

(2000) 02 KAR CK 0051

In the Karnataka High Court

Case No : Civil Revision Petition No. 1472 of 1999

B.S. Venkatachalapathy Shetty (Deceased) by L.RS

APPELLANT

Vs

C.J. Panduranga Setty

RESPONDENT

Date of Decision : 18-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(2)

Citation : (2000) 8 KarLJ 114

Hon'ble Judges : S. R. Venkatesha Murthy, J

Judgement

1. Dismissal of an Execution Case No. 366 of 1994 by the XIX Additional City Civil Judge, Bangalore, is challenged by the legal representatives of the deceased decree-holder in this revision.

2. Facts necessary for disposal of this revision are as follows: The deceased decree-holder had instituted O.S. No. 578 of 1983 on the file of the City Civil Court, Bangalore for declaration of title and for possession of the plaint schedule shop in Raja Market, Bangalore, against the defendant (now judgment-debtor) who is none other than the plaintiff's brother-in-law. The defendant denied plaintiffs (decree-holder's) case and asserted that he was the real owner of the property having purchased the property in the name of the plaintiff and that alternatively he had perfected his title by adverse possession. The Trial Court dismissed the suit. Plaintiff filed an appeal to this Court in R.F.A. No. 660 of 1988. This Court by its judgment dated 15-11-1993, came to the conclusion that the defence of purchase of the property benami by the defendant was untenable by reason of Benami Transactions (Prohibition) Act, 1988 and that the plea of adverse possession, being contrary to the plea of benami nature of the deed in favour of the plaintiff, could not be sustained. Consequently the appeal was allowed and a decree in favour of the plaintiff as prayed for was granted. It is admitted that the defendant's Special Leave Petition No. 479 of 1994 was dismissed on 3-2-1994 by the Supreme Court and the review petition also met with the same fate, being withdrawn. Before the withdrawal of the review petition, the judgment-debtor sought and obtained six months time to surrender

vacant possession of the plaint schedule property.

3. In the execution proceedings also there was obstruction on the ground that the obstructor was a tenant and that attempt at obstruction to delivery of property also failed and the order became final after a failed contest in all the available forums.

4. The decree-holder who was resisted in seeking possession of the property, moved for punishment of the judgment-debtor for contempt in C.C.C. No. 2149 of 1997 and this Court held the judgment-debtor guilty of contempt and directed delivery of the property with the aid of the police. The Supreme Court in appeal stayed the delivery of property. Subsequent to the hearing of this revision, the decree-holder has filed into Court a copy of the order of the Supreme Court in C.A. No. 1905 of 1999, dated 8-10-1999 which reads as follows:

"Interim relief is confirmed. It is made clear that the executing Court or any other Court to proceed on the basis that the right of the respondent to prosecute ordinary remedy is not affected in any manner by this order".

5. Thus, there is no impediment for disposal of this revision. Meanwhile, on the execution side, an application under Order 21, Rule 16 of the CPC was filed to bring on record the legal representatives of the decree-holder who died on 27-1-1999. This was resisted by the judgment-debtor on the ground that the applicants do not fill in the character of decree-holder under Section 2(2) and (3) of the CPC; that no decree came to be passed in favour of the deceased plaintiff in R.F.A. No. 660 of 1988 and was not, therefore, a decree-holder in R.F.A. No. 660 of 1988; and that the Government alone was entitled to take over the property in question.

5-a. The executing Court has accepted all the contentions of the judgment-debtor and held that the judgment in R.F.A. No. 660 of 1988 did not decide the question of title of the plaintiff at all; and that the decree is inexecutable. On the basis of a definitions of "decree" and "legal representative" under the Code of Civil Procedure, that there was no decree in favour of the plaintiff (decree-holder) and consequently there was no estate left after the demise of the decree-holder which could be represented by the petitioners herein. By this process of reasoning the executing Court dismissed the application of the petitioners and also the execution petition. Hence, this revision.

6. The operative portion of the judgment and decree in R.F.A. No. 660 of 1988, which is the bone of contention between the parties, reads thus:

"The appeal is allowed. The judgment and decree of the Trial Court dated 16-8-1988 in O.S. No. 578 of 1983 is hereby set aside. The defendant is granted two months time from today to vacate and deliver vacant possession of the suit property. The mesne profits from the date of the suit to the date of possession has to be computed separately. The parties shall bear their own costs".

7. The plaintiff (decree-holder) prayed in the appeal that the judgment and

decree of the Trial Court dismissing his suit be set aside and for grant of a decree in his favour.

8. At the outset it has be observed that there is no dispute as to the identity of the subject-matter of the decree that is put in execution; nor about the identity of the parties to the lis; nor about the place of location of the plaint schedule property i.e., within the jurisdiction of the Bangalore City Civil Court.

