
(2015) 09 KAR CK 0257
In the Karnataka High Court
Case No : R.P. No. 1245/2014

P.C. Kumaraswamy and Others

APPELLANT

Vs

Channabasamma and Others

RESPONDENT

Date of Decision : 15-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 1, Order 20 Rule 2, Order 20 Rule 20, Order 20 Rule 3, Order 47 Rule 1
Criminal Procedure Code, 1973 (CrPC) — Section 369
Karnataka Land Revenue Act, 1964 — Section 132, 132(3), 133, 14, 152

Citation : (2015) 09 KAR CK 0257

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : Krishna Swamy S., Advocate, for the Appellant; K.S. Ramaswamy Iyengar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—Appellants in RSA 1670/2013 are seeking for review of Judgment and decree passed by Co-ordinate Bench of this court on 16.07.2014 whereunder second appeal came to be rejected at the threshold without being admitted after hearing learned advocates appearing for the parties.

2. It is the contention of Sri. S. Krishna Swamy, learned counsel appearing for review petitioners who had also appeared on behalf of appellants in second appeal before the Co-ordinate Bench that;

"(i) Learned Judge who disposed of the appeal had failed to take note of the revenue entries standing in the name of review petitioners which was not rebutted;

(ii) Learned Judge has signed the Judgment after his retirement and same is impermissible in law;

(iii) There is no provision under C.P.C for a retired Judge to sign the Judgment

beyond 60 days after it is dated and when no date was fixed for pronouncement."

3. On these grounds he seeks for review of Judgment and decree passed on 16.07.2014 by Coordinate Bench of this Court which was presided by Hon"ble Dr. Justice Jawad Rahim and prays for allowing the review petition. In support of his submissions he has relied upon the following Judgments:

"(i) Anil Rai Vs. State of Bihar,

(ii) Gem Travels Vs. Syndicate Bank,

(iii) Assistant Commissioner Vs. Chandasaheb Mohaddinsab Mujawar,

4. Sri. K.S. Ramaswamy Iyengar, learned counsel appearing for respondent No. 1 would contend that review cannot be an appeal in disguise and grounds urged in support of the review petition, if considered, Would tantamount to rehearing the appeal and issue regarding revenue entries had been considered by the Bench which heard and disposed of the matter and as such, he prays for dismissal of review petition. In support of his submissions he has relied upon the following Judgments:

"(i) Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury,

(ii) Parsion Devi and Others Vs. Sumitri Devi and Others, "

5. Having heard the learned Advocates appearing for parties and on perusal of grounds urged in the review petition as also judgments relied upon by respective learned Advocates and on perusal of records of RSA No. 1670/2013, this Court is of the considered view that following points would arise for consideration:

"Whether judgment and decree passed in RSA No. 1670/2013 dated 16.07.2014 is required to be reviewed for any reason?"

6. There cannot be any dispute with regard to proposition that scope of review is having limited jurisdiction and it is also circumscribed by the language employed under Order XLVII Rule 1 of CPC. In the event of three (3) grounds specified in Sub-Rule (1) of Rule 1 Order XLVII is satisfied, review can be entertained as otherwise not. These three (3) conditions can be found in Clauses (a) to (c) of Sub-Rule (1) of Rule 1 of Order XLVII CPC are;

(a) "by discovering all new and important matter or evidence which, after due diligence was not within the knowledge or review petitioner/petitioner's knowledge or could not be produced by him/them at the time when the decree was passed or order made;

(b) mistake or error apparent on the face of the record;

(c) for any other sufficient reason;"

7. An error which has to be established by long drawn process of reasoning on the points where there may be conceivably two points of view or two opinions

can hardly be said to be an error apparent on the face of record. Thus, provisions of Order XLVII Rule (1) CPC mandate high degree of diligence on the part of party seeking review, since object is to secure finality of litigation at some stage or other in the long drawn process. A review by no means is an appeal in disguise where an erroneous decision is rebuilt and corrected but lies only for correction of errors apparent on the face of record. The distinction between a mere erroneous decision and an error apparent on the face of record has to be drawn where error on substantial point of law stairs one in the face or there can be probably no two opinions. Then clear case of error apparent on the face of record is held to be made out. Though "error on the face of record" cannot be defined precisely it has to be necessarily held as already noticed hereinabove that an error which has to be established by long drawn process of reasoning on points where there can be two views or two opinions cannot be held or construed as an error apparent on the face of record.

