

(2008) 02 KAR CK 0004

In the Karnataka High Court

Case No : Regular Second Appeal No. 2223 of 2006

Dr. M. Mahalingam

APPELLANT

Vs

Smt. Shashikala since deceased by LR's and Others

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 1 (2), Order 17 Rule 1 (2), 151

Citation : (2008) ILR (Kar) 4055

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : C.B. Srinivasan, for Shankarachar S, for the Appellant; S.Y. Shivalli, for C/R1 and 3 and R2A-c, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This is a defendants second appeal, against a concurrent finding. For the purpose of convenience, the parties are referred to as they are referred to in the original suit.

2. The subject matter of the suit, are the four sites bearing No. 3, 4, 7 and 8, of different dimensions which are adjoining each other situated in Chikkabanavara Village, Yeshwanthpur Hobli, Bangalore North Taluk.

3. The case of the plaintiffs is that land bearing Sy. No. 92/3 of Chikkabanavara Village, Yeshwanthpur Hobli, Bangalore North Taluk measuring 17 guntas originally belonged to the defendant. The defendant formed a layout of residential sites. The Defendant executed power of attorneys dated 24.10.1985, 3-9-1986 and 16-9-1986 in respect of site Nos. 4, 3, 7 and 8 in favour of first plaintiff Shashikala, Channabasavaradya, Suma and Ambika. The defendant also executed consideration receipts and affidavits. The possession of the respective sites were handed-over by the defendant to each of the attorney holders after receipt of full consideration They were given full power to deal with the respective sites including the power to sell. The power of attorneys executed

along with the other documents, makes it clear that the power of attorneys were coupled with interest, the katha of the sites were also made out in their respective names and they paid taxes to the Chikkabanavara Group Panchayath. Plaintiff No. 2 purchased the site No. 3 from Channanbasavaradya and plaintiff No. 3 purchased site No.7 and 8 from Suma and Ambika under the registered sale deeds dated 9.3.1994.

4. The prices of the property over the years have appreciated. The defendant got issued a legal notice on 27.8.1996 to the power of attorney holders purporting to revoke the general power of attorneys executed by him in their favour and they were called upon not to meddle with the property. The said legal notice has been duly replied on 5.11.1996. After receipt of the notice, the defendant attempted to trespass upon the suit schedule property. Therefore, the plaintiffs were constrained to file a suit for a decree of permanent injunction restraining the defendant from interfering with their peaceful possession and enjoyment of the suit schedule property.

5. The defendant after service of summons, entered appearance and filed a detailed written statement. He admitted his title to Sy. No. 92/3 under the registered sale deed dated 31.5.1980. He denied that he formed a layout. He also denied the execution of the power of attorneys, consideration receipts, affidavits and the plaintiffs possession over the suit schedule property. It was his specific case that the alleged power of attorneys are not executed in the manner indicated u/s 32 of the Indian Registration Act. He admitted the issue of legal notice dated 27.8.1996. He admitted that the plaintiffs asserted their rights under the alleged power of attorneys. Sensing some mischief, he got issued a legal notice terminating the agency revoking the alleged power of attorneys. The alleged power of attorneys were not for consideration and the same were misused and therefore, it has been cancelled. Further, he contended that the entire 17 guntas of land in Sy. No. 92/3 has been fenced by constructing a compound wall, there are temples constructed by the defendant and they exclusively belong to the family of the defendant. The temples are the family temples and his family members are worshipping the deities. The entire extent of land has been partitioned between the defendant and his sons under a registered partition deed dated 8.10.1996 allotting different portions of the property to the sons of the defendant. 0.2 guntas of land is allotted to the share of the defendant. On the basis of the partition, mutation has been entered in the revenue records. The sons of the defendant have borrowed money from the Central Bank of India by offering the said property as security. Therefore, he contended that the plaintiffs are not in possession of the property and they are not entitled to a decree of injunction.

6. On the basis of the aforesaid pleadings, the trial Court framed issues. First plaintiff s husband Gurusiddappa was examined as PW1. Through him, Exs.P. 1 to P.22 were got marked. He was cross examined at length. Defendant did not adduce any evidence. The trial court on appreciation of the aforesaid oral and

documentary evidence on record, held that the plaintiffs have established their lawful possession over the suit schedule property and therefore the plaintiffs are entitled to a decree of permanent injunction and accordingly, decreed the suit. Aggrieved by the said judgment and decree, the defendant preferred a regular appeal. The lower appellate court on re-appreciation of the entire evidence on record and after formulating the points for consideration, agreed with the findings recorded by the trial court and has dismissed the appeal.

