
(1992) 10 KAR CK 0021
In the Karnataka High Court
Case No : C.P. No. 28 of 1990

Bab Mahabaleshar Revankar

APPELLANT

Vs

Syndicate Bank

RESPONDENT

Date of Decision : 22-10-1992

Acts Referred:

High Court of Karnataka Rules, 1959 — Rule 5

Citation : (1992) ILR (Kar) 3477 : (1992) 4 KarLJ 306

Hon'ble Judges : K.A. Swami, Acting C.J.; A.B. Murgod, J

Bench : Division Bench

Advocate : R.G. Hegde, for the Appellant; Radesh Prabhu, for the Respondent

Judgement

K.A. Swami, Ag. C.J.

1. This Review Petition is filed by the Judgment Debtor No. 2 to review the Order dated 5th June 1990 passed in Civil Revision Petition No. 2542/1986.

2. A contention was raised before the learned single Judge that as Laxmeshwar, J. has retired, the order passed by Laxmeshwar, J. cannot be reviewed by any other Judge of this Court therefore, Review Petition was not maintainable. The Decision of this Court in K.N. Kesava Pillai Vs. K.C. Paulose and Others, was also relied upon in support of the above said contention. In the light of this contention Hakeem, J. thought it necessary to refer it to a Division Bench in the light of the provisions contained in Rule 5 of Chapter III of the High Court of Karnataka Rules, 1959 (hereinafter referred to as "the Rules") which had not been noticed in Sharanappa's case. Therefore, this Civil Revision Petition is before a Division Bench.

3. In the light of the contentions urged on both sides, the following Points arise for consideration:

1. Whether a Review Petition can be entertained and decided by a Single Judge of this Court to review the order passed by a Single Judge of this Court after his

retirement?

2. Whether the order under review suffers from error apparent on the face of the record?

3. What order?

POINT NO.1

4. The contention that since Laxmeshwar, J. has retired, the Review Petition to review the order passed by Laxmeshwar, J. cannot at all be entertained, cannot be sustained. Firstly, Rule 5 of Chapter III of the Rules specifically provides to meet such a contingency. It provides that "every petition or application for review, reconsideration or correction of a judgment, decree, order or sentence shall be posted before the original Bench which pronounced, made or passed such judgment, decree, order or sentence or if the Judge or any of the Judges who constituted the said Bench is not available by reason of death, retirement or absence, before any other Bench constituted in the same manner as the original Bench." Therefore, in view of Rule 5 of Chapter III of the Rules it is open to any other similar Bench to review the order passed by a Judge who retires after passing the order. In Sharanappa's case, Rule 5 of Chapter III of the Rules has not been brought to the notice of the learned Single Judge. Further, the Decision of the Supreme Court in Devaraju Pillai Vs. Sellayya Pillai, has not been correctly appreciated. In Devaraju Pillai's case, the Supreme Court held thus:

"We are afraid that the order of the High Court which is under appeal cannot stand a moment's scrutiny. The question in this case was whether a certain document of title was a deed of settlement or a will. The learned Single Judge of the High Court sitting in Second Appeal considered the document and held that it was a deed of settlement. He noticed that, apart from the deed being styled as a deed of settlement and registered as such. One of the recitals in the document was that the disposition was irrevocable. On an application being filed for review of the judgment of the learned Single Judge, another learned Single Judge of the High Court - the judge who heard the Second Appeal not being available - virtually sitting in judgment over the decision of the learned Judge who decided the Second Appeal construed the document differently and held that it was a will and not a deed of settlement. This the learned Single Judge was not entitled to do. If the party was aggrieved by the judgment of the learned Single Judge sitting in Second Appeal, the appropriate remedy for the party was to file an appeal against the judgment of the learned Single Judge. A remedy by way of an application for review was entirely misconceived and we are sorry to say that the learned Single Judge who entertained the application totally exceeded his jurisdiction in allowing the review and upsetting the judgment of the learned Single Judge, merely because he took a different view on a construction of the document. These appeals are, therefore, allowed with costs. The judgment of the learned Single Judge in Second Appeal No. 1048 of 1966 is restored."