9. The inexecutability of the decree is raised for the first time, after the petitioners sought to substitute themselves for the deceased decree-holder. The objection that is raised by the judgment-debtor is that the decree does not specify to whom he should deliver possession of the property. In addition it has been sought to be urged that the judgment and decree did not really upset the findings recorded in favour of the judgment-debtor by the Trial Court and the only finding recorded in R.F.A. No. 660 of 1988 is about the benami nature of the transaction raised by the judgment-debtor, being untenable by reason of a decision in *Mithilesh Kumari v Prem Behari Khare*, AIR 1989 SC 1247, being upset in 1995. The Counsel for judgment-debtor sought persuade this Court to accept the finding recorded by the executing Court, contending that this Court did not set aside the findings against the plaintiff-decree-holder and has merely on the basis of the Benami Transactions (Prohibition) Act, 1988 granted the decree as aforesaid, without going into the other provisions of the said Act, by which, on a correct interpretation, the property should have been dealt with as vesting in the State. Thus submission was sought to be supported by a plea that the decision in *Mithilesh Kumari's* case, *supra*, has been held to be not good law in view of the decision in *R. Rajagopal Reddy v Padmini Chandrasekharan*, (1995)2 SCC 630, and therefore the decision in R.F.A. No. 660 of 1988 rendered by the Court is void for want of inherent jurisdiction.

10. The submissions for the judgment-debtor would have to be rejected as perverse, for this Court in R.F.A. No. 660 of 1988, was examining the decision in the suit, which was instituted in the Court which had jurisdiction over the parties and the subject-matter. The decisions in R.F.A. No. 660 of 1988 was rendered on merit by this Court and the further appeal was rejected in the Supreme Court, followed by a rejection of the review of such dismissal of the special leave petition. All permissible avenues for challenge to the decisions were tried without any success. Thus the decisions became conclusive against the judgment-debtor. The decision in R.F.A. No. 660 of 1988 thus became law between the parties and there is no way by which the judgment-debtor could question the validity of the judgment in R.F.A. No. 660 of 1988 in the execution proceedings.

11. The only way by which the judgment-debtor could challenge the decree in execution is on the ground that the Court lacked inherent jurisdiction to try the case. The inherent lack of jurisdiction asserted for the judgment-debtor is that the decisions in *Mithilesh Kumari's* case, *supra*, has been subsequently held to be not good law in *Rajagopal Reddy's* case, *supra*, in 1995 and so the judgment in R.F.A. No. 660 of 1988 in a nullity and so in the execution proceedings such a

plea could be raised. This plea raised for the judgment-debtor shows that the Court had jurisdiction over the parties and the subject-matter at the time the decisions was rendered reversing the judgment of the City Civil Court. It has to be observed that a change of the legal position subsequent to a judgment would not be a ground even for seeking a review of a judgment as can be made out from the explanation to Order 47, Rules 1 and 2 of the CPC. When that is so, the judgment-debtor could hardly contend that the decision in Rajagopal Reddy's case, *supra*, holding that the Benami Transactions (Prohibition) Act, 1988 is prospective in operation and not retrospective as held in Mithilesh Kumari's case, *supra*, rendered the decision in R.F.A. No. 660 of 1988 without jurisdiction. Notwithstanding the decision in Rajagopal Reddy's case, *supra*, the decision in R.F.A. No. 660 of 1988 on the legal position enunciated in Mithilesh Kumari's case, *supra*, is inescapably law so far as the parties to the case are concerned.

12. The decision in *Ittyavira Mathai v Varkey Varkey and Another*, AIR 1964 SC 907, at page 502, it is observed as follows:

"... Even assuming that the suit was barred by time, it is difficult to appreciate the contention of learned Counsel that the decree can be treated as a nullity and ignored in subsequent litigation. If the suit was barred by time and yet, the Court decreed it, the Court would be committing an illegality and therefore the aggrieved party would be entitled to have the decree set aside by preferring an appeal against it. But it is well-settled that a Court having jurisdiction over the subject-matter of the suit and over the parties thereto, though bound to decide right may decide wrong; and that even though it decided wrong it would not be doing something which it had no jurisdiction to do. It had the jurisdiction over the subject-matter and it had the jurisdiction over the party and, therefore, merely because it made an error in deciding a vital issue in the suit, it cannot be said that it has acted beyond its jurisdiction. As has often been said, Courts have jurisdiction to decide right or to decide wrong and even though they decide wrong, the decrees rendered by them cannot be treated as nullities. Learned Counsel, however, referred us to the decision of the Privy Council in *Maqbul Ahmad v Onkar Pratap Narain Singh*, AIR 1935 PC 85 and contended that since the Court is bound under the provisions of Section 3 of the Limitation Act to ascertain for itself whether the suit before it was within time, it would act without jurisdiction if it fails to do so. All that the decision relied upon says that Section 3 of the Limitation Act is peremptory and that it is the duty of the Court to take notice of this provision and give effect to it even though the point of limitation is to be referred to in the pleadings. The Privy Council has not said that where the Court fails to perform its duty, it acts without jurisdiction. If it fails to do its duty, it merely makes an error of law and an error of law can be corrected only in the manner laid down in the Civil Procedure Code. If the party aggrieved does not take appropriate steps to have that error corrected, the erroneous decree will hold good and will not be open to challenge on the basis of being a nullity".