7. Aggrieved by the concurrent findings, the defendant is in second appeal.

8. Sri C.B. Srinivasan, learned Sr. Counsel appearing for the appellant, assailing the impugned judgment and decrees contended: -firstly that, all the documents on which the plaintiffs rely were denied by the defendant. None of the plaintiffs were examined except PW1 - the power of attorney holder of the first plaintiff. His evidence does not prove these documents and therefore courts below committed a serious error in acting on the said documents and decreeing the suit of the plaintiffs. - secondly that, in the cross-examination of PW1, it is elicited that the plaintiffs could not have been in possession of the property either on the date of the suit or on any other day, which admissions have not been properly appreciated by the Courts below which has resulted in miscarriage of justice. - lastly that, the trial court committed a serious error in not affording reasonable opportunity to the defendant, not only to completely cross examine PW1 but also to lead evidence in the case and the lower appellate court did not advert to this aspect of the matter and therefore the judgment requires to be interfered with.

9. I do not find any substance in any of these contentions. The material on record discloses that undisputedly, the defendant was the owner of the suit schedule property. It is an agricultural land. He has not obtained any order of conversion to use this agricultural land for non-agricultural purpose. Similarly, on the date of the transaction, the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1966, was in force. Therefore, bits of land in the said survey number could not have been sold under a registered sale deed. Hence, he formed a private layout and has executed power of attorneys in favour of intended purchasers of the sites. Those power of attorneys are produced before the Court. On the very same day, he has also executed the receipts acknowledging the receipt of the entire sale consideration. He has also given affidavits acknowledging these transactions. The recitals in these documents, evidence the agreement to sell, receipt of the entire consideration and delivery of possession of the schedule sites to the purchasers.

10. It is clear from the categorical averments in the written statement that, he issued a notice nearly after eleven years on 27.8.1996 canceling the power of attorneys and revoking the same on the ground that the persons in whose favour he has executed the power of attorneys were attempting to sell the property. The said notice has been replied on 5.11.1996, pointing out to the defendant, that as the power of attorneys were coupled with interest, the entire sale consideration agreed was paid, he has put them in possession and therefore, he cannot revoke

the power of attorneys. The revocation is bad. It is thereafter, when he made an unsuccessful attempt to enter upon the property by force, power of attorneys and purchasers of the property from such power of attorneys have filed the suit for a decree of permanent injunction.

11. The best evidence one can think of in a judicial proceeding is the admission in the very same proceeding where the rights of the parties are adjudicated upon. The defendant is a Doctor by profession; He had the assistance of a lawyer. In the written statement after denying the execution of all the documents, he has categorically pleaded that he has issued a legal notice revoking the power of attorneys executed by him. According to him, such power of attorneys are not in conformity with Section 32 of the Registration Act and hence, they are unenforceable. Therefore, in the facts of this case, this admission in the written statement is sufficient to hold that the defendant did execute power of attorneys, did execute the receipt under which he received the entire consideration and put the plaintiffs in possession and also the affidavit narrating the aforesaid facts.

12. In view of the denial of the entire case pleaded by the plaintiffs, notwithstanding the aforesaid admission in the written statement, plaintiffs made an attempt 1st prove their case independent of the said admission. They examined PW-1, the power of attorney of the 1st plaintiff, who is none other than the husband of the 1st plaintiff through whom all the documents were marked. The documents relied on are the power of attorneys executed by the defendant in favour of the plaintiff or their vendors, the receipt acknowledging the entire sale consideration and the affidavits which sets out the aforesaid transaction and other documents such as, registered sale deeds, demand register extract, receipts issued by the Grama Panchayat, encumbrance certificate and a copy of the legal notice. The defendant has admitted the issue of the legal notice through his Counsel revoking the power of attorney executed in favour of the Plaintiff No. 1. The execution of documents are not in dispute. It is admitted. What is in dispute is the validity of the said documents. No oral evidence is required to prove the validity of the documents. Therefore, the evidence of plaintiff through the power of attorney is sufficient to establish the case of the plaintiff. All those documents categorically states that the plaintiffs were put in possession of the property at the time of execution of the said document. The persons in whose favour power of attorneys were executed have acted upon the said documents and in fact have executed registered sale deeds before revocation of the power of attorneys. Khatha has been made out. In a suit for bare injunction, what is required to be seen by the Courts is, whether the plaintiffs have prima facie right to the property and whether they are in lawful possession of the property? The cumulative effect of these documents in the light of admissions in the written statement by the defendant, clearly establishes the case of execution of the said documents. The recital in the said documents conclusively proves that the plaintiffs were in lawful possession of the property on the date of the suit.

