
(2006) 07 KAR CK 0024
In the Karnataka High Court
Case No : R.P. No. 645 of 2005

C.P. Bharathi and Another

APPELLANT

Vs

Anjanappa (deceased by L.Rs.) and Others

RESPONDENT

Date of Decision : 12-07-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114, 151
Constitution of India, 1950 — Article 142, 226
Limitation Act, 1963 — Section 5

Citation : AIR 2007 Kar 31 : (2007) 4 KarLJ 706 : (2006) 3 KCCR 1927

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : S.P. Shankar for Kumar and Kumar, for the Appellant; C.B. Srinivasan, D.R. Ravishankar, Shrihari, Kishore Shetty and S.K. Chalapathy for Vagedevi Associates, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—A short and an important question arises in this review petition is; whether Order 47 Rule 1 of CPC can be invoked to review the judgment by a person who is not a party either in the suit or in the appeal.

2. One Anjanappa filed the suit for partition and separate possession of his half share in the suit schedule property in O.S. No. 332/1971, which was later renumbered as O.S. 1318/1980. The suit property is measuring 4 acres 14 guntas of dry land in Sy. No. 39/4 of Doddakallasandra Village, Uttarahalli Hobli, Bangalore South Taluk along with an existing tiled roof house. A purchaser of the property had also filed a suit in O.S. No. 177/1973, which was later renumbered as O.S. No. 473/81 before the City Civil Court, Bangalore for the relief of declaration and for possession in respect of the property mentioned in the suit. These two suits were clubbed together and a common judgment was passed. The suit filed by the plaintiff in O.S. No. 1318/80 was dismissed and the suit filed by the 4th defendant who had purchased a portion of the property in O.S. No.

473/91 was decreed. Against the judgment and decree passed in O.S. No. 1318/80, the unsuccessful plaintiff filed an appeal in R. F. A. No. 606/89. Against the judgment and decree passed in O.S. No. 473/81, R. F. A. No. 324/90 was filed. The appeal filed by legal-heirs of Anjanappa. was allowed on 24th November 1998 by a learned Judge of this Court and the judgment and decree of the trial Court was set aside. A preliminary decree was passed declaring that the plaintiff appellant is entitled for half share in the suit property.

3. The present review petitioners by Smt. C. P. Bharathi and Sri Sathyanarayana, who were not parties either in the suit or in the appeal have filed this review petition under Order 47 Rule 1 of CPC requesting this Court to review the order dated 24-11-1999 passed by this Court in R.F.A. No. 606/1989 and to give an opportunity to the petitioners to defend their case properly. Along with this review petition, an application u/s 5 of the Limitation Act. has been filed to condone the delay of 2492 days in filing the review petition. An application u/s 151 of CPC is also filed seeking permission to prosecute the review petition.

4. Before considering the application filed u/s 5 of the Limitation Act, I have heard the counsel for the parties in regard to the right of the petitioners to maintain the review petition.

5. According to Mr. S. P. Shankar, learned Senior Counsel appearing for the petitioners, considering the provisions of Order 47 Rule 1 of Code of Civil Procedure, any aggrieved person can maintain a review petition to review the judgment passed by this Court. He further relied upon Section 114 of Code of Civil Procedure, In support of his arguments, he has also relied upon the judgments of Hon''ble Supreme Court in AIR 1963 S.C. 1909 (Shivadevo Singh and Ors. v. State of Punjab and Ors.) and Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., . Relying upon these judgments, Mr. Shankar contends that the petitioners being aggrieved persons, even though they were not parties either before the trial Court or before the appellate Court, can maintain an application for review of the Judgment. Therefore, he requests this Court to set aside the judgment in order to give an opportunity to the petitioners to establish their rights, Contending Kant & the judgment passed by this Court in Regular First Appeal would directly affect the interest of the petitioners.

6. Per contra Mr. C. B. Srinivasan, learned Counsel appearing for the legal heirs of the 1st respondent contends that Section 114 of CPC has to be read along with Order 47 Rule 1 of Code of Civil Procedure. According to him, scope of Order 47 Rule 1 of CPC is very limited and can be invoked by a person; against whom a decree or order is passed. Therefore, he contends that when the judgment and decree is not passed against the review petitioner, the review petitioners cannot maintain the review petition under Order 47 Rule 1 of CPC along with Section 114 of Code of Civil Procedure. To support his arguments, he has relied upon the judgment of Supreme To Day reported in Haridas Das Vs. Smt. Usha Rani Banik and Others, Relying upon this judgment, he contends that the scope of review petition is very limited and can be filed by a person against whom a decree or

order is passed under the circumstances explained in Order 47 Rule 1 of Code of Civil Procedure. Therefore, he requests this Court to dismiss the review petition.

7. At the outset, this Court made it very clear to the learned Counsel for both the parties that; this Court would consider the merits of the petition provided the review petition under Order 47 Rule 1 of CPC is maintainable. Therefore, there is no necessity for this Court to go into whether the review petitioners have got a case on merits.

8. It is not in dispute that the petitioners were not parties in the original suit filed by Anjanappa and similarly, they were also not parties in the appeal filed by legal heirs of Anjanappa. In *Shivdeo Singh and Others Vs. State of Punjab and Others*, , the Hon"ble Supreme Court has held that since an order was passed against a person who was not a party to the writ petition under Article 226 of the Constitution of India, such aggrieved person either can file a separate writ petition or a review petition. Considering the scope of Article 226 of the Constitution of India, their Lordships have held that, in such circumstances, the review petition was maintainable. Their Lordships have not considered the scope of Order 47 Rule 1 of CPC in a civil Appeal in regard to right of a person to maintain a review petition when he is not a party to the suit or to the appeal.

9. Similarly, in *Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc.*, , the Hon"ble Supreme Court while considering the issue under Article 142 of Constitution of India has decided the said case. But the facts involved In *Union Carbide Corporation v. Union of India* is not applicable to the facts and circumstances of the case on hand. The Supreme Court has never said that the review petition under Order 47 Rule 1 of Code of Civil Procedure, can be maintained, even if a petitioner is not a party to the suit or appeal.

10. The Hon"ble Supreme Court In *Haridas Das Vs. Smt. Usha Rani Banik and Others*, has considered the scope of review petition under 47 Rule 1 of Code of Civil Procedure. It has also considered the judgment of *Shivdeo Singh and Others Vs. State of Punjab and Others*, and held that the scope of review petition is very limited. Order 47 Rule 1 of CPC reads hereunder:

1. Application for review of judgment -(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes.

And who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any

other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the appellant and the respondent, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

From reading of Order 47 Rule 1 of Code of Civil Procedure, it is clear to the Court that review petition can be filed by a person against whom a decree or order is passed and a person who has not filed an appeal can also file an application by invoking jurisdiction under 47 Rule 1 of Code of Civil Procedure. On a careful reading of Order 47 Rule (1)(2) of Code of Civil Procedure, this Court is of the opinion that if a person is not a party to the suit and has not suffered a decree either by the trial Court or by the appellate Court cannot maintain the petition. In the circumstances, review petition filed by the petitioners; is not maintainable, as their case does not fall within the provisions of Order 47 Rule 1 of Code of Civil Procedure.

11. In the result, the review petition is dismissed. If the petitioners are aggrieved by the Judgment and decree of the trial Court or this Court, they have to work out their remedy by filing a suit or in any other proceedings.