

(1962) 08 KAR CK 0032
In the Karnataka High Court
Case No : Second Appeal No. 723 of 1958

Bhavani Amma and Others	Vs	APPELLANT
Narayana Acharya and Others		RESPONDENT

Date of Decision : 10-08-1962

Acts Referred:

Citation : AIR 1963 Kar 120

Hon'ble Judges : G.K. Govinda Bhat, J

Bench : Single Bench

Advocate : Padubidri Raghavendra Rao, for the Appellant; M.R. Suvarna, for Respondent 1, for the Respondent

Judgement

G.K. Govinda Bhat, J.—This second appeal arises out of a suit brought by respondents 1 and 2 for recovery of arrears of maintenance due to the second plaintiff under a maintenance karar dated 15-6-1900 marked Exhibit A-1 in the suit. The question presented for decision is whether the plaintiffs are entitled to value the claim for the rice morass at the prevalent market rates or at the fixed rate of Rs. 4/- notwithstanding the undisputed fact that the market rates ranged between Rs. 10/- Rs. 23/-per mura of rice during the relevant period. The Courts below held that the plaintiffs are entitled to claim at the market rates on the ground that the decision in a previous suit marked Exhibit A-12 operated as Res Judicata on the issue now raised for decision. The appellants who are the legal representatives of the contesting defendant, contended that both on a construction of the terms of Exhibit A-1 and also by reason of the judgment in Original Suit No. 35/1919 on the file of the District Munsiff, Karkal, marked Ex. B-1, the plaintiffs are not entitled to claim anything more than Rs. 4/-per mura of rice.

The learned Counsel urged that Exhibit A-12 not being a certified copy of the judgment, is inadmissible in evidence and secondly, since the pleadings in the said suit not having been produced, it cannot be ascertained from the judgment as to whether the price of rice morass was claimed at the market rate or the

fixed rate of Rs. 4/-. He further submitted that in the judgment in Exhibit B-1 the issue now in dispute was expressly decided and, therefore, the said judgment operated as Res Judicata in bar of the plaintiff's present contention.

2. For decision of this appeal, it is unnecessary to consider whether Exhibit A-12 is admissible, for, I am of the opinion that the said judgment does not operate as Res Judicata. The issue now raised, it is not disputed by the learned Counsel for the respondents, was not expressly raised or decided in the judgment contained in Exhibit A-12. The Courts below presumed that the value of rice was claimed at the market rates from the total amount decreed in the suit. The judgment does not disclose the rate of interest claimed and decreed on the arrears of maintenance annually payable. In the absence of the copy of the plaint in the said suit, it cannot be said that the plaintiff in that suit claimed the value of rice morass at the market rates. Shri N.T. Raghunathan, the learned Counsel for the respondents, fairly concedes that Exhibit A-12 may not operate as Res Judicata of the question in issue in this suit. He submitted that the decree in the suit O. S. No. 35/1919 aforesaid was the subject-matter of appeal as seen from the courts below and the judgment rendered in the appeal has not been produced in this suit.

The contention of the learned Counsel for the respondents is well-founded. When the judgment and decree of a Court are appealed against, the decree of the Court of first instance is merged in the decree of the appellate Court though the appellate Court may affirm the decree of the trial Court. What operates as Res Judicata is not only the decision but the grounds on which the decision is based. The interpretation of the relevant clause in Exhibit A-1 is the ground for decision. In the absence of the judgment on appeal, there is nothing on record to indicate the grounds of the decision of the appellate Court. The judgment in Exhibit B-1 having been superseded by the decree and judgment made in the appeal, the former judgment cannot be pleaded in bar of Res Judicata. This view is supported by a decision of the High Court of Calcutta in *Sekendar Ali Mridha Vs. Sadaruddin Bhuniya*, .

3. Since the judgments in Exhibit B-1 and Exhibit A-12 do not operate as a bar for the decision on the issue in the suit, that question has to be decided on the interpretation of the relevant clause in Exhibit A-1 which is to the effect that maintenance is payable to the second plaintiff at the rate of eight morass of Kuchige and one mura of Belthige rice and Rs. 4/- in cash, by the Vishu Sankramana of every year, and that on default, according to the local custom, the value of rice due is payable at the rate of Rs. 4/- per mura. It is undisputed that the market price of rice morass during the year 1944 was RS. 10/- and that for 1953 Rs. 23/-. It is urged by the learned Counsel for the appellant that Exhibit A-1 confers on his client the alternative right to pay either in kind or in cash I am unable to accept this contention.

4. The second plaintiff, as a member of a joint Hindu family, became entitled to maintenance on the charge of the estate of her husband which devolved on the

surviving coparceners. The widow's right of maintenance arising out of the jural relations of the family is in lieu of her share. Being excluded from participation in the estate, law afforded her the solatium of maintenance. The joint-family of the 2nd plaintiff owned agricultural lands yielding rice income. Taking into consideration the income of the family lands and the needs of the second plaintiff, her maintenance was fixed at nine morass of rice and Rs. 4/- per annum which cannot but be regarded as the barest minimum needed for human sustenance. The defendants who are liable to pay the maintenance in rice morass did not deliver the same as provided under Exhibit A-1. They deliberately defaulted in the payment with the sole object of invoking to their aid the default clause which is to their great advantage. If the appellants' contention is accepted, the maximum maintenance the second plaintiff could claim would be Rs. 40/- per year, which during the post-constitution period is insufficient to buy even two morass of rice.

5. In my opinion, the default clause in Exhibit A-1 is intended to enure for the benefit of the maintenance holder only and not intended to confer any alternative right on the persons liable to pay the maintenance. If construed otherwise a defaulting party will be placed at an advantage so as to earn a profit by committing default in the payment of maintenance solemnly undertaken to be paid in rice morass. A default clause in a maintenance agreement is not intended to confer any right on the defaulting party.

If the contention of the learned Counsel for the appellant is accepted, a right and a benefit could accrue to a defaulting party by committing deliberate default. It is wellknown rule of equity that relief will be denied where it appears that the right upon which the party relies has grown out of his wrong or a breach of his duty. A party will not be permitted to take advantage of his own wrong and no Court of justice will aid such a party to earn a profit out of a breach of his duty or inequitable conduct. The Judicial Committee of the Privy Council in AIR 1932 207 (Privy Council) construed that a default clause in a mortgage deed is intended for the benefit of the mortgagee and not of the defaulting mortgagor. The same principles apply to default clauses in maintenance Karars. The decree of the Court below is, therefore, right though the ground for its decision is not correct.

6. For the above reasons this appeal fails and is dismissed with costs.