8. Power of review is to correct the mistake it is not the substitution of view earlier expressed to that off a fresh view or an alternate view. Review proceedings are not by way of appeal and Hon"ble Apex Court in the case of Kamlesh Verma Vs. Mayawati and Others, after considering the catena of judgments commencing from Chhajju Ram vs. Neki and OthersAIR 1922 112 (Privy Council) till 2013 has laid down the contours under which a review petition can be entertained and when it ought not to be entertained. It has been held as under;

"16. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

(A) When the review will be maintainable:--

(i) Discover of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in Chhajju Ram vs. Neki and OthersAIR 1922 112 (Privy Council) and approved by this Court in Chhajju Ram vs. Neki and OthersAIR 1922 112 (Privy Council) , to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Chhajju Ram vs. Neki and OthersAIR 1922 112 (Privy Council) .

(B) When the review will not be maintainable:--

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere apparent on the face of the record should not be an error which has to be fished out and searched.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

9. Though above referred contours are not exhaustive, they are illustrative. Keeping in mind above referred illustrations, facts on hand is being examined as to whether present review petition would fit within any of the illustrations referred to by Hon"ble Apex Court and if the answer is "yes", as to which of illustrations/contingencies indicated therein would be attracted to the present review petition? If a point is urged, addressed to and a finding is recorded by the Court, then parties to said judgment in review jurisdiction cannot contend that view taken by the Court at the first instance is erroneous and view which is sought to be proposed in the review petition ought to have been taken. Keeping these aspects in mind let me examine the facts on hand.

10. Review petitioners were arrayed as defendants 1 and 2 before trial Court. Respondents 1 and 2 were arrayed as plaintiff and 3rd defendant before trial Court. Plaintiff instituted a suit against defendants i.e., review petitioners 1 and 2 and 3rd respondent for declaration of his title to suit schedule property and consequential relief of perpetual injunction to restrain defendants from interfering with his possession. Suit after contest came to be dismissed by judgment dated 04.02.2013. Unsuccessful plaintiff pursued his grievance before First Appellate Court in R.A. No. 60/2013. First Appellate Court on reappreciation of evidence found that suit of plaintiff ought to have been decreed and accordingly decreed the suit by allowing the appeal.

11. Being aggrieved by above said judgment and decree passed by First Appellate Court, defendants 1 and 2 filed second appeal. Coordinate Bench of this Court presided by Hon"ble Justice Sri. Jawad Rahim (Since Retired) after hearing the matter dismissed the appeal at the stage of admission without admitting same by assigning reasons as set out in the judgment itself. It is no doubt true that on 23.05.2014 notice was ordered on second respondent, by which time first respondent was already appearing as caveator and stay of judgment and decree passed by First Appellate Court came to be passed and said interim order was extended from time to time till disposal of appeal on

16.07.2014. Office note made on 15.07.2014 would indicate that appellant and respondent No. 1 were represented by respective learned Advocates. Respondent No. 2 though served had remained unrepresented and LCRs had been received and as such, it was ordered to be listed for admission on 16.07.2014. Accordingly, matter has been listed on 16.07.2014 and note made in column "Office Notes" reads as under:

"Office Notes

S. Krishnaswamy & Uma N. adv. for applt. S.N. Bhat Adv. for C/R1 R2 served remain unrepresented RSA is ready in notice Both LCR"s received Post RSA for Admission before SJ on 16/7/14 (Both LCR"s kept below) (CH moved)

Sd/- 15/7/14"

12. There cannot be any dispute with regard to contents of Office Notes and a presumption arises that contents of same is to be true and correct.