Balakrishna, J. has extracted the aforesaid portion of the Judgment of the

Supreme Court in Sharanappa's case and has held that the "ratio of the said Decision is that even when the Judge who passed a Judgment is not available to review of his own Judgment, it is not open to another Judge of the same Court to review the Judgment passed by the Judge who is not available either due to retirement or death etc., and the only remedy for the aggrieved person is to prefer an appeal against the Judgment of the learned Single Judge and a remedy by way of an application for review is misconceived and the entertaining of such a petition is beyond the jurisdiction of another learned Judge of the same Court." It is not possible to agree with the view expressed by Balakrishna, J. regarding the Decision of the Supreme Court in Devaraju Pillai's Case. What is held by the Supreme Court is that in a review it is not open to the Court to consider the case as though it is an appeal. Merely because another view is possible, is not a ground for review, as such the learned Judge hearing a Review Petition is not entitled to allow the review merely because he takes a different view on construction of the document. The Supreme Court has not held that if an application for review is filed to review the Judgment of a single Judge who has retired, another single Judge of the same High Court cannot entertain the Review Petition. In fact, the Decision of the Supreme Court in Devaraju Pillai's case has been considered by another single Judge of this Court in Chairman, BDA Vs. Shivanna, and it has been held thus;

"The contention urged by the learned Counsel and his submission that in the above Decision the Supreme Court has laid down that no Judge other than the Judge who made an order can review it is totally misconceived. What the Supreme Court has held in the above Decision is, when the question decided by the Judge who decided the second appeal was as to whether a document was a will or a deed of settlement and on consideration of the recitals in the document, the Judge had come to the conclusion that it was a deed of settlement, the only course open to the party aggrieved by such a finding was, to prefer an appeal and not a Review Petition. In that case what had happened was another Judge before whom the Review Petition was posted consequent on the retirement of the Judge, who decided the matter originally, proceeded to hear the Review Petition as if he was hearing the original matter and decided the very question in a different manner and held that the document was a will, the Supreme Court held, the Judge who heard the Review Petition exceeded his jurisdiction. There can be no doubt that even if the same Judge who had decided the matter originally had heard the Review Petition and did so, it would also be a clear case of exceeding the jurisdiction and power conferred on the Court under Order 47 Rule 1. The said Judgment is no authority for the proposition that only the Judge who decided the matter, in the first instance, alone can hear a Review Petition presented under Order 47 Rule 1 of the C.P.C. and if for any reason he is unavailable, no Review Petition lies, as sought to be made out by the learned Counsel."

We are of the view that the ratio of Devaraju Pillai's case has been correctly appreciated in Shivanna's case. Hence, the Decision in Sharanappa's case is

liable to be over-ruled. We accordingly over-rule the said Decision. Accordingly, Point No. 1 is answered in the Affirmative.

POINT NO. 2

5. We have been taken through the order passed by the Executing Court as well as in C.R.P. 2542/1986. We find that both the orders suffer from error apparent on the face of the records. The Trial Court did not consider the evidence adduced by the decree holder to show that the Judgment Debtor No. 2 was not an agriculturist inasmuch as his livelihood did not depend upon the income derived from agriculture. This Court in C.R.P. also has not taken into consideration the evidence on record though it has set aside the order passed by the Executing Court. We are aware of the fact that this proceeding has come up before this Court for the second time. But, still in view of the fact that the Executing Court as well as this Court in C.R.P. 2542/1986 have not considered the evidence on record in deciding the question as to whether the Judgment Debtor No. 2 is an agriculturist and can take advantage of Section 60(1)(c) of the C.P.C., the Review Petition is entitled to be allowed. To enable the executing Court to appreciate the evidence on record in the correct perspective we may allude to a Decision of the Supreme Court in *Shrimant Appasaheb Tuljaram Desai and Others Vs. Bhalchandra Vithalrao Thube*, wherein the provisions of Section 60(1)(c) of the C.P.C. have been interpreted, which reads thus:

