

(2022) 07 KAR CK 0016

In the Karnataka High Court

Case No : Review Petition No. 506 Of 2019 In Regular First Appeal No. 986 Of 2012

Padmini

APPELLANT

Vs

M. Sathyanarayana & Others

RESPONDENT

Date of Decision : 15-07-2022

Acts Referred:

Transfer Of Property Act, 1882 — Section 43
Code Of Civil Procedure Code, 1908 — Order 47 Rule 1

Citation : (2022) 07 KAR CK 0016

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

Bench : Single Bench

Advocate : Ravishankar St. Sheshagiri Rao

Final Decision : Dismissed

Judgement

H.P. Sandesh, J

1. This review petition is filed praying this Court to review the order dated 16.08.2019 passed in R.F.A.No.986/2012 and grant such other reliefs.

2. The respondent Nos.1 to 3, who are the plaintiffs had filed a suit for declaration that Will dated 30.6.1993 executed by late Thammaiah is null and void and for permanent injunction and also for partition and separate possession of 3/4th share in the schedule property and the said suit was decreed. Being aggrieved by the judgment and decree, R.F.A.No.1228/2012 connected with R.F.A.No.986/2012 are filed. This Court considering the material on merits, vide order dated 16.08.2019, dismissed both the appeals. Hence, the present review petition is filed by defendant No.1(a), who is the appellant in R.F.A.No.986/2012.

3. The main contention of the review petitioner in this review petition is that this Court while dismissing the appeals has considered only the facts and the point of law urged has not at all been considered and there is no discussion on these aspects of the matter. The other grounds are also urged with regard to the

factual aspects of the case. But the main contention of review petitioner before this Court is that Section 43 of the Transfer of Property Act ('T.P. Act' for short) has not been considered by this Court. The same is error apparent on the face of the record i.e., non-consideration of point of law and hence it requires interference of this Court by exercising the review jurisdiction.

4. The learned counsel for the review petitioner reiterated the grounds urged in the review petition and would vehemently contend that Section 43 of the T.P. Act has not been considered inspite of referred the judgment in the order. The learned counsel in support of his contentions relied upon the judgment of this Court in the case of DR. JACOB LAZARUS CHELLY v. DOKKA SAMUEL reported in (1995) 5 Kant LJ 695 and brought to the notice of this Court paragraph Nos.12 and 27, wherein it is observed that an error apparent on the face of the record as the view of the learned Single Judge runs counter to the law laid settled by the Supreme Court and this judgment is in respect of payment of sale consideration while executing the sale deed.

5. The learned counsel also relied upon the judgment of the Apex Court in the case of ARIKALA NARASA REDDY v. VENKAT RAM REDDY REDDYGARI AND ANOTHER reported in 2014 Supreme (SC) 1109, wherein it is held that scope of review petition does not extend to extent that the Court can substitute its view and change its finding of facts. In case inadvertently or by mistake the Court has recorded the wrong finding, the Court should not hesitate to change same as it would amount to perpetuating an illegality which in fact resulted in miscarriage of justice.

6. The learned counsel also relied upon the judgment of this Court in the case of A. SUBRAMANYASWAMY v. A. NARAYANASWAMY reported in 2019 (3) KCCR 2564 and brought to the notice of this Court paragraph No.8 of the judgment, wherein it is discussed with regard to scope of Order 47 Rule 1 of CPC.

7. The learned counsel also relied upon the judgment of the Apex Court in the case of JUMMA MASJID, MERCARA v. KODIMANIANDRA DEVIAH AND OTHERS reported in AIR 1962 SC 847 and brought to the notice of this Court paragraph No.7, wherein discussed with regard to Section 43 of the T.P. Act and so also paragraph No.15, wherein discussed with regard to the rule of estoppel.

8. The learned counsel also relied upon the judgment of this Court in the case of S. ANANDA SHETTY v. MEHABOOB SHERIEFF reported in 2019 Supreme (Kar) 717, wherein it is discussed with regard to scope of Section 43 of the T.P. Act.

9. The learned counsel for the review petitioner referring these judgments would vehemently contend that if no finding is given on question of law, the Court can entertain the review petition.

10. Per contra, the learned counsel for respondent Nos.1 to 3 submits that, admittedly the property belongs to Thammaiah and he had purchased the same in the year 1962 and he died in the year 1994. Before his death, during the

original purchaser was alive, the daughters have executed the release deed in the year 1979, wherein no description of the details of the property. The learned counsel submits that there were two Wills of the year 1974 and 1981 executed by the executant original owner. Both the Courts have given the finding that the same has not been proved and this Court also considered the grounds urged in both the appeals and dismissed both the appeals and the said release deed is also executed in favour of the father and also a son by the daughters of the original owner. The said property, admittedly is the self-acquired property of Thammaiah and the question of executing any release deed in respect of self-acquired property of Thammaiah does not arise and this Court has given the finding to that effect and the Trial Court also considered the same.