13. As noticed hereinabove one of the prime ground which has been urged by Sri. Krishnaswamy, learned counsel appearing for review petitioners is that learned Judge who dictated the judgment on 16.07.2014 had not affixed his signature to the judgment and he had retired subsequently and after his retirement judgment has been released by Registrar and as such, it has to be presumed that learned Judge had affixed his signature subsequent to his retirement. To buttress his arguments he has relied upon a "print out" alleged to have been taken out from the website of this Court and has appended the same along with review petition. A perusal of same would indicate that it is a print out from the website of this Court and relates to information available with regard to status of certified copy applied for. A perusal of same would indicate that against column "Date of Order" it is indicated as 16.07.2014 and status of application is indicated as pending and column "Date Autograph Released" and "Date Decree Released" is indicated blank and as such, it has been contended that a presumption has to be drawn that judgment and decree was never signed and released by Hon"ble Judge as on the date of alleged print out.

14. Order XX of Code of Civil Procedure, 1908, is the Chapter which deals with judgment and decree. A bare reading of Rule (1) of Order XX CPC would indicate that Court after hearing the case would pronounce the judgment in open Court at once or as soon as thereafter as may be practicable and where judgment is pronounced on a future date Court can fix a day for said purpose to which due notice is to be given to parties or their pleaders or advocates.

15. Proviso, to Rule (1) of Order XX would indicate that where judgment is not pronounced at once every endeavour shall be made by the Court to pronounce such judgment from thirty (30) days on which the hearing date was concluded and where it is not practicable to do so on the ground of exceptional and extraordinary circumstances of the case, Court is empowered to fix the future date for pronouncing of judgment which shall not be ordinarily be beyond sixty

(60) days from the date on which hearing date was concluded and even on the future date on which day it pronounces the judgment notice is to be given to parties.

16. Rule (2) of Order XX CPC empowers a judge to pronounce the judgment written, but not pronounced, by his predecessor.

17. Rule (3) of Order XX CPC would indicate that judgment should be dated and signed by the Judge in open Court at the time of pronouncing it and, once signed, shall not be altered or added to, save as provided under Section 152 or on review.

18. Interpretation of Rule (3) of Order XX CPC came to be made by the Hon'ble Apex Court in the case of Chhajju Ram vs. Neki and OthersAIR 1922 112 (Privy Council) and held said Rule enables the Court to alter or add to a judgment so long as it is not signed. It has also been held that when judgment is pronounced in open Court parties act on the basis of it and signing is a formality to follow. It has been further held that ordinarily judgment is not delivered till hearing is complete and by listening to submissions of counsel and perusal of records a definite view is reached by the Court in regard to the conclusion. It has been held once that stage is reached and Court pronounces the judgment, same should not be reopened unless there being some exceptional circumstance or a review is asked for and is granted.

19. By referring to its earlier judgment in the case of Chhajju Ram vs. Neki and OthersAIR 1922 112 (Privy Council) it came to be held by Apex Court that when judgment is pronounced, parties present in Court would know the conclusion of matter and often on the basis of such pronouncement they proceed to conduct their affairs. It has been further held that if pronouncement in Court is not acted certainly litigants would be prejudiced, confidence in judicial process would be shaken. It has been held by the Hon'ble Apex Court as under:

"6. The Allahabad High Court framed its present set of Rules in 1952. They came into force on the 15th of September in that year. We are concerned with the following in Chapter VII dealing with the judgment and decree, namely Rules 1-4.

7. These rules provide for four different situations: (1) for judgments which are pronounced at once as soon as the case has been heard; (2) for those which are pronounced on some future date; (3) for judgments which are oral, and (4) for those which are written. These rules use the word "pronounced" in some places and "delivered" in others. Counsel tried to make capital out of this and said that a judgment had to be both "pronounced" and "delivered" and that they were two different things.