"Under Clause (c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him are exempted, from attachment. The word "agriculturist" in this clause must carry the same meaning as the word "agriculturist" in Clause (b) and the house must be occupied by him as such. The object of the exemption in Clause (c) apparently is that an agriculturist should not be left without a roof over his head. In other words, the Legislature intended by Clauses (b) and (c) to prevent an agriculturist becoming destitute and homeless. It was, however, argued on behalf of the appellants that there are no restrictive words in Clause (c) so long as it was a house belonging to an agriculturist and occupied by him, it was exempted from attachment no matter what other income than agriculture was earned by him. The Wada in question was clearly occupied by the appellants for the purpose of tilling the land of the home farm and for storing the produce thereof the implements of husbandry and tethering of cattle employed in cultivating the land. It seems to us, on the evidence of the appellant's own witness, that they do not themselves till the land of the home farm which is done by a large number of labourers employed by them. Tuljaramarao did not himself cultivate the land. He merely supervised the work of cultivation by the labourers. The witness, however, did state that sometimes Appasaheb and his brother worked personally in the fields. This is a vague statement which does not necessarily mean that they did any act of cultivation themselves. The Wada in question is a big structure where the appellants reside but if they are not agriculturists within the

meaning of that word in Section 60, the Wada cannot be exempted from attachment. It seems to us that even if it is not necessary that a person must till the land with his own hands to come within the meaning of the word "agriculturist" he must at least show that he was really dependent for his living on tilling the soil and was unable to maintain himself otherwise. In the present case it is quite obvious that even if the appellants can be described as agriculturists in the widest sense of that term, they are not agriculturists who are really dependent for their maintenance on tilling the soil and that they are unable to maintain themselves otherwise. The evidence shows that Tuljaramarao was getting an income of nearly 20,000 to 25,000 Rupees from lands cultivated in the home farm and that the appellant Appaseheb by extending the acreage of that farm was receiving an income of Rs. 30,000 to Rs. 35,000/-.

In addition he had lands in 10 or 12 other villages and his income from the lands was Rs. 35,000 to Rs. 40,000. Assuming that these figures include the income from the lands of the home farm, they would show that in addition to that income he had an additional income of atleast Rs. 5,000 from lands in villages other than Nandi. Furthermore, the appellant Appaseheb is receiving a cash allowance of Rs. 700 to Rs. 800 per annum and Rs. 4,000 to Rs. 5,000 from the village officers of the four inam villages. In these circumstances, it can hardly be said that the appellant Appaseheb is really dependent for his maintenance by tilling the soil and unable to maintain himself otherwise. From this point of view it seems to us that he cannot be regarded as an agriculturist within the meaning of that word in Section 60 of the Code.

In our opinion, the decision of the High Court that the Wada in question was not Watan property and that it was not exempted from attachment by virtue of the provisions of Section 60(1) of the Code is correct. The appeal is accordingly dismissed with costs".

The Executing Court shall keep in view the aforesaid Decision of the Supreme Court while deciding the question as to whether the Judgment Debtor No. 2 is an agriculturist. Accordingly, Point No. 2 is answered in the Affirmative.

6. For the reasons stated above, this Civil Petition is allowed. The order dated 5th June 1990 passed in C.R.P. No. 2542/1986 and also the order dated 5th April 1986 passed in Execution Case No. 17/1979 on the file of the Civil Judge, Karwar in so far as the said orders relate to Judgment Debtor No. 2 are set aside. The case is remitted to the Executing Court with a direction to decide the question as to whether the Judgment Debtor No. 2 can take advantage of the provisions contained in Section 60(1)(c) of the C.P.C. in the light of the Decision of the Supreme Court in Shrimant Appaseheb's case and the observations made in this Order and in accordance with law.

7. As the execution is of the year 1979 we consider it necessary to direct the parties to appear before the executing Court on a particular date to avoid further delay in service of notice. Accordingly, we direct the parties to appear before the

executing Court on 16th November 1992. There need not be a fresh notice from the executing Court.

8. The Registrar is directed to send the records to trial Court within two weeks, from today.