

(2014) 01 KAR CK 0130

In the Karnataka High Court

Case No : Writ Appeal Nos. 6525 and 6526 of 2013 (LR)

M. Gundappa

APPELLANT

Vs

Thimma Bovi Since (Dead)

RESPONDENT

Date of Decision : 28-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1(c), Order 9 Rule 9
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 340
Karnataka High Court Act, 1961 — Section 4

Citation : (2014) 5 KarLJ 437

Hon'ble Judges : D.H. Waghela, C.J.;B.V. Nagarathna, J

Bench : Division Bench

Advocate : S.N. Keshavamurthy, Advocate for the Appellant; A.S. Ponnanna, Government Advocate, P.N. Rajeswara and H.R. Narayana Rao, Advocate for the Respondent

Judgement

1. The order of learned Single Judge passed on I.A. Nos. I and II of 2012, dated 8-11-2013 is assailed in these appeals. The relevant facts of the case are that the order of the Land Tribunal, Ramanagaram, in Case No. LRF (7) 723 and 792/1975-76 was assailed by respondent 1 by his legal representatives in W.P. No. 38942 of 2002. That writ petition was filed in the year 2002. By order dated 12-8-2008 the writ petition was dismissed for non-prosecution. Subsequently, applications were filed in 2012 seeking recalling of the order dated 12-8-2008 by condoning the delay. Those applications were heard by learned Single Judge. By the impugned order dated 8-11-2013 those applications were allowed. The order dated 12-8-2008 was recalled. The writ petition was restored to file subject to payment of cost of Rs. 10,000/- payable to Counsel for respondents 3 and 4 in the writ petition. That order is assailed by respondents 3 and 4 in the writ petition, in these appeals.

2. We have heard learned Counsel for the appellants and learned Counsel for the respondents and perused the material on record.

3. The main contention raised by learned Counsel for the appellants is that subsequent to the dismissal of the writ petition for non-prosecution on 12-8-2008, the appellants had sold the land in the year 2010 to one Puttaraju and others. Therefore, they had lost their right, title and interest in the land in question and the purchasers were also not parties to the writ proceedings. It was therefore contended that third party rights have been created in the interregnum. Learned Single Judge ought to have taken note of that fact and ought not to have allowed the applications filed by the respondents.

4. Per contra, learned Counsel for the respondents initially contended that these writ appeals are not maintainable. It is also contended that though learned Single Judge has stated that the writ petition was dismissed for non-prosecution on account of the mistake committed by the Counsel, nevertheless the order recalling would not call for any interference.

5. At the out set, we take up the contention with regard to maintainability of the appeals. Right to file an appeal against the order of the learned Single Judge is envisaged under Section 4 of the Karnataka High Court Act, 1961, which states that an appeal from a judgment, decree, order or sentence passed by a Single Judge in the exercise of the original jurisdiction of the High Court under this Act or under any law for the time being in force, shall lie to and be heard by a Bench consisting of two other Judges of the High Court. Learned Counsel submitted that this section has to be read in the context of Rule 39 of the Writ Proceedings Rules, 1977 (for short, "the Rules"). Rule 39 of the Rules states that the provisions of the High Court of Karnataka Rules, 1959, the rules made by the High Court of Karnataka under the Karnataka Court Fees and Suits Valuation Act, 1958, and the provisions of the Code of Civil Procedure, 1908, shall apply, as far as may be, to proceedings under Article 226 (and/or Article 227 of the Constitution of India) and writ appeals in respect of matters for which no specific provision is made in these rules. Reference to Rule 39 is made by contending that the application for recalling the order of dismissal for non-prosecution was in substance one under Order 9, Rule 9 of the Civil Procedure Code, 1908 and as against the order passed on such application, an appeal would lie under Order 43, Rule 1(c) of Civil Procedure Code, and therefore, an appeal under Section 4 of the High Court Act, 1961 would not apply. The said contention has to be rejected for two reasons. Firstly because, the right to file a writ appeal is a statutory right which is envisaged under Section 4 of the High Court Act and not under Civil Procedure Code. Secondly, Rule 39 of Writ Proceedings Rules, 1977, is in a special enactment for regulating writ proceedings. Rule 39 itself states that the Civil Procedure Code, 1908 would apply as far as may be to proceedings under Article 226 and/or 227 and writ appeals in respect of matters for which no specific provision is made in these Rules. That apart, the impugned order is made under Article 226 read with Article 227 of the Constitution of India. Therefore, as against the order passed by learned Single Judge in writ jurisdiction, an appeal would lie under Section 4 of the Act. Therefore, the Karnataka High Court Act, 1961 and Writ Proceedings Rules, 1977 being special

enactments, they would prevail over the provisions of Civil Procedure Code, which is a general Code. Even the Civil Procedure Code states that the impugned order is an appealable order and the provision to file an appeal is Section 4 of the Karnataka High Court Act, 1961. Reliance placed on the judgment of the Division Bench of this Court in the case of Channappa v Basappa 1984(1) Kar. LJ. 204 (DB) is not applicable, as it is one under Section 340 of the Criminal Procedure Code, 1973.

6. On perusal of the material on record, we note that legal representatives of respondent 1 had assailed the order of the Land Tribunal dated 20-9-2002, by which Form 7 filed by respondent 1 was rejected. That order was the subject-matter of W.P. No. 38942 of 2002. That writ petition was dismissed in the year 2008 on the ground of non-prosecution. For almost four years no steps were taken for restoration of the writ petition. Taking note of the fact that the order in the writ petition had obtained finality, the appellants herein had alienated the land, as Form 7 has been rejected by the Land Tribunal. Thus, third party rights were created. The persons who had purchased the land in question were not made parties in the writ petition. In fact, no steps were taken to array them as respondents in the writ petition. In the absence of those parties who had really right, title and interest in respect of the land in question, the applications were considered and impugned order has been passed. That apart, the appellants herein who had alienated the land in question had really no say in the matter, since they had lost their right, title and interest in the land in question. More seriously we find that respondent 1 had not taken steps in time to get the writ petition restored. As a result, third party rights were created which are now irreversible. In the aforesaid backdrop, we find that learned Single Judge was not right in recalling the order dated 12-8-2008 on 8-11-2013 i.e. nearly five years and that too in the absence of parties who had acquired right, title and interest in the land in question. Awarding cost to appellants for recalling of the order is no remedy to persons who are really in possession and having right, title and interest in the land in question. Therefore, we find that the order for restoration of the petition was not in accordance with law. The appeals are therefore allowed. The impugned order is set aside. No cost.

In view of disposal of the appeals, I.A. No. 1 of 2014 would not survive for consideration.