8. We do not intend to construe these rules too technically because they are designed, as indeed are all rules, to further the ends of justice and must not be viewed too narrowly; nor do we desire to curtail the jurisdiction which the Privy Counsel point out is inherent in courts to make good inherent defects caused by

accidents such as death. As this decision of the Judicial Committee was relied on in the arguments we will quote the passage which is relevant here. It is at page 295, of - Firm Gokal Chand-Jagan Nath vs. Firm Nand Ram Das-AtmaAIR 1938 292 (Privy Council) . The facts are not quite the same as here because the judgment was actually delivered in open court and both the judges who constituted the Bench were present and concurred in it. But before it could be signed, one Judge went on leave. The Rules required the judgment to be signed and dated at the time that it was pronounced. Their Lordships said-

"The Rule does not say that if its requirements are not complied with the judgment shall be a nullity. So starting a result would need clear and precise words. Indeed the Rule does not even state any definite time in which it is to be fulfilled. The time is left to be defined by what it is reasonable. The Rule from its very nature is not intended to affect the rights of parties to a judgment. It is intended to secure certainty in the ascertainment of what the judgment was. It is a rule which Judges are required to comply with for that object. No doubt in practice Judges do so comply, as it is their duty to do. But accidents may happen. A Judge may die after giving judgment but before he has had a reasonable opportunity to sign it. The Court must have inherent jurisdiction to supply such a defect. The case of a Judge who has gone on leave before signing the judgment may call for more comment, but even so the convenience of the Court and the interest of litigants must prevail. The defect is merely an irregularity. But in truth the difficulty is disposed of by sections 99 and 108 , Civil Procedure Code."

9. That was a civil case. This a criminal one. But Section 537 of the Criminal Procedure Code does much the same thing on the criminal side as sections 99 and 108 do on the civil. The principle underlying them is the same. But even after every allowance is made and every effort taken to avoid undue technicality the question still remains what is a judgment, for it is the "Judgment" which decides the case and affects the rights and liberties of the parties; that is the core of the matter and, as the Privy Council say, the whole purpose of these rules is to secure certainty in the ascertainment of what the judgment was. The question assumes more importance than ever in a criminal case because of section 369 of the Criminal Procedure Code which provides that-

"Save as otherwise provided by this Code or by any other law for the time being in force or, in the case of a High Court, by the Letters Patent or other instrument constituting such High Court, no Court, when it has signed its judgment, shall alter or review the same except to correct a clerical error."

20. In the instant case as already noticed hereinabove review petitioners are contending that on account of status of copy application in the website of the Court indicating that judgment is not yet released a presumption is required to be drawn, that Judge who rendered the judgment in RSA No. 1670/2013 and who had since retired on 01.09.2014 had not affixed his signature. Said contention requires to be considered with utmost circumspection for reasons

more than one; firstly, entries in order sheet is presumed to be true, correct and are depicting factual matrix, until and unless it is rebutted by any other evidence and established that such entries are contrary to facts. In the instant case, review petitioners have not ventured to dredge in this direction. However, they are admittedly taking umbrage under the copy print out taken from website of this Court produced along with review petition, which indicates that in column "Date Autograph Released" and column "Date Decree Released" being blank as their Sheet Anchor to contend that on the date Hon"ble Judge retired the judgment had not been signed. At the cost of repetition it requires to be noticed and held that mere non filling up of columns in the website relating to status of application, no presumption can be drawn that learned Judge who rendered the judgment in open Court had not affixed his signature.

21. That apart, in the facts obtained in the present case it would unmistakably point out to the fact that judgment was pronounced in open Court and signed by Hon"ble learned Judge on 16.07.2014 itself.

22. It requires to be further noticed that Chapter XVI of the High Court of Karnataka Rules, 1959 and in particular Rule 2 would indicate that order sheet in every case would contain two parts. First part relates to indicating the names of parties, Advocates appearing for parties and the like, vide Sub-Rule (2) of Rule 2. Sub-Rule (3) of Rule 2 would indicate that Part II of order sheet would consist of two separate divisions:--

"A) process matters; and

B) preparation of records of the case."

Part II which contains office notes, orders of the Registrar in all matters in relation to the service of processes and the preparation of records of the case, which is maintained.

23. Sub-Rule (iv) would indicate that progress sheet of order sheet is maintained in the manner prescribed under Rule 4 and Sub-Clause (xi) and it would also indicate the date of pronouncement of judgment or order.