13. In so far as the contention that the Courts have not taken note of the admission of PW-1 in the cross-examination is concerned, it is without any substance. Both the Courts have carefully considered the entire evidence of PW-1. PW-1 in categorical words has stated in his evidence that compound wall which is surrounding the site has been put up by them and not by the defendant. He admits the existence of a temple, which is not the subject matter of the suit. It is from that admission it is contended that the plaintiff is not in possession and the defendant has constructed the temple and therefore, he is in possession. The aforesaid evidence do not lead to such conclusions. That evidence only shows, in the 17 guntas of land owned by the defendant, he has constructed a temple and he has formed a layout. The plaintiffs have purchased sites from the defendant which forms only a part of 17 guntas of land and they have put up a compound wall enclosing those sites. In fact after issue of legal notice dated 27-8-1996, the defendant contends that on 8-10-1996 there was a partition in the family and in the said partition, the entire extent of 17 guntas has been distributed among the family members. Two guntas of land has fallen to the share of defendant. They have made out khatha in respect of their respective share of property. The said case made out goes contrary to the suggestion made by him to PW-1 as well as what is pleaded in the written statement. The material on record shows that in 1995, the defendant has formed a private layout without sanction and without an order of conversion. As there was prohibition to execute sale deed, he executed power of attorneys, parted with the possession, received the entire sale consideration and executed receipts on stamp paper and also affidavits. Eleven years thereafter, as the value of the real estate around Bangalore has gone up considerably, taking advantage of the fact that these are all agricultural lands, there is no conversion order, there is no sanction plan, he wants to turn around and contend that the plaintiffs are in illegal possession, power of attorneys are not valid in law and hence, he continues to be the owner of the property. The said documents which are not in dispute are binding between the parties to the documents. These documents establish plaintiffs lawful possession over the schedule property and also that the defendant is not in possession of the property on the date of the suit. The Courts below on careful consideration of the oral and documentary evidence on record have rightly decreed the suit of the plaintiff, which is based on legal evidence and do not call for any interference.

14. In so far as the contention that the defendant was denied opportunity to lead evidence is concerned, it also has no substance. The first plaintiff examined her husband who is also her power of attorney as PW1. How this witness has been treated in the witness box by the defendant and his Counsel is clearly set-out by the learned trial Judge in the order passed on I.A. No. 10 on 6-10-1999. It reads asunder:

The defendant filed this application to recall PW-1 for the purpose of further cross-examination and re-opening the case, when the case is posted for plaintiff's arguments. Plaintiff filed this suit against the defendant for permanent injunction. This Court framed the issues and posted the case for plaintiff's

evidence for the first time on 2-12-1998. The general power of attorney holder of the plaintiff was examined as PW-1 on 10-12-1998. On that day, the defendant and his Counsel were absent. This Court has taken the cross-examination of PW-1 as nil, since no representation was made on the defendant side and posted the matter for defendant's evidence on 16-12-1998. The defendant and Counsel were absent on 16-12-1998 and this Court again posted the case for defendants evidence on 5-1-1999. The defendant appeared before this Court on 5-1-1999 and filed I.A. No. 6 u/s 151 CPC to recall PW-1 for cross-examination. This Court allowed I.A. No. 6 and permitted the defendant to cross-examine PW-1 and posted the case for cross-examination of PW-1 on 19-1-1999. The defendant filed I.A. No. 7 Under Order 39 Rule 7 r/w Section 151 CPC on 19-1-1999 and he has not cross-examined PW-1, even though PW-1 was present on that day. Hence this Court taken the cross-examination of PW-1 as nil on 19-1-1999 and posted the case for further evidence of the plaintiff and objections to I.A. No. 5 on 28-1-1999. The defendant filed I.A. No. 8 Under Order 6 Rule 17 r/w Section 151 CPC. This Court posted the matter for objections of the plaintiff to 11-2-1999. Plaintiff filed his objections on 11-2-1999 and this Court passed orders on I.A. No.8 on 8-3-99, after hearing both the sides. As per the orders of this court, the defendant carried out the amendment and filed the amended written statement on 31-3-99. PW-1 was further examined in chief on 7-4-99 and the case was posted for cross-examination of PW-1 again on 28-5-99. PW-1 was present on 28-5-99. The defendant again filed I.A. No. 9 Under Order 17 Rule 1 r/w Section 151 CPC for the adjournment of the case. This Court allowed I.A. No. 9 and granted time for the defendant for the cross-examination of PW-1 and posted the case for cross-examination of PW-1 on 9-6-99. PW-1 was present on 9-6-99. Again the defendant's Counsel prays time and this Court granted time and posted the case for 19-6-99 for cross-examination of PW-1.

