
(2012) 11 KL CK 0006
In the High Court Of Kerala
Case No : RP No. 793 of 2012

K. Rajalakshmi

APPELLANT

Vs

Jayaraj, K. Sreeraj, K. Rajkumar and D.V. Sudhakaran

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114

Citation : (2012) 11 KL CK 0006

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : T. Krishnan Unni, Sri. Saju S.A., Smt. P.A. Sheeja and Sri. K.C. Kiran, for the Appellant; K.C. Charles, for R1, for the Respondent

Final Decision : Dismissed

Judgement

Justice Thomas P. Joseph

1. This application for review is filed by the 1st respondent in the Second Appeal. She seeks a review of the judgment dated 18.06.2012 on various grounds as if there are errors apparent on the face of the judgment and that even if there are no errors apparent on the face of the judgment, there are other sufficient reasons for reviewing the judgment. The question this Court considered while deciding the Second Appeal was whether item No. 5 of the A schedule of Ext. A1, partition deed was allotted in that partition to the 1st respondent and the late Santhamma jointly or, it was an allotment of that item to the late Santhamma exclusively and whether the gift deed executed by the late Santhamma concerning the said item valid or not? I heard the learned counsel on both sides as to the contentions raised, found from Ext. A1, partition deed that notwithstanding the heading given to the A schedule, the specific description given to item No. 5 of the A schedule along with circumstances indicated that allotment of item No. 5 of the A schedule of Ext. A1 was exclusively for the late Santhamma and hence she was competent to dispose of the said property. In view of that finding, the Second Appeal was allowed and the Cross Objection

preferred by the petitioner was dismissed. That judgment is sought to be reviewed on the grounds mentioned in the Review Petition.

2. The learned Senior Advocate for the review petitioner has contended that it is clear from the body of Ext. A1, partition deed that while division of the properties were made, the entire properties were assessed at Rs. 6,00,000/- and the value of property to be allotted to each sharer was fixed as Rs. 1,50,000/-. The A schedule of Ext. A1 was allotted to two sharers - the review petitioner and the late Santhamma and the value of those properties was fixed as Rs. 3,00,000/- (from out of the total value of Rs. 6,00,000/- for the entire properties) meaning thereby that in the said sum of Rs. 3,00,000/-, each sharer (among the review petitioner and the late Santhamma) was entitled to the moiety. According to the learned Senior Advocate, if the interpretation given by this Court to Ext. A1, partition deed is accepted, it would mean that the review petitioner and the late Santhamma would get half share in item Nos. 1 to 4 of A schedule of Ext. A1 and the late Santhamma will get, along with the half share in item Nos. 1 to 4, absolute right in item No. 5 of A schedule of Ext. A1. Such an intention was not contemplated by the parties at the time of Ext. A1, it is contended.

3. A further contention the learned Senior Advocate has advanced is that the recitals in the body of Ext. A1 should prevail over the description of the schedule which only meant for describing the property. Lastly, it is argued that even if the schedule descriptions are accepted, Ext. A1 being a partition deed the first disposition must prevail over the latter disposition. It is therefore, submitted that if not an error apparent on the face of the judgment there are other sufficient reasons for reviewing the judgment.

4. The learned counsel for the 1st respondent (in the review petition) would contend that in the way the second appeal and cross objection were disposed of, there is no scope for review. The learned counsel has highlighted the scope of review under Sec. 114 and Order XLVII, Rule 1 of the CPC (for short, "the Code"). It is argued that a review is not a short cut for a re-hearing of the appeal, nor, could be treated as a challenge to the findings entered in the judgment. According to the learned counsel, a review is not a substitute for an appeal and if aggrieved by the findings in the judgment the remedy is to challenge the judgment before the appropriate forum and not to seek a review. It is also contended by the learned counsel that all the contentions the review petitioner has raised in the application for review were considered by this Court and it was held that the deceased Santhamma had absolute right over item No. 5 of the A schedule of Ext. A1, partition deed. Accordingly the second appeal was allowed and the cross objection was dismissed. Hence there is no scope for review.