24. Keeping these rules in mind when the case records of second appeal are perused it would indicate that judgment was pronounced in open Court and it was dictated on 16.07.1987 in open Court after transcription and correction and learned Judge has affixed his signature on the day indicated in the judgment itself. As soon as the judgment is delivered it becomes operative and it would be pronouncement of the Court. Law then provides the manner in which it should be authenticated, signed, sealed etc, and rules regarding this may differ but they do not form the essence of matter and if there is irregularity in carrying them out it is curable. It has been held by Hon"ble Apex Court in the case of Chhajju Ram vs. Neki and OthersAIR 1922 112 (Privy Council) at page 196 to the following effect:

"(10) In our opinion, a judgment within the meaning of these sections is the final

decision of the Court intimated to the parties and to the world at large by formal "pronouncement" or "delivery" in open Court. It is a judicial act which must be performed in a judicial way. Small irregularities in the manner of pronouncement or the mode of delivery do not matter but the substance of the thing must be there: that can neither be blurred nor left to inference and conjecture nor can it be vague. All the rest - the manner in which it is to be recorded the way in which it is to be authenticated, the signing and the sealing, all the rules designed to secure certainty about its content and matter - can be cured; but not the hard core, namely the formal intimation of the decision and its contents formally declared in a judicial way in open Court. The exact way in which this is done does not matter. In some Courts the judgment is delivered orally or read out, in some only the operative portion is pronounced, in some the judgment is merely signed after giving notice to the parties and laying the draft on the table for a given number of days for inspection.

(11) An important point therefore arises. It is evident that the decision which is so pronounced or intimated must be a declaration of the mind of the Court as it is at the time of pronouncement. We lay no stress on the mode or manner of delivery, as that is not of the essence, except to say that it must be done in a judicial way in open Court. But however it is done it must be an expression of the mind of the Court at the time of delivery. We say this because that is the first judicial act touching the judgment which Court performs after the hearing. Everything else up till then is done out of Court and is not intended to be the operative act which sets all the consequences which follow on the judgment in motion. Judges may, and often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however heavily and often they may have been signed. The final operative act is that which is formally declared in open Court with the intention of making it the operative decision of the Court. That is what constitutes the "judgment".

(12) Now up to the moment the judgment is delivered Judges have the right to change their mind. There is a sort of *locus poenitentiae*", and indeed last minute alterations often do occur. Therefore, however much a draft judgment may have been signed beforehand, it is nothing but a draft till formally delivered as the judgment of the Court. Only then does it crystallise into a full fledged judgment and become operative. It follows that the Judge who "delivers" the judgment, or causes it to be delivered by a brother Judge, must be in existence as a member of the Court at the moment of delivery so that he can, if necessary, stop delivery and say that he has changed his mind. There is no need for him to be physically present in court but he must be in existence as a member of the Court and be in a position to stop delivery and effect an alteration should there be any last minute change of mind on his part. If he hands in a draft and signs it and indicates that he intends that to be the final expository of his views it can be assumed that those are still his views at the moment of delivery if he is alive and in a position to change his mind but takes no steps to arrest delivery.

But one cannot assume that he would not have changed his mind if he is no longer in a position to do so. A Judge's responsibility is heavy and when a man's life and liberty hang upon his decision nothing can be left to chance or doubt or conjecture; also, a question of public policy is involved. As we have indicated, it is frequently the practice to send a draft, sometimes a signed draft, to a brother Judge who also heard the case. This may be merely for his information, or for consideration and criticism. The mere signing of the draft does not necessarily indicate a closed mind. We feel it would be against public policy to leave the door open for an investigation whether a draft sent by a Judge was intended to embody his final and unalterable opinion or was only intended to be a tentative draft sent with an unwritten understanding that he is free to change his mind should fresh light drawn upon him before the delivery of judgment.

