

(2015) 11 KAR CK 0154
In the Karnataka High Court
Case No : RFA No. 4057/2013

Champabai and Others

APPELLANT

Vs

Mahadev and Others

RESPONDENT

Date of Decision : 19-11-2015

Acts Referred:

Citation : (2015) 11 KAR CK 0154

Hon'ble Judges : S.N. Satyanarayana, J.

Bench : Single Bench

Advocate : R.M. Kulkarni, Advocate, for the Appellant; Sangram S. Kulkarni, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Satyanarayana, J.—Defendants 3 to 5 in O.S. No. 3 of 2003 on the file of II Additional District Judge, Belgaum, have come up in this first appeal impugning the judgment and decree dated 22/08/2007.

2. This appeal is filed with inordinate delay of 1962 days. Hence, application in I.A. 1 of 2013 is filed seeking condonation of the same for which objections are filed by the counsel for respondent No. 1, who is the plaintiff in the Court below. Heard the learned counsel for the appellants and as well as the contesting respondent No. 1, perused the affidavit filed in support of I.A. 1 of 2013 and also the statement of objections filed to the said application. On going through the same it is seen as under:

3. Suit in O.S. No. 3 of 2003 is filed by respondent No. 1 herein seeking issue of probate and succession certificate with reference to the Will dated 10.04.1995 executed by his father late Siddappa Halabhavi with reference to the suit schedule property. According to the plaintiff in the original suit, his father Siddappa Halabhavi had in all five children, i.e., two sons and three daughters, besides his wife who was living at the time of execution of the Will. According to him, his father purchased the suit property under a registered sale deed dated

03.05.1976 from out of his own earnings and the said property was in his possession and enjoyment during his life time. It is his case that, when his father was sufficiently old and unable to manage his affairs and when he was in sound disposable state of mind, he decided to bequeath the suit property in favour of plaintiff. It is stated that, his father had raised loan on the said properties with Shri. Mahatma Basaveshwar Credit Society, Nippani. Hence, in the Will executed by him on 10.04.1995 in the presence of two independent witnesses bequeathing the suit property in favour respondent No. 1 herein who is plaintiff in the Court below, he had imposed certain conditions. One of which, is clearing the loan in Shri. Mahatma Basaveshwar Credit Society, Nippani and also conducting the marriage of his youngest daughter Jayashree, who was aged about 20 years at the time of execution of the Will.

4. It is seen that subsequently Siddappa Halabhavi died on 23.08.1995, i.e., after 4 months 13 days after the Will is executed and thereafter the proceedings under the provisions of Probate and Succession Act was initiated seeking letter of administration for the Will dated 10.04.1995. In the said proceeding notice was duly served on the widow of deceased Siddappa Halabhavi, his son Shivaputra and three daughters who are appellants herein. It is only defendant No. 4 who filed the written statement contesting the Will. So far as other defendants, namely, defendant No. 1 who is widow of Siddappa Halabhavi, defendant No. 2 who is the eldest son and defendant Nos. 3 and 5 who are other daughters did not file any written statement opposing the said Will. Thereafter, the proceedings in P & S.C. No. 5/2000 was converted into original suit in O.S. No. 3/2003.

5. In the said proceedings, on the basis of the pleadings, oral and documentary evidence adduced by the parties, suit of the plaintiff came to be decreed by judgment and decree dated 22.08.2007. Thereafter, the present appeal is filed by defendant Nos. 3 to 5 in O.S. No. 3/2003 contending that the judgment and decree passed by the trial Court is erroneous and that the same is allowed without looking into the merits of the case and by erroneously accepting the plea of the plaintiff that the suit schedule property is the absolute property of the deceased Siddappa Halabhavi and holding that he had right to execute the Will, which is erroneous for the reason that the suit schedule property was the joint family property of Siddappa Halabhavi, with reference to which he did not have absolute right to execute the Will and that he did not fulfill the obligation, which was put on him under the Will dated 10.04.1995. Therefore, there is breach of conditions of the Will that is also not looked into and that the Will is executed under suspicious circumstances, that is also not taken into consideration.

6. Since the appeal is filed with a delay of 1962 days, an application in I.A. No. 1/2013 is filed. To the said application, learned counsel for respondent No. 1 who is contesting respondent in this proceeding filed a detailed objections.

7. Heard the learned counsel for the appellants and respondent on I.A. No. 1/2013 and perused the affidavit filed in support the application and also the objections. On going through the same, it is seen that the reasons for filing the

appeal belatedly, i.e., with a delay of 5 years 4 months and 17 days is for the reason that defendant Nos. 3 to 5 who are appellants herein were under the impression that the judgment which is rendered would only entitle their brother to receive the letter of administration to manage the suit schedule property. It is only when they came to know that the plaintiff in the original suit who is respondent No. 1 herein is trying to create third party interest with reference to the suit schedule property, they thought it fit to file the present appeal. It is also pleaded in the affidavit that delay in filing the appeal is due to lack of legal knowledge and not knowing the procedure of law.

8. To that, the objections filed by the contesting respondent is to the effect that the averments made in the affidavit is totally false for the reason that probate and succession certificate which was initiated under P & S.C. No. 5/2000 clearly indicate that respondent No. 1 herein had staked a claim for the suit property under the Will dated 10.04.1995 and it was made clear by virtue of the said Will, he has become the absolute owner of the suit property and as such he has right to administer the same by getting the property registered in his name. Therefore, nowhere in the proceeding before the trial Court he had indicated that other parties to the proceedings had any right. It is further stated that in fact though defendant Nos. 3 to 5 who are appellants herein were duly served, it is only defendant No. 4, i.e., the second appellant herein who choose to file written statement and other two appellants did not even file the written statement. In spite of giving sufficient opportunity to adduce evidence to demonstrate that the suit property is not the absolute property of deceased Siddappa Halabhavi, they did not adduce any evidence in support of the defence of defendant No. 4 who is second appellant herein and that other two appellants herein did not have any objections at all for issuance of succession certificate.

9. However, it is only five years after the suit was decreed, this appeal is filed under the pretext that they presumed that they had subsisting right in the suit property and what was granted in favour of respondent No. 1 who is plaintiff in the Court below is only letter of administration to manage the property without disturbing the rights of the appellants herein is far from truth and that was not the understanding of the parties in the proceedings before the trial Court. It is also stated that the reasons stated in the affidavit is nothing but a lame excuse to get over the inordinate delay of 5 years 4 months and 17 days in filing the appeal. On going through the grounds for condonation of delay and the defence raised against that and with reference to the judgment on record, it is clearly seen that the reason given by the appellants herein to seek condonation of delay is without any basis, as rightly contended by the contesting respondent herein. The appellants herein were fully aware of the proceedings which was initiated in P & S.C. No. 5/2000 which was subsequently converted into O.S. No. 3/2003. On the basis of defence raised by defendant No. 4 who is second appellant herein and to say that they presumed that still they had some right in the property and that there was alleged disturbance to the said right in appellants trying to create third party interest is all nothing but a pigment of lie and to make an attempt to

make a ground to seek condonation of inordinate delay of 1962 days in filing this appeal.

10. In that view of the matter, this Court find, no justifiable grounds are made out to condone the inordinate delay of 1962 days in filing the appeal. Even otherwise, in the light of the discussions made above with reference to the facts of the case and also the judgment rendered by the trial Court, it is seen that on merits also there appears to be no grounds are made out by the defendants to seek setting aside the judgment passed by the Court below, which is passed taking into consideration the facts and circumstances of the case. Hence, the application filed in I.A. No. 1/2013 is dismissed and consequently the appeal also dismissed.