decree in the sense that it comes into existence for any purpose including the purpose of presenting it for registration u/s 23 of the Act has come into existence only on and after 7-12-2000 and as such registering the same as on 22-12-2000 is well within the period of 4 months envisaged u/s 23 of the Registration Act.

21. This aspect apart the time for presenting the documents for registration - provided u/s 23 of the Act which is 4 months from the date of its execution can be reckoned only after the document has come into existence. What was required to be registered in the present case was a compromise decree passed by the Court, subject matter of which decree were immovable properties belonging to the parties to the decree. It is only after a document of this nature which can be presented for registration after it has come into existence, the period of 4 months stipulated u/s 23 of the Registration Act begins to run. In the case of a final decree involving immovable properties it comes into existence only when the final decree in favour of the party to whom a share had been given is drawn up and engrossed on stamp paper of commensurate value and issued to the concerned party, that final decree is available either for its enforcement by taking out the execution or for presenting the same for registration if it were required to be registered. Till this event has occurred the document itself has not come into existence. A document which can be presented for registration has in fact come into existence in the present case only on 7-12-2000 and not at any time prior to this date. On this ground also the registration of the document as on 22-12-2000 is within the time provided for u/s 23 of the Act for its presentation.

22. This Court exercises its revisional jurisdiction u/s 115 of C. P. C. only within the permitted limits of such jurisdiction when the exercise of this jurisdiction is justified and warranted. In a matter of the present nature even when this Court

finds that there are some irregularities such as the trial Court not having given a finding that the execution proceedings were not illegal or that the registration of the document was not in contravention of the provisions of Section 23 the same would not be a ground for exercising the revisional jurisdiction u/s 115 C. P. C. This is because the order impugned is not one which has given rise to any failure of justice or could be said to have caused irreparable injury to the party against whom it was made as is required under the proviso to Section 115 C. P. C. On the other hand it is found as discussed above that the registration was valid and did not suffer from any infirmity and the Court below is well within its jurisdiction and justified in giving effect to the final decree.

23. Accordingly I find no merit in the submissions made by the learned counsel for the petitioner.

24. In the result, this C. R. P. is dismissed leaving the parties to bear their own costs.