

(2002) 07 KAR CK 0028
In the Karnataka High Court
Case No : C.R.P. No. 2509 of 2000

Chandrabhagabai Krishnasa Basava @ Chandrabhagabai and
Others

APPELLANT

Vs

Vasant

RESPONDENT

Date of Decision : 24-07-2002

Acts Referred:

Citation : (2002) 4 CivCC 692 : (2003) ILR (Kar) 3868 : (2002) 4 KCCR 376 SN

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Dinesh M. Kulkarni, for the Appellant; G.S. Bhat, for the Respondent

Final Decision : Dismissed

Judgement

Gopala Gowda, J.—In this revision petition the legality and validity of the order passed by the appellate Court setting aside the order dated 3-2-1998 in OS. No. 167/97 and restoring the suit which was dismissed for non-prosecution is questioned.

2. Learned Counsel for the petitioners vehemently contended that the respondent is not entitled to the relief as he has not complied with the condition imposed by the Trial Court in the interim order dated 14-7-1997 granting temporary injunction. He further states that since the said order was not complied with, the suit was dismissed for non-prosecution and even the Miscellaneous N0.6/98 was also dismissed. M.A.No. 26/99 filed against same was allowed and questioning the legality and validity of the said order the present revision petition is filed.

3. I have perused the orders of the Courts below. The appellate Court exercised its discretion and restored the suit by setting side the order by which it was dismissed for non-prosecution. The appellate Court observed that normally a litigant does not stand to get benefit by dismissal of his case. Rightly the appellate Court held that judiciary is respected for eliminating injustice and

providing justice. I fully concur with the views expressed by the appellate Court for restoring the suit.

4. A person will not file a suit unnecessarily except with any oblique motive. One who filed case asserting his right or alleging injustice or damage and seeking compensation normally will not deliberately allow his case dismissed for non-prosecution. Circumstances and situations vary from case to case for such dismissal of the case. Many a times parties are not responsible for the same. There may be fault on the Advocates or communication gap for compliance of certain conditions or requirements. A case shall not be thrown out on account of such technical lapses. Once a case is handed over to an Advocate, normally the parties will depend upon the instructions and advise of the Advocate. Many a times the communications made by the Advocates will not reach the parties on account of various reasons. In such circumstances, if the party does not appear in Court, the case shall not be dismissed merely on that ground, as has been done by the Trial Court in the instant case.

5. In the case on hand, the suit is filed for declaration and injunction in respect of immovable property. Such a suit will not be filed for pleasure. A right, either vested or implied, is sought to be asserted in the suit. Such a suit ought not to have been dismissed by the Trial Court on the ground of non-prosecution holding that the plaintiff is not interested in prosecuting the suit. The order-sheet dated 25-9-1998 reveals that the counsel appearing for the plaintiff expressed his intention to retire from the case. On the date when the suit was dismissed, the Counsel remained absent. It is quite natural that an Advocate who intends to retire from a case will not be interested to attend the case. That is what happened in this case also.

6. The Trial Court should have allowed the Counsel to issue notice to his clients and thereafter file memo of retirement. On filing of such memo and after allowing the counsel to retire from the case, it should have issued Court notice to the plaintiff. None of these are done. Straight-away the case had been dismissed for non-prosecution. The approach of the Trial Court is not correct.

7. The appellate Court rectified the mistake of the Trial Court and restored the suit, thereby an opportunity is provided to the plaintiff. As stated by the Trial Court if the plaintiffs are not interested in the case, definitely they would not have filed the miscellaneous petition, after dismissal of the same, the miscellaneous appeal and thereafter this revision petition. The filing of miscellaneous petition, miscellaneous appeal and the present revision petition ipso facto proves that petitioners are interested in the case and their absence before the Trial Court was not intentional. The appellate Court provided justice to the plaintiffs and hence this Court declines to interfere with the order under revision.

8. Accordingly, the revision petition is dismissed.

9. Having regard to the facts and circumstances of the case, even though the

defendant has not filed the written statement in the suit, the plaintiffs are directed to go on with the case so that the suit shall be disposed of by the Trial Court within four months.