Again the defendant Counsel prays time for cross-examination of PW-1 on 24-6-99. Again this Court granted time for cross-examination of PW-1 on 29-6-99. The defendant cross-examined PW-1 partly on 29-6-99 and again posted the case for further cross-examination of PW-1 on 9-7-99. PW-1 was present on 9-7-99 and again the defendant Counsel pray time and the case was posted for further cross-examination of PW-1 to 16-7-99. The defendant partly cross-examined PW-1 on 16-7-99 and again the case was posted for further cross-examination of PW-1 to 31-7-99. On 31-7-99 PW-1 was absent and hence this Court has granted time for further cross-examination of PW-1 to 7-8-1999. The defendant has not cross-examined PW-1 even though PW-1 was present on 7-8-1999 and the case was posted for further cross-examination of PW-1 to 24-8-99. PW-1 was present on 24-8-99. The defendant Counsel again prays time. In spite of given sufficient time, the defendant has not cross-examined PW-1 hence this Court taken the further cross-examination of PW-1 as nil and posted the case for defendant's evidence on 27-8-99. The defendant was absent, the defendant Counsel prays time on 27-8-99 and this Court posted the matter for defendant's evidence to 6-9-99. The defendant was absent. The

defendant Counsel prays for time on 6-9-99. This Court rejected the prayer of the defendant Counsel and posted the case for plaintiff's arguments by taking the defendant evidence as nil. Plaintiff Counsel submitted the arguments on 8-9-99. The defendant filed I.A. No. 10 to recall PW-1 on 8-9-99. From the above observations the conduct of the defendant from the order sheet, it is clear that the defendant is not interested in cross-examining PW-1. The defendant is in the habit of filing application after application to drag the matter. The defendant is also not allowing this Court to proceed with the case. Hence, I answer the above point in the negative and pass the following order:

ORDER

I.A. No. 10 is rejected with no costs.

15. The said order sets out the way the Counsel and the defendant have obstructed the due process of law. Both of them have no regard to the Court or to the judicial process. It is because the Courts are tolerating these tendencies, the entire judicial system is ridiculed. People are afraid of coming to Courts. The judicial process has become an instrument of oppression and harassment. Before a litigant public, the lawyers and others criticize the snail pace in which the judicial process moves in a Court, they should know the real cause for such delay. Most of the time it is this dilatory tactics on the part of the litigant and the conduct of handful members of the bar, which is the cause for delay in disposal of cases. Litigants want to dictate the course of litigation, with the aid and assistance of their attorney. The Judge is rendered helpless. The learned trial Judge out of anguish has taken pains to set out in the order what transpired in the Court from the day it posted for plaintiffs evidence till the date the said order was passed. Still it was contended that the defendant was not given opportunity to adduce evidence and therefore, the judgment and decree is in violation of principles of natural justice. If this is the understanding of principles of natural justice, a day will come when we have to dispense with misbrand of principles of natural justice which defeats the fair trial and rule of law. It is to be noted that the defendant is not an illiterate person. He is a doctor by profession. He seems to have engaged the Counsel only to drag on the proceedings and to harass PW-1 who was in the witness box. Any leniency shown in this regard will only perpetuate this illegal and obnoxious practice which is the cause for delay in disposal of cases. The Courts below were justified in firmly handling the situation and did not succumb to the said dilatory tactics. This conduct on the part of the Courts is worth emulating by others.

16. The aforesaid order sets out clearly how the civil courts are functioning in our state. It also shows how the judges, lawyers and the litigants are conducting the civil cases. It is clear that the said procedure followed is contrary to the express provision contained in Order XVII of the CPC hereinafter referred to as "Code". Though Order XVII of the Code bears the heading "adjournments", a careful perusal of the said provision makes it clear that, it sets out the procedure to be followed by civil courts in the matter of trial. This aspect has been completely

lost sight of by the legal fraternity and the litigants which is the root cause for delay in disposal of civil cases. In this context it is necessary to note what this provision actually intends:

1. Court may grant time and adjourn hearing: (1) The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the suit.

(2) Costs of adjournment.- In every such case the Court shall fix a day for the further hearing of the suit, and shall make such orders as to costs occasioned by the adjournment or such higher costs as the court deems fit.