It is clear that even on the basis of the submission made for the judgment-

debtor the lack of inherent jurisdiction for the making of the judgment in R.F.A. No. 660 of 1988 cannot be pleaded. The thrust of the submission for the judgment-debtor has been that the Trial Court gave specific findings in favour of the judgment-debtor regarding title to the property. But in the R.F.A. no specific finding in favour of plaintiffs title was recorded by the Court and so plaintiffs title to the property was never decided and that without a specific declaration to that effect in favour of the plaintiff-decree-holder, no decree can be granted. This contention cannot be entertained, in view of the observation of the Supreme Court in Ittavira Mathai's case, referred to above. The judgment in R.F.A. No. 660 of 1988 dealt with the question of benami nature of the transaction sought to be raised by the judgment-debtor and this Court on the then legal position as enunciated in Mithilesh Kumari's case, supra, held that the respondent-judgment-debtor was not entitled to raise a contention regarding the benami nature of the transaction. This Court also held that on account of the finding recorded on the basis on Mithilesh Kumari's case, supra, the contention of the respondent-judgment-debtor herein regarding adverse possession also had to fail. It is clear, therefore, this Court did find in favour of the plaintiff-decree-holder that the ostensible title in the plaintiff had to be sustained. It has to be remembered that the decision in R.F.A. No. 660 of 1988 has become final and is incapable of being interpreted as being without jurisdiction. The decision in R.F.A. No. 660 of 1988 supplants the findings recorded by the Trial Court. The contention that the judgment in R.F.A. No. 660 of 1988 did not specifically deal with the findings recorded by the Trial Court and give reasons for taking a different view, cannot be urged as a ground of inherent lack of jurisdiction. Indeed the observations extracted in the earlier paragraph of this order in Ittavira Mathai's case, supra, is a complete answer to the contention of the judgment-debtor. Even if the contention of the judgment-debtor is in fact true with which contention it is difficult to agree all that could be said is the decision in R.F.A. would be wrong and not a nullity.

13. It was sought to be contended on behalf of the judgment-debtor that the merger of the decisions with that of the Appellate Court is not principles of universal applicability and so the decision in R.F.A. No. 660 of 1988 does not really upset the findings recorded by the Trial Court. Reliance was sought to be placed on a decision in *State of Madras v Madurai Mills Company Limited*, AIR 1967 SC 681, and the Supreme Court had occasion to examine the position regarding the fact of merger of the original decision with the decision of an Appellate Authority. In *Commissioner of Income-tax, Bombay v M/s. Amritlal Bhogilal and Company*, AIR 1958 SC 868, and the relevant observation at page 720 reads as follows:

"There can be no doubt that, if an appeal is provided against an order passed by a Tribunal, the decision of the Appellate Authority is the operative decision in law. If the Appellate Authority modifies or reverses the decision of the Tribunal, it is obvious that it is the appellate decision that is effective and can be enforced. In law the position would be just the same even if the appellate decision merely

confirms the decision of the Tribunal. As a result of the confirmation or affirmance of the decision of the Tribunal by the Appellate Authority the original decision merges in the appellate decision and it is the appellate decision alone which subsists and is operative and capable of enforcement.....".

