

(2014) 04 KAR CK 0143
In the Karnataka High Court
Case No : Regular Second Appeal No. 18 of 2011

Gowramma

APPELLANT

Vs

Rudrappa

RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Citation : (2014) 5 KarLJ 605

Hon'ble Judges : H. Billappa, J

Bench : Single Bench

Advocate : A.V. Gangadharappa, Advocate for AVG Associates, Advocate for the Appellant; K.R. Ramesh, Advocate for the Respondent

Judgement

H. Billappa, J.—This appeal by the appellant is directed against the order dated 25-7-2006, passed by the Principal Civil Judge (Junior Division), Arsikere, in FDP No. 5 of 2004 and the order dated 9-9-2010 passed by the Senior Civil Judge and Judicial Magistrate First Class, Arsikere, in R.A. No. 33 of 2007. Aggrieved by that, the appellant has filed this second appeal.

2. Briefly stated the facts are:

The appellant had filed suit in O.S. No. 228 of 1989 for partition and separate possession of the suit schedule properties. The Trial Court decreed the suit partly. The appellant preferred an appeal in R.A. No. 12 of 1996. The Appellate Court by its judgment and decree dated 29-10-1997 modified the judgment and decree passed by the Trial Court and granted share in all the suit "A" Schedule properties. The appellant initiated final decree proceedings in FDP No. 5 of 1996. The appellant was put in possession of her share.

3. Thereafter, the appellant filed petition in FDP No. 5 of 2004 to determine the mesne profits. The Trial Court by its order dated 25-7-2006 has dismissed the petition.

4. Aggrieved by that, the appellant has preferred an appeal in R.A. No. 33 of

2007. The Appellate Court by its order dated 9-9-2010 has dismissed the appeal as not maintainable. Therefore, this second appeal.

5. The learned Counsel for the appellant contended that the impugned orders cannot be sustained in law. He also submitted that the appellant had filed suit in O.S. No. 228 of 1989 for partition and separate possession of the suit schedule properties and it was decreed partly. In the appeal, the Appellate Court modified the judgment and decree passed by the Trial Court and granted share in all the suit "A" schedule properties. Thereafter, the appellant initiated Final Decree Proceedings in FDP No. 5 of 1996. The appellant was put in possession of her share. Thereafter, the appellant filed petition in FDP No. 5 of 2004 to determine the mesne profits. The Trial Court by its order dated 25-7-2006 has dismissed the petition on the ground that there is no order in the Final Decree regarding mesne profits. The Appellate Court has dismissed the appeal as not maintainable. The preliminary decree directs an enquiry regarding mesne profits. Therefore, an enquiry should have been held regarding mesne profits. Therefore, the impugned orders cannot be sustained in law.

6. As against this, the learned Counsel for the first respondent submitted that the impugned orders do not call for interference. He also submitted that the partition has been effected in terms of the decree and the appellant has been put in possession of her share. There is no order in the final decree regarding mesne profits. Therefore, the impugned orders do not call for interference.

7. I have carefully considered the submissions made by the learned Counsel for the parties.

8. The point that arises for my consideration is:

Whether the impugned orders can be sustained in law?

9. The suit in O.S. No. 228 of 1989 has been filed by the appellant for partition and separate possession of the suit schedule properties. The Trial Court has decreed the suit partly. In the appeal, the Appellate Court has modified the judgment and decree passed by the Trial Court and has granted share in all the suit "A" Schedule properties. Thereafter, Final Decree Proceedings have been initiated. The appellant has been put in possession of her share. Thereafter, the appellant has filed petition in FDP No. 5 of 2004 to determine the mesne profits. It has been rejected on the ground that there is no order in the final decree regarding mesne profits. The Appellate Court has dismissed the appeal as not maintainable. It is clear from the decree passed by the Trial Court that there is a clear direction to hold an enquiry regarding mesne profits. The Appellate Court has modified the judgment and decree passed by the Trial Court granting share in all the suit "A" Schedule properties. The direction to hold enquiry regarding mesne profits has been confirmed. Therefore, the Trial Court should have held an enquiry regarding the mesne profits. Instead of that, the Trial Court has rejected the petition on the ground that there is no order in the final decree regarding mesne profits which is not correct. In the preliminary decree, there is a direction

to hold an enquiry regarding mesne profits. Therefore, the impugned orders cannot be sustained in law.

Accordingly, the appeal is allowed and the impugned orders passed by the Trial Court in FDP No. 5 of 2004 and the Appellate Court in R.A. No. 33 of 2007 are hereby set aside. The Trial Court is directed to hold an enquiry regarding mesne profits in terms of the decree passed in O.S. No. 228 of 1989 and R.A. No. 33 of 2007. The matter is pending since long time. Therefore, Trial Court is directed to expedite the proceedings.