Provided that,-

(a) when the hearing of the suit has commenced, it shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary,

(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party,

(c) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment,

(d) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time,

(e) where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in court, is not ready to examine or cross-examine the witness, the court may, if it things fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.

17. The proviso to Sub-rule (2) of Rule 1 of Order XVII was introduced by the CPC (Amendment) Rules, 1976. The object and reason behind the introduction of this proviso was that, when hearing of evidence has once begun such hearing shall be continued from day to day. The said provision is being made more strict so that once such stage is reached, an adjournment should be granted only for unavoidable reasons. A few other restrictions were also being imposed on the grant of adjournments. The intention in enacting the said proviso is that, when the hearing of the suit has commenced, it shall be continued from day-to-day,

until all the witnesses in attendance have been examined. In other words, it provided that a suit being tried like a sessions case in a Criminal Court. Therefore, the Rule is, once trial begins, evidence should be recorded on day-to-day basis. Even in exceptional cases, if an adjournment becomes necessary, it has to be adjourned to the following day only. Clauses (b), (c) and (d) were introduced restricting the power of the Court to grant adjournments on the grounds set out therein. These Clauses make it clear that, the fact that a pleader of a party is engaged in another Court, is not a ground for adjournment. Even the illness of the pleader and inability of a pleader to conduct a case is not a ground for adjournment, unless the Court is satisfied that the party applying for adjournment could not have engaged another pleader in time. It also provides for the Court to record the statement of witnesses who are present in Court, when the party who summoned him and the party who has to cross-examine the said witnesses and their Counsel being not present. Therefore, it is clear that the Court can be liberal in granting adjournments before the commencement of the Trial. But once the trial commences, there is an obligation cast on the Court to conduct the said trial day-to-day until all the witnesses in attendance have been examined. Unfortunately, this procedure which is in the statute book since 1976, is followed more in breach. Adjournments are sought for and granted by the Courts as a matter of course. The intention of the Parliament in enacting the said provision was not appreciated. In spite of introduction of the proviso, there was no marked change in the trial of suits. Adjournments continued to dominate and obstruct speedy trial. Therefore, the parliament amended the law once again and now an attempt is made to control the power of the courts in granting adjournments.

18. This time Sub-rule (1) and (2) of Rule 1 of Order XVII was amended substantially by the CPC (Amendment) Act, 1999. The object and reason behind the amendment Act was that, every effort should be made to expedite the disposal of civil suits and proceedings so that justice may not be delayed. The committee on Subordinate Legislation (11th Lok Sabha) recommended that it should be made obligatory to record reasons for adjournment of cases as well as award of actual or higher cost and not merely notional cost against the parties seeking adjournment in favour of the opposite party. Further limit up to three adjournments has also been fixed in a case.

19. The amended Sub-rule (1) of Rule 1 provides that at any stage of the suit, if sufficient cause is shown, the Court may adjourn the hearing of the suit for the reasons to be recorded in writing. Therefore, an adjournment cannot be granted for a mere asking. There should be sufficient cause for such an adjournment. Before granting adjournment, the Court has to record in writing the reasons, which constituted sufficient cause for it to adjourn the case. The proviso to Sub-rule (1) of Rule 1 puts an embargo on the Court's power to grant adjournments, in as much as, it restricts the said power to grant adjournments to three times to a party during the hearing of the suit. Therefore, the Court cannot exercise its power of granting adjournments arbitrarily, whimsically and it should know its

limitations. The amendment to Sub-rule (2) of Rule 1 makes it obligatory on the part of the Court to make an order as to costs occasioned by the adjournments. This rule is intended to see that the imposition of costs may act as a deterrent to the party seeking adjournment when there being no sufficient cause. By such costs, the cost of litigation would increase and it may dissuade the party from seeking adjournment on flimsy grounds.