(13) Views similar to this were expressed by a Full Bench of the Calcutta High Court consisting of nine Judges in the year 1867 in - "Mahomed Akil v. Asadunnisa Bibee", 9 WR 1 (FB) (B). In that case, three of the seven Judges who constituted the Bench handed in signed judgments to the Registrar of the Court. Before the judgment could be delivered, two of them retired and one died. A Full Bench of nine Judges was convened to consider whether the drafts of those three Judges could be accepted as judgments of the Court. Seton -Kerr, J. who had heard the case along with them, said -

"Certainly as far as I can recollect, they appeared to have fully made up their minds on a subject which they had very seriously considered, and on which they had had abundant opportunities of forming a final determination. I am, however, not prepared to say that they might not on further consideration have changed their opinions...." (p-13)

Despite this, all nine Judges were unanimous in holding that those three opinion could not be regarded as judgments in the formal sense of the term. In our opinion, Jackson, J. expressed the law aright in these words:

"I have however always understood that it was necessary in strict practice that judgments should be delivered and pronounced in open Court. Clearly, we are met today " for the first and only time" to give "judgment" in these appeals; and it appears to me, beyond question, that Judges who have died or have retired from the Court cannot join in the judgment which is to be delivered today, and express their dissent from it." (p-5)

Peacock, C.J. pointed out at page 30 -

"The mere arguments and expressions of opinion of individual Judges who compose a Court, are not judgments. A judgment in the eye of the law is the final decision of the whole Court. It is not because there are nine Judges that there are nine judgments. When each of the several Judges of whom a simple Court is composed separately expresses his opinion when they are all assembled, there is still but one judgment, which is the foundation for one decree. If it were otherwise, and if each of the memoranda sent in on the present occasion were a

judgment, there would be nine judgments one case, some deciding one thing and some another, and each Judge would have to review his own judgment separately, if a review should be applied for."

We do not agree with everything which fell from the learned Chief Justice and the other Judges in that case but, in our opinion, the passages given above embody the true rule and succinctly explain the reasons for it.

(14) As soon as the judgment is delivered, that becomes the operative pronouncement of the Court. The law then provides for the manner in which it is to be authenticated and made certain. The rules regarding this differ but they do not form the essence of the matter and if there is irregularity in carrying them out it is curable. Thus, if a judgment happens not to be signed and is inadvertently acted on and executed, the proceedings consequent on it would be valid because the judgment, if it can be shown to have been validly delivered, would stand good despite defects in the mode of its subsequent authentication."

25. In the light of above referred authenticative pronouncement, Hon"ble Apex Court when facts on hand are examined it does not even remotely suggest that judgment rendered by Hon"ble Justice Sri. Jawad Rahim has been signed or signature to the judgment has been affixed subsequent to the retirement of Hon"ble Judge on 01.09.2014. Said contention is bereft of facts and also untenable and same is liable to be rejected and accordingly, it stands rejected.

26. In so far as contention with regard to judgment suffering from error apparent on the face of record when examined in the background of grounds urged in the review petition namely, learned Judge has not considered, entries found in the revenue records which undisputedly stood in the name of review petitioners and as such, a presumption under Section 132 of Karnataka Land Revenue Act, 1964, had to be drawn and same had been ignored by the learned Judge while disposing of such appeal and as such, it amounts to an error apparent on the face of record, deserves to be rejected and it does not detain this Court for long to brush aside the said contention as it is erroneous and this very contention had been raised by the review petitioners before the Coordinate Bench of this Court at the time of hearing of second appeal and on scrutiny and examination of said plea it came to be negatived by this Court and finding recorded by the Court in this regard reads thus:

"12. Assailing the finding of the appellate Judge, xxxx against the defendants. The defendants had disputed such claim and had substantiated factum of possession through documentary evidence that is revenue records. As revenue records requires presumption of genuineness that the...defendants were in possession of the property in question. He would submit that learned appellate judge did not apply his mind to the fact, on the other hand held as the defendants had not proved palupatti i.e., division of property among the family members the defence failed. He submits that the village secretary had tendered evidence before the trial Court that revenue entries made on the basis of

palupatti and that was sufficient evidence to establish rights of the defendants."

