

(1999) 07 KAR CK 0051

In the Karnataka High Court

Case No : Civil Revision Petition No. 2709 of 1997 and Miscellaneous First Appeal No. 3075 of 1997

Bahu Bali Ramappa Padnad and Another APPELLANT

Vs

Babu alias Babu Rao S. Padnad and Others RESPONDENT

Date of Decision : 02-07-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3A, Order 7 Rule 11, 151, 9
Karnataka Land Reforms Act, 1961 — Section 66

Citation : AIR 2000 Kar 21 : (1999) 3 CivCC 215 : (1999) ILR (Kar) 3344 : (1999) 5 KarLJ 562

Hon'ble Judges : Y. Bhaskar Rao, C.J; N.S. Veerabhadraiah, J

Bench : Division Bench

Advocate : Sri Tarakaram Associates, for the Appellant; Sri K.S. Savanur, for the Respondent

Judgement

N.S. Veerabhadraiah, J.—As both the matters are between the same parties and the subject-matter also being one and the same, they are taken up for disposal by a common order.

2. Civil Revision Petition No. 2709 of 1997 is by the appellants being aggrieved of the order of dismissal of Miscellaneous Application No. 8 of 1995 on the file of the Civil Judge (Senior Division), Athani.

3. Miscellaneous First Appeal No. 3075 of 1997 is also by the appellants being aggrieved of the order passed in O.S. No. 4 of 1996 rejecting the plaint by the learned Civil Judge, Senior Division, Athani, dated 4-8-1997.

4. Brief facts of the case are as follows:

One Babu alias Babu Rao filed O.S. No. 16 of 1991 for partition and separate possession of his 1/4th share in the suit schedule property against the other members of the family i.e., against his brother, brother's son who are common propositus of one Settappa Laxman Padnad who died on 7-4-1933. The

defendants in O.S. No. 16 of 1991 have appeared. Defendant 7-Ramappa Padnad who is the father of the present appellants contested the suit by taking all such defences. Subsequently that Babu Rao, plaintiff in O.S. No. 16 of 1991, defendant 7-Ramappa Padnad who is the father of the present appellants and other defendants to have peace in the family and put an end to the litigation entered into a compromise on 1-7-1994 and filed the compromise petition under Order 23, Rule 3, CPC and the suit was decreed in terms of the compromise. That after lapse of three years and drawing the final decree on 23-7-1994, the present appellants filed Miscellaneous Application No. 8 of 1995 u/s 151 of the CPC read with Order 23, Rule 3-A of the CPC to recall the compromise agreement dated 1-7-1994 as ab initio void as being opposed to law. The appellants also filed O.S. No. 4 of 1996 to declare the compromise dated 1-7-1994 in O.S. No. 16 of 1991 on the file of the Civil Judge, Athani as null and void being fraudulent opposed to public policy resulting in defeat of the provisions of the Karnataka Land Reforms Act to restrain defendants 1 to 41 from interfering with the peaceful possession and enjoyment of the plaintiffs jointly with the defendants 42 to 45 in respect of Items 1 to 6 in the suit schedule properties shown in "P" schedule or in the alternative to restrain defendants 1 to 41 from interfering with the possession of the plaintiffs 1/4th share each jointly in respect of Items 1 to 6 in "P" schedule property and for such other reliefs. The contesting respondents 1 to 6 who are the sons of Babu Rao filed an application under Order VII, Rule 11 of the CPC to dismiss the appellants' miscellaneous application as not maintainable. Apart from that the contesting respondents filed an application in O.S. No. 4 of 1996 to reject the plaint on the ground of non-disclosure of cause of action as provided under Order 23, Rule 3-A of the CPC. The learned Civil Judge, Athani, by common order dated 4-8-1997 rejected the plaint in O.S. No. 4 of 1996 by allowing the respondent's interlocutory application and so also rejected Miscellaneous Application No. 8 of 1995 by allowing LA. Nos, 6 and 7. Being aggrieved by the impugned common order dated 4-8-1997 on the file of the learned Civil Judge, Athani, the appellants have preferred Civil Revision Petition No. 2709 of 1997 as well as Miscellaneous First Appeal No. 3075 of 1997.