20. In spite of the legislative mandate reflected in the aforesaid provision, the Courts and the Lawyers continue to ignore the said statutory provisions and the requirement of holding a continuous trial day to day. The Courts, in practice, have buried the rule fathoms deep and have been granting adjournments on the flimsiest grounds. In every case these provisions are honoured more in breach than in compliance with the spirit of providing justice expeditiously. It is rare indeed when a court holds a trial continuously in terms of this rule. If only the provisions of the Code are followed in letter and spirit, the grievance of delay in disposal of cases would have been reduced considerably. The rule of law requires respect for the law by all the citizens of this country. The Judges and Lawyers who are the officers of the Court are no exception. First they should respect the rule of law, i.e. these statutory provisions. Without any exception they cannot plead any difficulty in implementing these provisions in letter and spirit. They are duty bound to act according to these statutory provisions. Without doing what we are legally expected to do, we are barking up at the wrong tree and by this process we are deceiving ourselves. Any amount of amendments to the Code or any efforts to reform the law would have no effect, unless the Courts give effect to the statutory provisions contained in the Code. If the Courts do not implement the law, one cannot find fault with the Advocates or the litigants. If these rules are implemented in letter and spirit, it may lead to some inconvenience and hardship as, for more than a century, the Judges, the lawyers and litigants are used to a particular atmosphere in Court. It is this atmosphere in Courts, which has no legal support and is the cause for delay in disposal of cases. Therefore, it is high time in the interest of speedy disposal of cases, these rules are implemented; once implemented, in course of time, lawyers and litigants would fall in line.

In order to implement these statutory provisions as amended, what is required is a change of mind set among the Judges and they must have the courage to depart from the practice which is in vogue. They must remind themselves that till now these provisions are not followed and the procedure which is adopted in Courts was totally different from what is provided under the statute and thus has no legal basis. That is the real cause for delay in disposal of cases. Therefore, the need of the hour is a change of mental attitude, firstly, on the part of the judges and secondly, on the part of lawyers and litigants. A beginning has to be made. It has to be done by Judges and Judges alone. In spite of the criticism and the amendment to the law made by the Parliament, if the Judges are not sensitive and do not give effect to these provisions which are made with an avowed object of speedy disposal of cases, the Judges would be failing in their duty. Therefore,

one may not blame the Code for delay in disposal of cases. The delay is on account of not following the provisions of the Code and in not knowing the philosophy behind these statutory provisions. Even now it is not too late for the Judges and Lawyers to give effect to the statutory provisions and render speedy justice to the litigants. Time has come that this malady should be treated with even handed at all levels.

21. In fact this view finds support from the observations made by the Law Commission in the Reports on the Code of Civil Procedure:

In the 14th Report of the Law Commission of India on "Reform of Judicial Administration", the Commission notes with concern the failure of the Courts to appreciate that Order 17 Rule 1 contemplates the continued hearing of a case, once it has started, from day to day until it is finished. It noted with concern that the judiciary seemed to think that the interrupted hearings should be a rule and day to day hearings the exception. Both the lawyers and the subordinate judiciary still persist in flouting these provisions by refusing to have a continuous trial.

27th Law Commission Report reads as under:

There is a popular belief that the technicalities of legal procedure can be exploited and a case continued almost indefinitely if so desired. In a weak case, apart from numerous applications for adjournment, frivolous interlocutory applications are made, e.g. applications for amendment of the pleadings or for amendment of issues, examination of witnesses on commission, summoning unnecessary witnesses etc., These tactics do not succeed before an experienced and astute Judge. They succeed only before Judges who have no adequate experience. And such tactics succeed not because of the observance, but because of the non-observance, of the rules of procedure. Delay under this item is, therefore, not due to any defects in procedure. Rules of procedure are intended to subserve and not to delay or defeat justice.

22. Therefore, while considering the prayer for grant of adjournment, it is necessary to keep in mind the legislative intent. After the trial commences, the legislative mandate is, it shall be continued from day to day until all the witnesses in attendance have been examined. Even to grant an adjournment beyond the following day exceptional reasons should exist and it should be recorded in writing before adjourning the hearing beyond the following day. A reading of the proviso makes it clear that the limitation of three adjournments contained in proviso to Sub-rule (1) apply where adjournment is to be granted on account of circumstances which are beyond the control of that party. Even in cases which may not strictly fall within the category of circumstances beyond the control of a party, the Court by resorting to the provisions of higher cost which can also include punitive cost grant adjournment beyond three times, having regard to the injustice that may result on refusal thereof, with reference to peculiar facts of a case and compensate the party who is inconvenienced by such