27. After considering this plea of appellants Coordinate Bench of this Court has opined as under:

"14. This is a case where the defendants had xxxx. The burden of proof upon her had lessen. As regards revenue entries concerned, learned counsel submits that once revenue entries are made, there is presumption of its validity and therefore the Courts could not have ignored it. As can be seen from the provisions of the Land Revenue Act, Section 132 sub-section (3) deals with the situation which envisages that

"after disposal of any case in which a certified copy of any such entry has been recorded, the Court shall communicate to the Deputy Commissioner any error appearing in such entry and any alteration therein that may be required by reason of the decree or order and a copy of such communication shall be kept with the record. The Deputy Commissioner shall in such case cause the entry to be corrected in accordance with the decree or decision of the Court, so far as it adjudicates upon any right required to be entered in the Record of rights of register of mutation. The provisions of this sub-section shall apply also to an appellate or revisional Court:

Provided that, in the case of an appellate or revisional decree or order passed by the High court or the Supreme Court, the communication shall be made by the original Court from which the appeal lay or the record was called for"

15. Therefore, section 132(3) clearly mandates that revenue entries are subject to decision of the Court. In the instant case the appellate court finds that plaintiffs plea that revenue entries were changed or mutated by defendants against her consent nullifies the presumption under section 133 of the Land Reforms Act. The appellate Court while adjudicating on the right put forward by the plaintiff has held that she was entitled to be declared as absolute owner and in terms of which had passed the decree. Therefore, finding of the appellate Court shall be the basis for revenue entry and not a case otherwise. In this view, submission of the learned counsel that revenue entries obtained by them should be taken as proof of their possession is difficult to accept. Even if they are in possession it is with plaintiff who is their mother. It will not be adverse to her.

16. With regard to legal proposition urged by the defendants that section 6(2) of the Act applies necessary reference is to be made to section 4 of the Act which negates such pleas. It reads thus:

"14. Property of a female Hindu to be her absolute property:-- (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner."

17. Thus it admits of no doubt that section 14 applies and that section 6(2) of the Act. Consequently plaintiff is to be held as absolute owner.

18. I find no merit to admit this appeal. Hence, the appeal is rejected at the stage of admission."

28. In view of above referred finding having been recorded by the Court, by no stretch of imagination it can be inferred that contention now raised in review was not considered, so as to give scope for construing the judgment rendered in second appeal suffering from an error apparent on the face of record so as to enable this Court to exercise review jurisdiction or giving scope for reviewing the judgment and decree rendered by Coordinate Bench of this Court.

29. This is a classic case where an unrighteous litigant has attempted to contend that learned Judge who had rendered the judgment in RSA No. 1670/2013 on 16.07.2014 did not affix his signature before the date of his retirement, which was on 01.09.2014. As noticed hereinabove and at the cost of repetition, entries found in the order sheet are presumed to be true and said stand deserves to be rejected.

30. Statement of fact, as to what transpired at the hearing as found in the records maintained in accordance with extant Rules are conclusive proof of facts. Hence, it is not open to the review petitioners to contend that judgment rendered in RSA No. 1670/2013 on 16.07.2014 was signed thereafter or in other words, signature was affixed by the learned Judge after his retirement and said contention not only deserves to be rejected but this type of attitude exhibited by litigants required to be curbed with iron hand and in the instant case, if review petitioners are mulcted with exemplary costs it would suffice and meet the ends of Justice.

31. At this juncture, Sri. Krishnaswamy, learned counsel appearing for review petitioners would fairly submit that review petitioners being in financial distress they need not be mulcted with any exemplary costs and he would prevail upon the petitioners to deposit a sum of Rs. 5,000/- voluntarily in the registry of this Court towards cost and his submission may be taken note of while imposing costs on Review Petitioner. His fair submission is placed on record.

32. For the reasons indicates hereinabove, I proceed to pass the following:

"ORDER

i. Review petition is hereby dismissed with costs.

ii. Review petitioners are directed to pay cost of Rs. 5,000/- to respondent No. 1 to the extent of 50% and balance 50% shall be paid to Karnataka Legal Services Authority.

iii. Said costs shall be deposited within twelve (12) weeks from today, failing which registry shall issue certificate to Karnataka Legal Services Authority and first respondent, to enable them to recover the same as arrears of land revenue."