

(1973) 12 KAR CK 0005

In the Karnataka High Court

Case No : Civil Revision Petition No. 1688 of 1972

N. Bansidhar

APPELLANT

Vs

Dwarakalal

RESPONDENT

Date of Decision : 03-12-1973

Acts Referred:

Citation : AIR 1974 Kar 117

Hon'ble Judges : Range Gowda, J

Bench : Single Bench

Advocate : M.M. Jagirdar, for the Appellant; Muralidhar Rao, for the Respondent

Judgement

Range Gowda, J.—This revision petition is directed against the order passed by the Munsiff, Yadgir, on 5-7-1972 in Misc. Case No. 12/1971 rejecting the application filed by the petitioner herein presumably u/s 144, Civil P.C. The relief sought in that application was to direct the respondent-landlord to refund the amount of rent drawn by him which the petitioner had deposited as per the orders of the Court passed in the eviction proceedings initiated on a petition filed by the respondent against him on the ground that he was in arrears of rent. The trial Court ultimately allowed the petition filed by the respondent and passed an order of eviction against the petitioner on the said ground, and the District Judge, Gulbarga, confirmed that order. But, this Court, in revision, set aside both the orders and remitted the case to the trial Court to dispose of the matter afresh, and it was thereafter the application out of which this revision petition arises was filed.

2. Sri Muralidhar Rao learned counsel for the respondent raised a preliminary objection regarding the maintainability of this revision petition. He contended that the impugned order purports to be one passed u/s 144, Civil P.C. and that no revision u/s 115, Civil P.C. lies against it.

3. Sri Manohar Rao Jagirdar learned counsel for the petitioner did not dispute the correctness of the above contention, and indeed he conceded that no revision lies

against such an order. But, what he submitted was that instead of dismissing this revision petition on the ground of non-maintainability it may be returned to the petitioner for being presented in the form of an appeal before the Civil Judge.

4. Now the question is whether the said prayer of Sri Jagirdar can be countenanced. In support of his submission that such a prayer is tenable even though the revision petition is not maintainable, Sri Jagirdar relied upon the following passage in Vishnumoorthi Bhagwatha and another Vs. Rudra Shedthi and another, :

8. The above discussion will necessarily lead to the conclusion that this revision petition is not maintainable. I have no doubt in my mind that the petitioners have bona fide pursued their remedy in a wrong forum, viz. this Court. Instead of filing an appeal, before the Court of Civil Judge, the petitioners have, under a bona fide impression that a revision is competent, filed this revision petition. The petitioners cannot be blamed for approaching this Court instead of preferring an appeal to the Court of Civil Judge. The wordings employed by the Court of first instance themselves were responsible for this situation. Instead of the Munsiff holding that the suit has abated against defendants 2 and 3, if he had dismissed the suit on the ground that the necessary parties are not before him the petitioners would have been posted with the information that a decree" dismissing their suit has been passed and that the remedy available to them is to prefer an appeal to the Court of Civil Judge. The petitioners, in these circumstances, should not be penalised for no fault of theirs in approaching this Court in revision, instead of filing an appeal to the Court of the Civil Judge.

9. For the reasons stated above. I direct that the memorandum of revision petition be returned to the petitioners for being presented as a memorandum of regular appeal in the Court of the Civil Judge, accompanied by appropriate court-fee. The petitioners shall be entitled to make an appropriate application for condonation of delay and I have no doubt that the application will be dealt with in accordance with law. No costs. And further submitted that this C.R.P. also may be disposed of on the same lines. I do not think it is possible to accede to the said submission. No doubt in the case relied upon by Sri Jagirdar this Court despite holding that the revision petition was not maintainable ordered the same to be returned for being presented as a memorandum of regular appeal before the Civil Judge. But what circumstances weighed with the Court in making that order are fully set out in paragraphs 8 and 9 which I have extracted above, and it was in those circumstances this Court made that order. It appears to me that the question whether a revision petition filed to this Court u/s 115, Civil P.C. which is not maintainable can be returned for being presented in the form of an appeal to a Court subordinate to it, did not come up for consideration in that case, and, if I may say so with respect, the observations made in that case cannot be understood as having considered this question and answered it in the manner suggested by Sri Jagirdar. Therefore, the said observations on which he strongly relied are not of much assistance to him.

5. Sri Jagirdar did not point out any other decision of this Court in which a view he pressed before me is taken. On the other hand, Sri Murlidhar Rao submitted that what this Court has consistently done in dealing with such petitions is to dismiss them, and he also drew my attention to two cases viz. K.C.D. Swamy Vs. Leela Marathey and Another, and Umamaheshwar Cotton Ginning and Pressing Factory and Others Vs. Rama Rao Shroff and Others, in support of his submission. In my opinion, when the revision petition itself is not maintainable, the question of returning it for presentation to another Court subordinate to this Court in the form of an appeal does not at all arise, and the benefit of Rule 10 of Order 7, Civil P.C. cannot be extended to such cases because it is inconsistent with the principle underlying the said Rule. When a petition of this type cannot be represented in its existing form in any Court, the question of returning it for presentation to the proper Court in the form of an appeal does not at all arise. In other words, when a revision petition filed u/s 115, Civil P.C. is not maintainable and the Court to which it is sought to be re-presented in the form of an appeal cannot take cognizance of such a petition in its existing form, it is not permissible to return the same for presentation to the Court to which an appeal lies, and, such a thing in my opinion, is not contemplated by the provisions of Order 7, Rule 10, Civil P.C. even if it is to be said that the said rule applies when read with Section 141, Civil P.C. A similar question came up for consideration before the Madras High Court in Karingamanna Melathil Karnavan Rama Kurup and Another Vs. Thirnnavaya, Kalathil Veetil's children Kunhipathumma and Others, and dealing with that question this is what Patanjali Sastri, J. as he then was, said:

The petitioner asks for return of the memo of civil revision petition for presentation to the District Court as an appeal as in view of the decision in Perumalla Venkayya Vs. Batchu Pullayya, an appeal lies in case like this to the District Court and civil revision petition is therefore incompetent. Mr. Govinda Menon for the petitioners relies on the provisions of Order 7, Rule 10 read with Sections 107(2) and 141, Civil P.C. as supporting the prayer. I do not consider that these provisions are applicable to the case as revisional jurisdiction is peculiar to this Court and there can be no question of returning the civil revision petition for presentation as a civil revision petition to any other Court in the province. The prayer cannot therefore be allowed.....

The above view also accords with the view I have taken. Therefore, when the revision petition itself is not maintainable u/s 115, Civil P.C., no question of returning it for presentation in the form of an appeal to the Court to which such appeal lies arises. Hence the prayer of Sri Jagirdar cannot be acceded to.

However, it appears to me that the petitioner was pursuing his remedy in this Court under a bona fide impression that a revision would lie against such an order instead of filing an appeal, and I have no doubt that if he files an appeal against the order under revision and makes an application for condonation of delay in preferring that appeal the appropriate Court will deal with that application in accordance with law. With this observation, this revision petition is

dismissed. No costs.