adjournment. The said cost cannot be notional. It should be realistic. As far as possible actual cost incurred by the other party shall be awarded where the adjournment is found to be avoidable but is being granted on account of either negligence or casual approach of a party or is being sought to delay the progress of the case. Therefore, an attempt is made by the Parliament to enable the Court to have complete control over the litigant and prevent parties from controlling the course of the litigation. The whole object is to deter the parties from seeking adjournment for the sake of mere adjournment. If a party wants to have the luxury of an adjournment, he should be made to pay for such luxury and the opposite party who is inconvenienced is to be compensated. In other words the cost of litigation should be made high in so far as a party who is not interested in speedy trial. A person who wants to obstruct the course of justice, delay the disposal of cases, abuse the process of court and wants to harass his opponent by virtue of his money power, for him the litigation should become costly which is not so now. Therefore, this provision of imposition of cost to prevent the litigant from seeking adjournment, thus, delay the disposal of cases, is to be given full effect. It is a weapon in the armory of the Judge to control the course of litigation and expedite trial. In spite of this provision if the Judges do not understand the significance and importance of these amendments and allow the parties to control the course of litigation, it only shows either lack of will on their part to implement these statutory provisions or their inability to give effect to these statutory provisions.

23. When the litigants complain of delay in disposal of cases, they cannot seek adjournments as a matter of right, as it is against their interest. An adjournment at the instance of one party, puts the other party to inconvenience, which in turn gives rise to such complaints. But an adjournment may become necessary for various reasons. Therefore, in such circumstances it would be in the interest of justice to grant adjournment, but at the same time the party inconvenienced has to be duly compensated. It is in this background the provision of Rule 1 of Order XVII of CPC as amended has to be understood and given effect to. A party to a litigation cannot have any grievance for day to day trial and on the contrary he should welcome it. It is only those litigants who want to abuse the judicial process and wants to use this legal machinery as a weapon of oppression against his opponents can have any grievance. It is there, these amended provisions come in handy to the courts to prevent such abuse of the judicial process.

24. The effort made by the Parliament and the Apex Court for speedy trial is to be properly appreciated. Now, the time is fixed for filing of written statement and, therefore, the question of adjourning the case for a mere asking for filing the written statement would not arise. After the filing of the written statement, now the Courts are under an obligation by virtue of Section 89 of the Code to make an attempt to find out whether the suit could be settled in any one of the Alternative Dispute Resolution Mechanism provided under the said Section, namely arbitration, conciliation, judicial settlement including Lok Adalath or mediation. In the event of the suit being not settled in the foresaid four modes

then the Court has to embark upon a trial. Strictly speaking the hearing of the suit referred to in Order 17 is a stage only after the case is posted for trial on failure of the alternative dispute resolution as provided u/s 89.

25. The Parliament inserted Section 89 in the CPC by way of amendment to the Code by the introduction of CPC (Amendment) Bill, 1997. The said amendments were challenged before the Apex Court. While upholding the amendments, the Apex Court, in *Salem Advocates' Bar Association v. Union of India* appointed a committee headed by Justice M. Jagannadha Rao, former Judge of the Supreme Court to suggest the modes by which full effect could be given to Section 89 of the Code. The said committee submitted its report and along with the same submitted model rules for approval in respect of alternative dispute resolution, mediation, amendment to the Code as well as Cash Flow Management in subordinate Courts. The Supreme Court approved the same and required the High Courts in the country to adopt the said rules with such modifications as they may deem it fit. The Karnataka High Court in turn has framed (1) The Civil Procedure (Alternative Dispute Resolution Karnataka) Rules, 2005; Karnataka CPC (Mediation) Rules, 2005; Civil Procedure (Amendment Karnataka) Rules, 2005 and Karnataka (Cash Flow Management in Subordinate Courts) Rules, 2005.

26. Now if the aforesaid Rules are implemented in letter and spirit, it would result in service of summons, notices at the earliest. Preliminary stages in a suit are now attended to by the ministerial officer and only after the pleadings are complete the case is posted before the learned Judge for further proceedings. By virtue of Section 89 after the pleadings are complete the Judge has to make an attempt to find out whether the dispute could be resolved in any one of the alternative modes of dispute resolution mechanism. Even if the parties agree to explore the possibility, the same has to be done within a time limit of about 60 days. If the suit is not decided in the aforesaid manner, then the Judge himself has to try the suit. Secondly, by virtue of the amendment of the Code in 1999 and 2002, Order 6 Rule 17 is amended so as to prevent application for amendment of the pleadings filed, after the trial has commenced. Order 13 Rule 2 of the Code for late production of documents is repealed. Examination in chief would be by way of an affidavit. Even the cross examination can be recorded through Commissioner. Order 18 Rule 17A is repealed. Therefore, considerable judicial time is saved in this regard. It is only the recording of cross-examination and hearing the parties which remains to be done and thus the suits could be disposed of expeditiously on day to day basis without any interruption. In fact under the Cash Flow Management Rules, now the suits have been categorized and outer time limit has been prescribed within which the suits have to be disposed of. In this regard they have been classified as Track-I, Track-II, Track-III and Track-IV suits and the maximum time is fixed at two years. Therefore, if the judicial officers in the first instance and the lawyer community co-operates in the administration of justice as required under law, in particular the amended provisions and the aforesaid rules framed in pursuance of the same, without much ado the case could be disposed of expeditiously which is the ultimate