5. Learned Counsel for the appellants contended that they have not been arrayed as parties in O.S. No. 16 of 1991 therefore, the settlement filed under Order 23, Rule 3, CPC is not binding on them. Accordingly, they filed Miscellaneous Application No. 8 of 1995 u/s 151 of the CPC to recall the compromise agreement wherein the learned Civil Judge, dismissed the application without considering the objections and the defence put forth. Secondly he contended that the learned Civil Judge has grossly erred in rejecting the plaint without considering the scope of the suit. In fact, the appellants are entitled for 1/4th share in the schedule properties Items 1 to 6 described in "P" schedule. The learned Civil Judge, without considering the nature of relief prayed, has erroneously rejected the plaint. Hence, prayed to set aside the impugned common order dated 4-8-1997 passed by the learned Civil Judge, Senior Division, Athani, to allow the appeal by recalling the compromise order dated

1-7-1994 and to dispose of the matter accordingly.

6. On the other hand, learned Counsel for the respondents contended that the appellants-petitioners have no locus standi either to file a Miscellaneous Application u/s 151 of the CPC to recall the compromise agreement dated 1-7-1994 as the appellants' father viz., Ramappa defendant 7 and he having entered appearance vehemently contested the matter after a prolonged litigation. The plaintiff Babu Rao in O.S. No. 16 of 1991 and the appellants-petitioners' father Ramappa defendant 7 to put an end to the litigation had entered into a compromise and a settlement was arrived. That after O.S. No. 16 of 1991 was decreed and also after drawing a final decree nearly after lapse of three years these petitioners who were sons of defendant 7-Ramappa have come up with the fictitious petition. He further submitted that even the suit in O.S. No. 4 of 1996 filed by these appellants-petitioners is also not maintainable in view of the clear provision of Order 23, Rule 3-A of the CPC. Learned Counsel further submitted that the learned Civil Judge, Senior Division, Athani, considering all the contentions of the petitioners has rightly dismissed the Miscellaneous Application as well as rejected the plaint in O.S. No. 4 of 1996 and the impugned order passed by the learned Civil Judge, does not call for interference. Accordingly, prayed to dismiss the revision petition as well as Miscellaneous First Appeal.

7. In the light of the submission, the point that arises for consideration is.-

"Whether the impugned order dismissing the Miscellaneous Application No. 8 of 1995 and rejecting the plaint in O.S. No. 4 of 1996 is capricious and unreasonable? If so, liable to be interfered with?"

8. It is not in dispute the plaintiffs as well as the defendants are the descendants of common propositus. That in respect of the joint properties are concerned representing the different branches that one Eabu alias Babu Rao filed O.S. No. 16 of 1991 for partition and separate possession. In the said suit, the appellants' father Ramappa Padnad was arrayed as defendant 7 wherein the appellants' father engaged an Advocate filed the written statement and vehemently contested the suit. After prolonged litigation, Ramappa Padnad in O.S. No. 16 of 1991 who happens to be the main contestant and also being the Manager of the joint family of his branch entered into a compromise with the plaintiff in O.S. No. 16 of 1991 and parties filed compromise petition under Order 23, Rule 3 of the CPC. The compromise was entered on 1-7-1994. The Court having satisfied with the correctness of the compromise permitted the parties to enter into the compromise and that a compromise decree was drawn accordingly. In pursuance of the compromise decree a final decree was also drawn. Thus from the facts in O.S. No. 16 of 1991 it is clear the appellants' father Ramappa Padnad-defendant 7 was allotted the definite share in terms of the compromise. It is in that stage, the appellants herein filed Miscellaneous Application No. 8 to set aside the compromise decree in O.S. No. 16 of 1991 and also filed O.S. No. 4 of 1996. Before considering the contentions of the appellants, now it is necessary for what

purpose the appellants have filed O.S. No. 4 of 1996. The relief sought by the appellants in O.S. No. 4 of 1996 as per the prayer column reads thus:

"(a) Declaring that the "suit compromise" dated 1-7-1994 filed in O.S. No. 16 of 1991 and "suit order" dated 1-7-1994 accepting and recording the "suit compromise" and "suit final decree" dated 23-7-1994 passed in O.S. No. 16 of 1991 of Civil Judge Court, Athani are null and void as being fraudulent, opposed to public policy, resulting in defeat of provisions of Karnataka Land Reforms Act, being forbidden by law and intended to injure the properties of the plaintiffs in the suit properties shown in Schedule "P" to the extent mentioned in said Schedule "P" annexed to this plaint.

Or

Alternatively declare that the "suit compromise" dated 1-7-1994 filed in O.S. No. 16 of 1991 and "suit order" dated 1-7-1994 accepting and recording the "suit compromise" and suit final decree dated 23-7-1994 passed in O.S. No. 16 of 1991 of Civil Judge Court, Athani are null and void as being fraudulent, opposed to public policy, resulting in defeat of provisions of Karnataka Land Reforms Act, being forbidden by law and intended to injure the properties of plaintiffs to the extent of 1/6th share each of the plaintiff in the suit properties shown in Schedule "P" to the extent mentioned in said Schedule "P" annexed to this plaint.

(b) Consequently, in pursuance to the above said declaration restrain the defendants 1 to 41 from interfering with the peaceful enjoyment and possession of plaintiffs, jointly with the defendant 42 to defendant 45, in respect of Sl. Nos. 1 to 6 of suit properties shown in Schedule "P" annexed to the plaint to the extent mentioned against them in said Schedule.

Or

Alternatively, in pursuance to the above said declaration restrain the defendants 1 to 41 from interfering with the possession of plaintiffs to the extent of their 1/6th share each jointly in respect of Sl. Nos. 1 to 6 of suit properties shown in Schedule "P" annexed to the plaint to the extent mentioned against them in said schedule.

(c) Consequentially declare that all transfers inter vivos between any of the defendants by way of partition, sale, mortgage and such transfers by any of the defendants in favour of third parties in respect of Schedule "P" properties are null and void and not binding on plaintiffs".

Prom the pleading in O.S. No. 4 of 1996 filed by these appellants the relief prayed firstly for 1/6th share in the "P" schedule property on the ground that the compromise entered into in O.S. No. 16 of 1991 is frivolous, vexatious and opposed to principles of natural justice. The appellants are the sons of defendant 7-Ramappa Padnad who is a party to the compromise in O.S. No. 16 of 1991. If at all, these appellants are entitled for any share in the property it is in the property of their father-defendant 7 under whom they can claim. When the

share of the defendants father has been determined by compromise in O.S. No. 16 of 1991 the plaintiffs are not entitled to contend that the compromise in O.S. No. 16 of 1991 is null and void.

9. Now the question that arises for consideration, whether it is open for these appellants to question the compromise entered by their father. Order 23, Rule 3-A reads thus:

"Bar of suit: No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful".

The provision makes clear, when a compromise is entered into between the parties it is not open for either of the parties to maintain a suit on the ground that the compromise was not lawful. Thereby filing of a suit to set aside a compromise decree is not maintainable in view of the provisions of Order 23, Rule 3-A of CPC. However, in this regard, learned Counsel for the appellants relied upon a decision in Banwari Lal Vs. Smt. Chando Devi (through L.R.) and another, , and contended that the compromise entered into can be recalled if the materials on record shows that the compromise was not lawful. Therefore, the learned Civil Judge, Senior Division, Athani, has erred in dismissing the suit and also dismissing the miscellaneous petition. In the above decision at the end of para 14, their Lordships observed thus:

"If the agreement or the compromise itself is fraudulent then it shall be deemed to be void within the meaning of the explanation to the proviso to Rule 3 and as such not lawful. The learned subordinate Judge was perfectly justified in entertaining the application filed on behalf of the appellant and considering the question as to whether there had been a lawful agreement or compromise on the basis of which the Court could have recorded such agreement or compromise on 27-2-1991. Having come to the conclusion on the material produced that the compromise was not lawful within the meaning of Rule 3, there was no option left except to recall that order".