14. The learned Counsel for the judgment-debtor sought to contend that the merger of the decisions of an Appellate Authority with that of the decision of the original authority is not one of universal application and so the decision of this Court in appeal does not really affect the finding. It is obvious that in order to find out whether the judgment of the Trial Court merges with the judgment of the Appellate Court or not on issue in favour of the defendant-judgment-debtor, the scope of the appellate jurisdiction would have to be examined as observed in the decisions cited for the judgment-debtor in Madurai Mills Company Limited's case. So far as a Civil Court is concerned, it is very clear that an appeal is a continuation of the suit and the Appellate Court is empowered under Order 41, Rule 33 of the CPC to pass any decree or make any order which ought to have been passed. Thus the scope of the appellate power to make any order which ought to have been made by a Trial Court is unquestionable. In the instant case, when this Court did set aside the judgment and decree of the Trial Court and allowed the appeal of the plaintiff, it is clear that the entire decree and judgment of the Trial Court has been reversed and a judgment and decree as prayed is granted by this Court. Merely because this Court did not specify in so many words that the plaintiff was declared to be the owner of the plaint schedule property, it cannot, by any stretch of imagination, be inferred that the plaintiff was not given a declaration as prayed for. When once the ostensible title is affirmed, it is clear that the finding of the Trial Court regarding defendant's title to the property is set aside. Merely because in the operative portion of the judgment, the finding that was recorded in the judgment was not repeated, it cannot be inferred that the plaintiff's title to the property had not been so declared. The fact that the defendant-judgment-debtor was required to deliver possession of the property in two months could not be construed out of context to base an argument that there was no direction in the decree to deliver possession of the property to the plaintiff. Indeed untenability of such an interpretation is writ large over the entire record. The materials on record would show that the defendant-judgment-debtor sought to call upon a person as a tenant to surrender possession to him to enable him to deliver possession of the property to the plaintiff-decree-holder; that the alleged tenant sought to obstruct the proceedings for delivery and failed is also clear. That being so, a fortuitous contention on the basis of vagueness of the decree as affecting the validity of the judgment and decree itself, can hardly be countenanced.

15. It is undisputed that the revision petitioners are the widow and children of the late decree-holder. All that the executing Court has sought to say in this matter is that the decree did not direct delivery of possession of the property to the decree-holder and so there was no estate that vested in the legal representatives of the deceased decree-holder and therefore the legal

representatives of the decree-holder are not entitled to continue the execution proceedings. The view taken by the executing Court is clearly perverse and cannot be sustained. The petitioners are the legal representatives of the deceased decree-holder and are entitled to prosecute the execution petition and to take delivery of the schedule property. The finding of the executing Court against the petitioners is clearly without jurisdiction and cannot be sustained and is set aside.

16. The judgment-debtors have sought to contend that in a revision under Section 115 of the CPC, the finding recorded by the Trial Court, howsoever wrong it may be, cannot be interfered with and the revision shall be dismissed.

17. The learned Counsel for the respondent sought to rely upon the decision in *M.L. Sethi v R.P. Kapur*, AIR 1972 SC 2379, wherein the Supreme Court observed thus:

"The "jurisdiction" is a verbal coat of many colours. Jurisdiction originally seems to have had the meaning which Lord Reid ascribed to it in *Anisminic Limited v Foreign Compensation Commission*, (1969)2 AC 147, namely, the entitlement "to enter upon the enquiry in question". If there was an entitlement to enter upon an enquiry into the question, then any subsequent error could only be regarded as an error within the jurisdiction. The best known formulation of this theory is that made by Lord Denman in *R. v Bolton*, (1841)1 QB 66. He said that the question of jurisdiction is determinable at the commencement, not at the conclusion of the enquiry." In *Anisminic Limited's* case, *supra*, Lord Reid said:

"But there are many cases where, although the Tribunal had jurisdiction to enter on the enquiry it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive".

In the same case, Lord Pearce said:

"Lack of jurisdiction may arise in various ways. There may be an absence of those formalities or things which are conditions precedent to the Tribunal having any jurisdiction to embark on an enquiry. Or the Tribunal may at the end make an order that it; has no jurisdiction to make. Or, in the intervening stage while engaged on a proper enquiry, the Tribunal may depart from the rules of natural justice; or it may/ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step

outside its jurisdiction. It would turn its inquiry into something not directed by Parliament and fail to make the inquiry which the Parliament did direct. Any of these things would cause its purported decision to be a nullity".

18. From the above observations, it is clear that in the instant case the learned Judge never really tried to determine what is the extent of his jurisdiction in regard to interpretation of decrees regarding nullity as a ground for inexecutability and merely proceeded to hold that the decree was inexecutable without even trying to find out the extent to which he could go behind the decree. It is clear that the executing Court should exercise the jurisdiction which was vested in it in holding that the decree was executable. In the circumstances, it appears to me that the order of the Trial Court suffers from jurisdictional error which calls to be corrected by interfering with the same.

19. Though a number of decisions were cited for the respondent-judgment-debtor, they are not referred to, as in my opinion, they are not relevant.

20. The casualness with which the matter has been dealt with by the executing Court is disturbing. A copy of this order shall be forwarded to the officer concerned for information.

21. The revision is allowed. The Trial Court shall bring on record the legal representatives of deceased decree-holder namely, the petitioners herein and shall proceed to dispose of the matter in the light of the findings given herein. The parties shall appear before the executing Court on 10th of March, 2000, to receive further directions regarding the progress of the execution proceedings.