

(2015) 11 KAR CK 0077

In the Karnataka High Court

Case No : R.P. No. 591/2014 in R.F.A. No. 779/2014

G. Nagaraj

APPELLANT

Vs

Padmashree Paper Mart and Others

RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Citation : (2015) 11 KAR CK 0077

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : C.K. Nandakumar, Advocate, for the Appellant; H.C. Shivaramu, Advocate, for the Respondent

Judgement

Aravind Kumar, J.—Heard Sri. C.K. Nandakumar, learned counsel appearing for review petitioner, Sri. H.C. Shivaramu, learned counsel appearing for respondent No. 1 and Sri. D.G. Chinnappa Gowda, learned counsel appearing for respondent No. 2.

2. Petitioner is seeking for review of order passed in R.F.A. No. 779/2014 by this court on 10.07.2014 whereunder Judgment and decree passed by Civil Court, Bangalore in O.S.4012/2007 dated 26.03.2014 decreeing the suit came to be modified by virtue of a compromise petition filed by the parties and accordingly appeal came to be disposed of on 10.07.2014 recording the said compromise petition. It is this Judgment and decree passed on a compromise petition filed by parties which is sought for review by the review petitioner contending inter alia that he has filed a suit for partition and separate possession against the 2nd respondent herein in O.S.4944/2008 and same is pending and in said suit an interlocutory application I.A.2 had been filed by him for a direction to the tenants including the 1st respondent herein to deposit the arrears of rent and on account of trial court having deleted the tenants as not being proper and necessary parties in suit, I.A.2 also came to be rejected and being aggrieved by same, review petitioner had approached this court in W.P.8563/2010 and order passed by trial court came to be set aside and I.A.2 was referred back to the court below

for fresh consideration and I.A.5 filed by 1st defendant i.e., 2nd respondent herein also came to be remitted back to the trial court. During the pendency of said writ petition as well as suit for partition, 2nd respondent herein filed a suit for ejectment against 1st respondent herein in O.S.4012/2007 which came to be decreed by Judgment and decree dated 26.03.2014 and against said Judgment and decree RFA 779/2014 came to be filed by 1st respondent which came to be disposed of by this court after recording compromise as observed herein above and suppressing the fact of partition suit pending 2nd respondent had obtained a decree from this court and as such it has to be reviewed.

3. It is the grievance of Sri. C.K. Nandakumar, learned counsel appearing for review petitioner 2nd respondent herein had suppressed the fact of partition suit namely O.S.4944/2008 pending before jurisdictional court in which the dispute relating to entitlement of collection of rent was also being adjudicated and right of review petitioner to seek for deposit of rent was also being adjudicated by jurisdictional court and as such the Judgment and decree passed by this court is without notice to the present review petitioner and on account of factum of partition suit being pending and so also the claim for entitlement of receiving the rent being under dispute and same having been suppressed by 2nd respondent herein order obtained by respondents is liable to be reviewed as it amounts to error apparent on the face of the record and as such Judgment and decree requires to be reviewed. Hence, he prays for allowing the review petition.

4. Per contra Sri. D.G. Chinnappa Gowda, learned counsel appearing for 2nd respondent contends that there is no error apparent on the face of the record nor there is any substantial cause shown by the review petitioner to review the Judgment and decree passed by this court in RFA 779/2014 on 10.07.2014. He would also submit that review petitioner was fully aware of the ejectment suit filed by 2nd respondent against 1st respondent herein since he had filed an application to get himself impleaded in the appeal namely RFA 779/2014 which was dismissed and as such he cannot be heard to contend that he was not aware of the pendency of the proceedings and there being no error as contended review petition is liable to be dismissed.

5. Sri. H.C. Shivaramu, learned counsel appearing for respondent No. 1 would submit that he would abide by any order that would be passed by this court.

6. Having heard the learned advocates appearing for the parties and on perusal of the records it would indicate that review petitioner herein is none other than the brother of 2nd respondent. Undisputedly he has filed a suit for partition in O.S.4944/2008 and same is pending. There is no order passed by jurisdictional court directing the tenants to pay the rents. Sri. C.K. Nandakumar, learned counsel appearing for review petitioner would draw the attention of the court to the order passed in W.P.8563/2010 to contend that there was direction issued to the tenants to deposit rents. Perusal of the said order which is at Annexure-E would indicate that defendants 5 to 19 in O.S.4944/2008 had been directed to deposit arrears of rents before trial court within 60 days from the date of order.

1st respondent herein is not one such defendants who had been directed to deposit the rent. After passing of said order review petitioner filed an application to implead the 1st respondent herein also as a party in the said suit and undisputedly said application is still pending adjudication before trial court. As such it can be safely concluded there is no direction issued by Civil Court or by this court in W.P.8563/2010 directing 1st respondent herein to deposit either arrears of rent or continue to pay rent of premises which was in his occupation. That apart the very review petitioner had filed an application to get himself impleaded in the suit for ejectment i.e., O.S.4012/2007 and said application came to be rejected vide order dated 23.11.2012. Said order had reached finality. Even in the present appeal in question i.e., R.F.A. No. 779/2014 application came to be filed by review petitioner to get himself impleaded and said application also came to be rejected on 24.06.2014. Said order has not been challenged. Thus, order dated 24.06.2014 has attained finality. In that view of the matter review petitioner cannot be heard to contend he ought to have been made a party in RFA 779/2014.

7. The Hon"ble Apex Court in the case of Kamlesh Verma Vs. Mayawati and Others, has illustratively indicated the contours under what grounds review petition/application requires to be considered or not to be considered. It reads thus:

"20.1 When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese and Iron Ores Ltd.

20.2 When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision

is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived".

8. Keeping in mind above said parameters when facts on hand are examined it would emerge that review petition would not fall under any of the parameters laid down by Apex Court. As discussed hereinabove applicant/review petitioner is seeking review of the order passed on the ground that he has filed a suit for partition and separate possession against the 2nd respondent herein in O.S.4944/2008 and he ought to have been impleaded as a party in the appeal proceedings. His application for being impleaded not only in the suit having been dismissed but also in the present appeal. Hence, it cannot be contended by him that there is any ground for reviewing the order passed in RFA 779/2014.

In that view of the matter I do not find any error in the Judgment rendered in R.F.A. No. 779/2014.

Hence, I proceed to pass the following:

Hence, granting of permission to the review petitioner to prosecute the review petition would only be an exercise in futility and would not serve any useful purpose. Thus, I.A.2/2014 stands dismissed and consequently Review Petition is also dismissed.