

(1995) 07 KAR CK 0048

In the Karnataka High Court

Case No : Regular First Appeal No. 255 of 1995

Krishnamurthy and Others

APPELLANT

Vs

Smt. Nanjamma

RESPONDENT

Date of Decision : 28-07-1995

Acts Referred:

Citation : (1995) 5 KarLJ 570

Hon'ble Judges : M. F. Saldanha, J

Judgement

1. Heard learned Advocates on both sides. This is a proceeding in which the present appellants who were the defendants to the suit before the Trial Court and who had appeared through their learned Advocate up to a certain stage of the proceedings have raised a plea before me that certain negotiations took place in the course of the litigation and that in the course of these negotiations, the plaintiff assured them that she would withdraw the suit. According to them, they believed the plaintiff and they were under the assumption that she would go to the Court and withdraw the suit and it was for this reason that they did not appear in the proceedings after a particular stage. It was only many months after the decree was passed which was virtually an ex parte decree that the appellants came to know of the consequences thereof and since they are aggrieved by the decree, they filed the present appeal effectively with a prayer that the decree be set aside and that the matter be remanded to the Trial Court for fresh adjudication. The appellants' learned Advocate contended that the property that is in dispute had come to the husband of defendant 3 by virtue of a gift and that consequently, the plaintiff who was his adopted mother sought an injunction restraining the defendants from interfering with her possession was not valid. It is his submission that pursuant to the execution of the gift deed in the early 1960's that necessary changes in the various records had been made and that the plaintiff ceased to have a right, title or interest in the property. I need to mention here that the plaintiff is an old lady of age well over 85 years and that the property in question belonged to her late husband. They in turn had virtually adopted the husband of defendant 3 and brought him up and it is his

case that this property was gifted to him. The plaintiff contends that her husband was an illiterate agriculturist and that the adopted son took undue advantage of their affection, obtained her husband's signatures on certain documents which have thereafter been misused for purposes of divesting them of their property. That aspect of the matter is hardly consequential because the plaintiff has produced before the Trial Court a whole set of documents and records starting from the patta book, the tax paid receipts, the revenue records all of which conclusively indicate that she is entitled to the relief of injunction asked for. The learned trial Judge has not passed a decree merely by virtue of the default of the defendants but he has passed a decree on the basis of the overwhelming documentary evidence which was undisputed and which was not refuted. The appellants' learned Advocate submits, that these documents are fabricated and that an opportunity be given to the appellants to establish their possession before the Trial Court. The application has been resisted by the other side who is also appearing before me.

2. Instances sometimes do occur before the Courts where parties are precluded, due to a variety of circumstances, from either taking part in a litigation or adequately defending themselves. In sum and substance when such situations occur, there is virtually a failure of justice because the order that is passed is virtually a one-sided order without having afforded a fair and reasonable opportunity to the opposite party to defend the proceeding. The scheme of the law requires that there has got to be proper service on the opposite party and that, that party be afforded an opportunity of participation in the litigation so that the party can if it so desires, establish what it has to point out before a judicial forum. This aspect of a reasonable opportunity is not to be confused with abnormal and undue indulgence. The law prescribes the consequences of situations where a litigant abandons a litigation or where a litigant, after having been given an opportunity, does not participate partially or wholly. Invariably, after the order is passed, pleas are put forward before the Appeal Court that an opportunity has been denied. This plea is untenable if the opportunity was offered and was not availed of. It is that last aspect of the matter that needs to be taken cognizance of. It is not the function of the Trial Courts to indefinitely keep the litigation pending or to go in search of parties who do not desire to participate in the litigation. The present case presents exactly such a situation where the defendants did appear, where they were represented, where a decree was passed against them and where even after their coming to know of the passing of the decree, if at all according to them any misrepresentation or fraud had taken place, they have not gone back to this Trial Court and recorded that fact. A long period of time has elapsed after the passing of the decree and there is nothing on record to establish save and except mere statements in the appeal memo, that a fraud had been played. Under these circumstances, to my mind, there is not even an iota of reliable material before this Court on the basis of which this plea can be upheld. There are instances when the Court takes cognizance of the handicaps under which a litigant is placed. There are situations

for that matter, where a litigant is illiterate, where a litigant is unwell or where a litigant is otherwise handicapped in defending the suit, that a Court has to make special allowance in favour of that litigant and even if a litigation has gone by default, to afford a fresh opportunity in the interest of justice. Those principles do not apply to the facts of the present case and certainly would not apply in a case where a specific allegation of fraud is made and that allegation is proved to be false.

3. To my mind, this is not a case in which any remand can be granted. Under these circumstances, what is required to be examined is as to whether the learned trial Judge was justified in having passed a decree on the material placed before him. I need to say to the credit of the learned trial Judge that despite the non-appearance of the defendants, that he has very correctly proceeded to frame the issues and thereafter recorded the evidence and taken on record the documents that were produced in support of the plaintiff's case. That material more than fully entitled the plaintiff to the decree that was asked for. The learned trial Judge has therefore acted correctly and to my mind, no interference is called for with the decree in question.

4. Having regard to the aforesaid situation, the appeal fails and stands dismissed.