It is clearly pointed out that in case any fraud is played in bringing out a compromise between the parties, it is open for the Court to entertain the application filed. In the decision *supra*, the Apex Court found that the fraud is played on the party in entering into the compromise and the compromise was also not signed by the contesting respondent. In that view of the matter, the Apex Court held that the compromise itself is fraudulent and void. Whereas in the case on hand, the record reveals that after O.S. No. 16 of 1991 was filed, the appellants' father Ramappa Padnad-defendant 7 though contested the matter ultimately entered into a compromise. The learned Civil Judge, Athani, after considering the application filed under Order 23, Rule 3, CPC after satisfying himself regarding the compromise entered, permitted the parties to enter into a settlement and it is thereafter a compromise decree came to be passed. It is further seen that a final decree also came to be passed after lapse of nearly three years. All along the appellants having remained silent, all of a sudden filed

a miscellaneous application to set aside the compromise decree and also filed O.S. No. 4 of 1996. This itself shows that there is no any fraud played by the parties in getting the matter settled. In view of the specific provision of Order 23, Rule 3-A of the CPC the matter is being ended in a compromise. That a suit to set aside such a compromise decree itself is not maintainable. In that view of the matter, the learned Civil Judge, Athani has rightly held that O.S. No. 4 of 1996 is not maintainable. Accordingly rejected the plaint.

10. It is well-settled principles that the Civil Court has got jurisdiction to entertain the suit by virtue of Section 9 of the CPC which are all civil in nature. In view of the provisions of Order 23, Rule 3-A the appellants are not being the parties in O.S. No. 16 of 1991 and the said suit having been properly represented by the appellants' father Ramappa Padnad, it is not open for the appellants to question the said compromise decree. That apart, the appellants are not being the parties in O.S. No. 16 of 1991 also have no locus standi to file a miscellaneous application. It is accordingly, the learned Civil Judge, Athani has rightly dismissed the Miscellaneous Application No. 8 of 1995 filed u/s 151 of the CPC and also rejected the plaint in O.S. No. 4 of 1996.

11. It is pertinent to note that O.S. No. 4 of 1996 filed by the appellants are for claiming 1/6th share. We have already pointed out that the appellants' father Ramappa Padnad was a party represented in the suit and filed the compromise petition duly signed. In that view of the matter, it is not open for the appellants to take any other defence or to reopen the compromise as the same is found duly executed by their father Ramappa Padnad and thereby the same is binding. The appellants being the L.Rs of Ramappa Padnad they are entitled only to the share of their father and nothing more. Even on this count also that the compromise decree passed does not call for interference.

12. The next contention of the learned Counsel for the appellants is that in view of Section 66 of the Land Reforms Act O.S. No. 16 of 1991 is not at all maintainable.

13. We have carefully examined the provisions of Section 66 of the Land Reforms Act which provides for filing of declaration of the holding in respect of the properties held. But there is no bar u/s 66 of the Land Reforms Act to file a suit for partition. In that view of the matter, we do not find any reasons to interfere with the impugned order even on this ground also. He lastly contended that the mutation entries are found in their names in respect of Schedule "P" property and in respect of the entries that the matter is pending under Writ Appeal Nos. 1174 of 1996 and 1015 of 1996. In this regard, we have to observe that this Court has consistently held that the mutation entries are subject to the result of a civil suit. Therefore, there is no merit in the submissions of the learned Counsel for the appellants.

14. For the foregoing reasons, viewing the matter from any angle, we do not find any merit in this appeal as well as in the civil revision petition. Accordingly, both

stand dismissed.

15. Parties shall bear their own costs.