object of these amendments. A day to day trial reduces the scope for mischief, manipulations, creating documents and filing applications for amendment of the pleadings as an after thought. When case is taken up day to day the Judge would be fully acquainted with the facts of the case so that there would not be any repetition and he would be in a better position to appreciate the arguments and write the judgment, thus the valuable time of the Court is also saved considerably. The system of holding a continuous trial in an open Court not only helps the Judge to do better justice, it also convinces the public that justice is being done. A citizen interested in finding out the quality of justice administered in the Courts can sit through out the trial and judge for himself the decision given in the case. What is required is the will to effect the change, adopt the same and give effect to it for which no great sacrifice is called for from the Judges or the lawyers. On the contrary, it should be the endeavor and duty of every one to raise to the occasion, understand the legislative intent and contribute their might in the sacred duty of resolving the litigation at the earliest. This itself may give some relief to the litigants.

27. If the trial Courts were to implement these amendments in letter and spirit it would also send a message to the litigants that, if they don't avail the opportunity of settling the dispute in any one of the alternate dispute resolution mechanism now made available to them and the Court is called upon to adjudicate the dispute, once trial starts it would go on day to day and the dispute would be adjudicated expeditiously.

28. As against these advantages of a speedy trial the disadvantages would be some inconvenience and heart burning on the part of the advocates as well as Judges who used to treat these matters very lightly. However, in course of time every one would realise that such a speedy trial would be in the interest of the members of the Bar, the litigant and the Courts and that would attract more and more people to come to Court to resolve their disputes which now is resolved by extra legal authorities. Therefore, in order to ensure that all the Courts in Karnataka would give effect to this mandate of the Parliament and the law declared by the Apex Court which finds its expression in the theme of the Karnataka High Court's Golden Jubilee Celebrations "Speedy and Real Justice" it is imperative for the Courts to follow the following procedures:

(1) After the pleadings are complete the case shall not be posted for framing of issues as was done all these years. It shall be posted for appearance of the parties. On such appearance of the parties the Court shall comply with the mandatory requirement as contained in Order X Rule 1 and Rule 1A of the Code.

(2) After ascertaining the facts and recording the admissions and denials, it is advisable for the Court to frame issues in the open Court itself, so that its effort and precious time do not go waste.

(3) Thereafter direct the parties to opt for any one of the modes of settlement; and accordingly issue appropriate directions.

(4) While referring the matter to Lok Adalath or Mediation, the Court shall fix the date of trial beyond 60 days, making it clear that if the Mediation or Lok Adalath fails, the trial would begin on the said date and that it will go on day to day.

(5) The court while fixing the date for trial, do so in consultation with the Counsel and the parties, so that they proceed with the trial on the day so fixed without fail.

(6) The learned Judges shall maintain a dairy to make sure that only such number of cases which they can handle are posted on any date for trial and complete the recording of evidence, thereby avoid the crowding of cases, and consequent adjournments for want of time and thus inconvenience to Counsel and litigants.

(7) All request for adjournments has to be considered before the actual beginning of the trial. Once the trial begins as contemplated under proviso to Rule (1) of Order XVII it shall go on day to day till all the witnesses are examined. If for any reason the case is to be adjourned, it is to be only to the next date.

(8) The Court shall give effect to the provision for payment of cost or such higher cost in order to ensure that adjournment is not sought with the intention of harassing the opposite party and that the opposite party is duly compensated if any adjournment is given.

(9) Once the trial is over, arguments are to be heard immediately and continuously and judgment has to be pronounced within the period stipulated under law.

(10) If this procedure as contemplated by the amended provisions of the CPC is adhered to by the Courts, it will be their contribution to the cause of speedy justice.

In the result I pass the following

ORDER

1) The second appeal is dismissed at the stage of admission, as no substantial question of law is involved in this appeal;

2) Parties to bear their own cost;

3) The High Court Registry is directed to send a copy of this judgment to all the sub-ordinate Courts in the State.