11. The learned counsel in support of his arguments relied upon the judgment of the Apex Court in the case of RAJAGOPAL PILLAI AND ANOTHER v. PAKKIAM AMMAL AND OTHERS reported in (1976) 1 SCC 299 and brought to the notice of this Court paragraph Nos.6 and 7 of the judgment.

12. The learned counsel also relied upon the judgment of the Apex Court in the case of CHINNATHAYI v. KULASEKARA PANDIYA NAICKER AND OTHERS reported in AIR 1952 SC 29 and brought to the notice of this Court paragraph No.34 with regard to general words of release will be construed with reference to the surrounding circumstances and as being controlled by recitals and context so as to give effect to the object and purpose of the document.

13. The learned counsel referring these judgments would vehemently contend that first of all the said release deed does not contain any description of the property and it is only a general release deed and also the parties are not having any interest in the property to execute any release deed.

14. Having heard the respective learned counsel and also on perusal of the grounds urged in the review petition, the points that arise for the consideration of this Court are:

(i) Whether the review petitioner has made out a ground to review the order, as prayed?

(ii) What Order?

Point No.(i):

15. Having heard the respective learned counsel and also on perusal of the material on record, particularly the grounds of review petition, the main contention is that question of law has not been considered and other grounds are also urged with regard to the findings of this Court based on the documentary evidence. The first and foremost contention is that Section 43 of the T.P. Act has not been considered.

16. The scope of review is very limited and only if the judgment of the Court is passed on the error apparent on the face of the record, then the Court can

exercise the review jurisdiction. This Court while passing the order has taken note of the contentions of the appellants and the respondents and in paragraph No.19, the contention of the review petitioner herein was taken note of and though at the first instance considered the factual aspects of the case based on the materials which has been mentioned in paragraph No.32, in paragraph No.44 after discussing the oral and documentary material available on record, taken note of the principles laid down in the judgments referred by the learned counsel for the appellants and the learned counsel for the respondents in both the appeals. The Court also discussed both the grounds urged on the facts as well as question of law and also considered both oral and documentary evidence placed on record, particularly the release deeds which have been relied upon which came into existence in the year 1979 marked as Exs.D.9 and 10, which have been produced by D.W.4.

17. This Court also taken note of the contentions of the respondents that in the release deed, the schedule is not mentioned and it is not stated in respect of which properties they were releasing their right. It is also observed in keeping the contention of the respective parties, admittedly the suit schedule property belonged to the executant, which was purchased by him in the year 1962 in terms of Ex.P.6. It is also noted in paragraph No.49 that during the lifetime of the original owner of the suit property, the question of daughters of Thammaiah executing the release deeds does not arise since the same is the self-acquired property of the executant. It is further observed that the daughters have no right in the suit property. Mere execution of the release deeds by them during the lifetime of the owner of the suit schedule property does not create any right in favour of the releasees i.e., Thammaiah and Pillanna. It is also observed that the parties did not dispute the fact that the suit property was purchased by the executant in the year 1962 and hence definite finding is given that mere execution of the release deeds also does not cease the right of the daughters of the executant. It has also taken note of the second will executed by the executant in the year 1981 i.e., 03.03.1981, wherein the property was bequeathed in favour of all his legal heirs and taken note of all the parties admit the execution of Will. It is further observed that the rights accrued to the parties, either in terms of the Will dated 03.03.1981 or in terms of succession. Even assuming that there was no Will, the legal heirs of the executant are entitled for equal share in respect of suit schedule property.

18. When this Court has given the definite finding that the executant of the releasees were not having any right as on the date of the alleged execution of the release deed and subsequently the owner of the property, who is having absolute right executed the Will and the Trial Court as well as this Court have given the finding that Will has not been proved and succession open only on account of death of the original owner who died intestate in the year 1994 as admitted by the review petitioner, the question of invoking Section 43 of the T.P. Act does not arise, as contend by review petitioner. First of all, it is the self-acquired property and the alleged release deed does not confirm any right when

the absolute owner was having the right in respect of his property. Mere creation of the release deed also does not create any right as held by this Court and considering the same as question of law though it is not mentioned, once again while discussing the judgment, the same is taken note of in paragraph No.44 of the judgment, wherein referred in keeping the principles laid down in the judgments and hence the question of invoking Section 43 of the T.P. Act does not arise and question or rule of estoppel does not arise and the property belongs to the original owner, which was purchased in the year 1962 and the same is the self-acquired property of the said Thammaiah and he died in the year 1994. Both the Courts have not taken note of earlier release deed as well as the Will executed in the year 1974 and 1981 when those documents are not considered and accepted by the Court, the succession open among the legal heirs of the said Thammaiah. Hence, I do not find any force in the contention of review petitioner to invoke the review jurisdiction and to review the order passed by this Court. The judgments relied upon by the learned counsel for the petitioner referred supra, will not come to the aid of the petitioner in keeping the property which is self-acquired of the executant and question of invoking Section 43 of the T.P. Act does not arise as contended. Hence, I answer point No.(i) as negative.

Point No.(ii):

19. In view of the discussions made above, I pass the following:

ORDER

The review petition is dismissed.