5. So far as a review under Sec. 114 and Order XLVII, Rule 1 of the Code is concerned, it arises when there is a discovery of a 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 (that clause has no application to the facts of this case, admittedly)

or, on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.

6. So far as the expression "error or mistake apparent on the face of the record" is concerned, various authoritative pronouncements say that the error must be so apparent on the face of the record. The detailed arguments, interpretation of documents or dwelling into the evidence is required to find whether there is an error, it is an error " apparent on the fact of the record ". The court is not required to go into the entire records of the case to find out whether there is such error or mistake. The error or mistake must be so apparent on the face of the judgment itself so that a mere perusal of the judgment should show that there is such an error. That alone would permit a review under Sec. 114 and Order XLVII, Rule 1 of the Code.

7. In this case the whole argument is based on the interpretation this Court has given to Ext. A1 while disposing of the second appeal. To understand the contentions the review petitioner has raised in the application for review, it is necessary to go into the entire records of the case which is not contemplated in an application under Sec. 114 and Order XLVII, Rule 1 of the Code.

8. Even otherwise, I am to notice that while disposing of the appeal, this Court has considered the various recitals and schedule descriptions in Ext. A1. This Court referred to the various circumstances including the fact that the late Santhamma was a widow at the time Ext. A1, partition deed was executed and found, also taking into account the heading given to the various schedules that though, to the A schedule the heading generally given is that it is allotted to the review petitioner and the late Santhamma, so far as item No. 5 of the A schedule is concerned, a separate description is given that it is allotted to the late Santhamma alone.

9. I must also notice that it is not because of the description for item No. 5 of the A schedule alone that this Court came to the conclusion that item No. 5 of the A schedule of Ext. A1 was allotted to the late Santhamma exclusively. In the other paragraphs of the judgment this Court has referred to the circumstances including that the late Santhamma was a widow during the relevant time and hence the parties intended that while she was given half right in item Nos. 1 to 4 of the A schedule, she was given exclusive right over item No. 5 of the A schedule where the family house was situated. This Court also found that the intention of the parties was to allot that house exclusively to the late Santhamma so that, she need not be at the mercy of the other sharers. This Court also stated that though item Nos. 4 and 5 of A schedule is comprised in the same survey number, and within common boundaries those items were scheduled separately, item No. 4 was included among item Nos. 1 to 4 allotted to the petitioner and the late Santhamma jointly and item No. 5, giving it specific boundaries was allotted to the late Santhamma. If item No. 5 was also intended to go to the petitioner and the late Santhamma jointly, it was not necessary to bifurcate item Nos. 4 and 5 into two schedules.

10. A further fact I must notice is that the valuation given to the respective shares in Ext. A1, partition deed was also taken into account by this Court. This Court came to the conclusion that having regard to the relevant aspects including the manner of disposition of the properties as per Ext. A1, the conclusion irresistible is that item No. 5 of the A schedule was allotted to the late Santhamma exclusively and hence she was competent to dispose of the property as she wished. Therefore, the gift deed was found to be valid. In that view of the matter the second appeal was allowed and the cross objection was dismissed.

11. Having gone through the judgment sought to be reviewed and heard the learned Senior Advocate for the review petitioner and the learned counsel for the 1st respondent, I do not find any error apparent on the face of the record. Assuming that the interpretation given by this Court to the various recitals and description of the schedules in Ext. A1 is not correct, the remedy is not by way of a review on the ground that there is an error apparent on the face of the record. Nor am I inclined to think that there are any other sufficient reasons which justifies a review of the judgment. As I stated, a review is not a substitute for an appeal. If petitioner is aggrieved by the findings that this Court has made in the judgment, remedy lies elsewhere and not by way of review as aforesaid.

The Review Petition is dismissed.