
(2015) 12 KAR CK 0088
In the Karnataka High Court
Case No : R.S.A. No. 5092 of 2012

Kamal Premanand Samant and Others	APPELLANT
Vs	
Sonubai Mansing Nalavade and Others	RESPONDENT

Date of Decision : 01-12-2015

Acts Referred:

Citation : (2015) 12 KAR CK 0088

Hon'ble Judges : S.N. Satyanarayana, J.

Bench : Single Bench

Advocate : R.M. Kulkarni, Advocate, for the Appellant; Vithal S. Teli, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Satyanarayana, J.—Plaintiffs in O.S. No. 578 of 2000 on the file of Civil Judge(Junior Division), Belgaum, have come up in this second appeal impugning the concurrent finding of both the courts below in dismissing the suit of the plaintiffs which was filed for the relief of declaration with reference to the marriage of first plaintiff with one Premanand Samant and for an order of injunction restraining defendant No. 1 in the original suit from seeking any of the benefits available to the estate of deceased Premanand Samant, an employee of KEB, Belgaum.

2. In the said suit, first defendant entered appearance and took up a defence that she is the legally wedded wife of deceased Premanand Samant and that the first and second plaintiffs have no manner of right, title or interest to the estate of deceased Premanand Samant, as his legal heirs. It was contended that at no point of time, there was marital relationship between Premanand Samant and first plaintiff-Smt. Kamala and the birth of second plaintiff with parentage of Premanand Samant was disputed. In the said proceedings, evidence was recorded and the Court below dismissed the suit of the plaintiffs declining to declare that the first plaintiff is the legally wedded wife of Premanand Samant and also for the relief of injunction. As against the judgment dated 03/07/2002

passed in O.S. No. 578 of 2000, an appeal in R.A. No. 392 of 2009 was filed on the file of Additional Sessions Judge, Belgaum, wherein the judgment and decree passed by the Court below was confirmed. As against the concurrent finding of both the Courts below, the present second appeal is filed by the plaintiffs with inordinate delay of 406 days. Hence, an application in I.A. 1 of 2012 is filed.

3. Heard the learned counsel for the appellants as well as the contesting respondents on the said application and perused the affidavit wherein the second plaintiff Prakash, who claim himself to be the son of Premanand Samant, would state that the first plaintiff in the original suit Smt. Kamala was having health issues and also the family had financial difficulties. Therefore, he was not able to contact the counsel to know about the progress in the appeal. It is also stated that in view of the old age diseases attacked the first plaintiff, she required utmost care and medical treatment. That the deponent was busy and therefore he was not in a position to secure the certified copy of judgment in lower appellate Court to pursue the matter. On going through the material available on record, there is nothing to substantiate his averment that the first plaintiff in the court below was suffering from ill-health which has caused the delay in filing the appeal. There is nothing on record to show that financial difficulty is one of the constraint. As could be seen, the court fee i.e., payable is only Rs. 50/-. There is nothing on record to demonstrate that huge finance was required for filing the appeal immediately after dismissal of the regular appeal. In any event, the reasons stated in the affidavit is nothing but a lame exclusion to seek condonation of delay in filing the appeal. Therefore, before considering the application on its technicalities the judgment impugned is also looked into.

4. On going through the judgment of both the courts below, it is clearly seen that though the plaintiffs contend that the first plaintiff is the widow and second plaintiff is the son of Premanand Samant they were not able to establish the same with acceptable proof of such marital relationship between Plaintiff and the deceased Premanand Samant. In that view of the matter, the first issue which was framed in the original suit was answered in the negative. While doing so, the allegation by the plaintiffs/appellants herein that first defendant in the original suit has set up a false claim contending that she is the legally wedded wife of deceased Premanand Samnat and that she has a son and two daughters in her marital relationship with him was considered in issue No. 2 and answered holding that the first defendant in the original suit is the legally wedded wife and children born to her is through marital relationship with deceased Premanand Samant. It is seen that suit of the plaintiffs is disposed of while doing that there appears to be some observation that the second plaintiff having established that he is born to Premanand Samant with relationship of the first plaintiff, in the court below, he was given permission to seek employment on compassionate ground. However, it is seen that in view of the age of second plaintiff, the same was not considered and the request of the deceased's legitimate son through the first defendant is considered for employment and the said findings of the trial court is also confirmed by the lower appellate Court.

In that view of the matter, this Court find, as against the concurrent finding, even if inordinate delay of 406 days is condoned, no grounds are made out to admit this second appeal inasmuch as no substantial question of law arises for consideration in this appeal. Accordingly, second appeal filed by the plaintiff in O.S. No. 578 of 2000 is hereby dismissed.

In view of the appeal being dismissed I.As. 2 to 4 of 2012 does not survive for consideration.