

(2023) 06 KAR CK 0009

In the Karnataka High Court

Case No : Civil Revision Petition No. 73 Of 2023 (IO)

Kamakshamma & Others

APPELLANT

Vs

Rizwan Ahmed

RESPONDENT

Date of Decision : 07-06-2023

Acts Referred:

Code Of Civil Procedure Code, 1908 — Order 9, Rule 13

Citation : (2023) 06 KAR CK 0009

Hon'ble Judges : H.P. Sandesh, J

Bench : Single Bench

Advocate : Kamaleshwara Poojary, K.P. Bhuvan

Final Decision : Disposed Of

Judgement

H.P. Sandesh, J

1. Heard the learned counsel for the petitioners and learned counsel for the respondent.

2. The petitioner is before this Court assailing the order passed by the XIII Additional City Civil and Sessions Judge, Mayo Hall Unit, Bengaluru in Misc. No.25059/2019 dated 03.12.2022 filed under Order 9, Rule 13 of C.P.C. and restore the judgment and decree passed in O.S.No.25020/2008 dated 26.02.2019.

3. The main contention of the learned counsel appearing for the petitioners is that the Trial Court committed an error in allowing Misc. No.25059/2019. The counsel would vehemently contend that the defendant though filed written statement through advocate, did not contest the matter and hence, the Trial Court proceeded to pass judgment the decree. The counsel also would vehemently contend that the Trial Court failed to notice the documents i.e., Exs.D1, D2 and D3, which are the proceedings, memo as well as the final order passed by the High Court in W.P.No.25573/2010 initiated against the very same suit schedule property as well as against the very same plaintiffs. Ex.D3 is the

memo filed by the defendant before the High Court that the matter amicably settled outside the Court is clinching evidence that the claim of the defendant in O.S.No.25020/2008 was settled in the year of 2010 itself and thereafter, they remained absent before the Trial Court and the Trial Court proceeded to pass an erroneous order in setting aside the judgment and decree, even though the defendant did not contest the matter.

4. Per contra, learned counsel for the respondent would submit that the counsel, who was representing before the Trial Court on behalf of the respondent passed away in the year 2016 itself and to that effect, the document at Ex.P3 is produced before the Court and the same has been considered by the Trial Court. Apart from that, the suit is not decided on merits and the Trial Court has given an opportunity having considered the material on record. It is also contended that, though the suit was filed in the year 2008, issues were framed in 2018 and the evidence commenced on 13.11.2018 and chief examination was completed on 30.01.2019 and the suit was decreed within a span of one month and these are the materials which are taken note of by the Trial Court, while passing the order. Hence, the Trial Court has not committed any error in passing such an order.

5. Having heard the respective counsel and also on perusal of the material available on record, in the miscellaneous proceedings also, evidence has been adduced by the petitioner himself as P.W.1 and got marked the documents as Exs.P1 to P4. On the other hand, the respondents have not led any evidence but, got marked the documents as Exs.R1 to R3 i.e., order in W.P.No.25573/2010, order sheet in W.P.No.25573/2010 and memo in W.P.No.25573/2010 and the said proceedings is with regard to de-notifying the land and not pertains to the merits of the case. No doubt, these documents are produced before the Trial Court, the defendant also appeared before the miscellaneous Court and produced the order sheet, judgment and decree passed in O.S.No.25020/2008, the death certificate of the advocate on record for the defendant and certified copy of the vakalath in O.S.No.25020/2008.

6. When the advocate engaged by the defendant has passed away in the year 2016 and the defendant also did not participate in the proceedings, he ought to have enquired about the status of the case but, he says that he was not aware of the death of the advocate and he came to know about the judgment and decree and the said contention cannot be accepted. However, taking note of the fact that the matter has not been decided on merits and also taking note of the fact that the advocate on record for the defendant, who passed away did not contest the matter and also the records discloses that the chief evidence was completed on 30.01.2019, within a span of one month, the judgment was delivered and the reason assigned for non-appearance of the advocate for defendant is that he was no more and the defendant also did not enquire about the status of the case.

7. No doubt, the Trial Court has not committed any error in passing the order and also given an opportunity while passing the order in the petition filed under

Order 9, Rule 13 of C.P.C. but, with regard to the fact that the respondent-defendant was not diligent in conducting the case from 2016 to 2019, even though the advocate for the defendant was no more, the very ground that he was not aware of the same cannot be a ground to set aside the judgment and even while exercising the discretion, the Trial Court ought to have taken note of the conduct of the defendant and would have considered the matter imposing cost and cost is also not imposed. Even though the suit is filed in 2008, the same was disposed of in the year 2019 and the material discloses that the plaintiffs also not pursued the matter diligently and even though the suit was filed in 2008, the evidence has been commenced in the year 2018 and the chief examination was completed in the year 2019, after almost a decade. Hence, it is appropriate to direct the respondent to pay a cost of Rs.25,000/- to the plaintiffs within one month from today. The Trial Court is also directed to dispose of the matter within six months from today and the parties as well as their respective counsels are directed to assist the Trial Court in disposal of the suit since, the same is a decade old.

Accordingly, the petition is disposed of.