

(1981) 07 KAR CK 0049

In the Karnataka High Court

Case No : Civil Revision Petition No. 699 of 1981

P.N. Krishnamoorthi Bhat

APPELLANT

Vs

Shivaprasad and Another

RESPONDENT

Date of Decision : 03-07-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3B, 151, 152
Mysore Court-fees and Suits Valuation Act, 1958 — Section 41 (2)

Citation : AIR 1982 Kar 173 : (1982) ILR (Kar) 128

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : U.N. Ramanand, for the Appellant; V. Krishna Murthy, for S. Vijayashankar, for the Respondent

Judgement

1. This civil revision petition is directed against the order dated 28th January 1981 passed by the learned Civil Judge, Udupi, allowing I. A. No. VI filed by the respondents in O. S. No. 28/78. That is an application filed by the respondents for amendment of the decree passed in the aforesaid suit on the basis of a compromise. The learned Civil Judge has allowed the application in its entirety

2. The Petitioner has resisted the application on various grounds. The application for amendment of the decree has been filed under the following circumstances. The respondents have filed the aforesaid O. S. No. 28 of 1978 against the petitioner for possession of the suit Schedule properties which consist of movable as well as immovable properties. The reliefs sought for in the plaint were as follows :

"1. Directing the defendant to Vacate and deliver possession of the under mentioned W. W and "C" schedule pretnlses with moveables to the 1st plaintiff, with future mesne profits at the rate of Rs. 575/- -from this date till the date of delivery of possession. This relief is valued at Rs. 6,900/- being the rental value for one year as provided for u/s. 41(2) of the Karnataka Court-fees Act XVI of 1958.

2. Directing the defendant to pay personally and also as Yejaman and Adalthedar of his family from out of his family assets also, the following sums with future interest at 6 per cent per annum from this date till payment:

(a) Arrears of rent due from the defendant as narrated in the plaint for the period from 21-7-1977 to 20-9-1977 at Rs. 575/- per month is Rs. 1150 -. No past interest on this till this date is claimed and is given up.

(b) Profits due from the defendants narrated in the plaint from 21-9-1977 up to this date at Rs. 575/- per month is Rs. 3258-33.

(c) Cost of Lawyer's notice dated 9-8-1977 issued to the defendant Rs. 25/-.

3. Directing the defendant to pay to the 1st plaintiff the cost of this suit.

4. Directing the defendant to render such other and favourable reliefs to the plaintiffs as this Court thinks fit and necessary in the circumstances of the case."

There was a compromise in the suit " Pursuant to the recording of compromise, the decree has been drawn up. The contents of the decree are as follows,

"DECREE: This suit coming on this day for final disposal before me in the presence of Sri P. N. K. Rao and Sri A. S. N. Hebbar, Advocates for the plaintiffs and of Sri R. S. Kedlaya, Advocate for the Defendant and the parties having filed a joint memo praying for a decree in terms thereof this court in view of the terms of the said joint memo, doth hereby order and decree as follows.

1. That the defendant do deliver the vacant possession of the Plaintiff "A" and "C" Schedule premises and also deliver the "B" Schedule moveables to the 1st Plaintiff V. K. Shetty on or before 31-3-1980.

2. That it is ordered and decreed, that at the time of the surrender of the plaintiff "A" and "C" Schedule premises and delivery of the plaintiff "B" Schedule moveables by the defendant, the plaintiffs shall at their option pay the defendant or adjust towards the decretal amount outstanding from the defendant the sum of Rupees 11,000/- (Rs. Eleven thousand) being the value of the improvements of the defendant and Rs. 1000/- being the advance deposited by him with the plaintiffs before taking possession.

3. That it is hereby ordered and decreed that the defendant personally, as yejaman and adalitar of his family and also from out of his family assets do pay to the 1st plaintiff a sum of Rupees 11,333-33/- towards relief of possession, arrears of rent, mesne profit and cost of registered notice, with future interest thereon at the rate 6% from 13-3-1978 till the date of payment.

4. That the defendant do pay to the 1st plaintiff future mesne profits at the rate of Rs. 575/- per month from 14-3-1978 till the date of delivery of possession.

5. That the defendant do also pay to the 1st Plaintiff Municipal taxes from 13-3-1978 till the date of delivery of possession.

6. That it is further ordered and decreed that the conditional attachment effected already in respect of the Immovable properties in I. A. No. III in this suit be and is hereby made absolute.

7. That the defendant do also pay to the 1st plaintiff a sum of Rs. 1108-07 towards costs of this suit; and

8 . That half of the Court fee paid on the plaint be refunded to the plaintiffs".

5. The respondents, on coming to know that the decree has not been drawn in conformity with the terms of the compromise have filed the aforesaid application for deletion and substitution of cls. 1 to 3 by new cls, 1. to 3 and for addition of a new clause; as Clause No. 8. It is this application that has been allowed in its entirety.

6. Shri Ramanand, learned counsel for the petitioner, submits that since the decree in question is a consent decree passed in pursuance of the compromise arrived at by the parties, it is not open for the Court to amend that decree at the instance of only one of the Parties to the compromise without the consent of the other party; that it is not open for the decree-holder to relinquish certain portion of the compromise decree so as to make the decree enforceable; that the effect of the order of the lower Court is to completely change the decree, as such, it is impermissible in law.

7. On the contrary, it was submitted on behalf of the respondents that even though in the suit, prayer No. 2 was made against the petitioner not only in his individual capacity but also as the Yejaman or the Adalitar of the joint family, but when the compromise was arrived at, it was only between the parties to the suit and the defendant-petitioner entered into a compromise only in his individual capacity and not as the Karta of the joint family and it was because of this, the other members of the joint family of the petitioner defendant were not notified as required by R. 3B of O. 23 of the Civil P. C. It was also further contended that Clause 3 of the compromise decree drawn up by the Court pursuant to the compromise was a severable portion of the decree and if that were to be deleted, it would not cause any injury to the petitioner inasmuch as by reason of deletion of Clause 3 of decree, the liability of the petitioner under the compromise decree would neither diminish nor decrease. The terms of the compromise did not enable the Court to draw a decree so as to make the petitioner-defendant liable as the Yejaman of the joint family and thereby to bind the other members of the joint family; therefore, the lower Court was justified in allowing the amendment application. However, when it was brought to the notice of the learned counsel for the respondents that it was not necessary to allow the entire application and a mere deletion of Clause 3 from the decree drawn by the Court pursuant to the compromise was sufficient as that would bring the decree in conformity with the compromise the learned counsel for the respondents readily accepted the same and submitted that instead of allowing the entire application, the lower Court would have deleted only cl, 3 from the decree.

8. The contention of Sri Ramanand, learned counsel for the petitioner, that the consent decree passed pursuant to the compromise cannot at all be allowed to be amended at the instance of only one of the parties without the consent of the other party cannot be accepted in the instant case for the simple reason that by the said amendment the scope and effect of the compromise arrived at by the parties is not affected in any manner. In other words, the compromise is not altered. The decree which is not in conformity with the compromise recorded in the suit can be amended so as to bring the decree in conformity with the compromise. Since there was no compromise in the suit with the defendant in his capacity as the Yejaman or Adalitar of the joint family and the compromise was between the plaintiffs and the defendant in his individual capacity; therefore the second prayer in the plaint could not have been included in the decree as it could not go along with the compromise arrived at by the parties. It is to be noticed that if really the compromise was entered into by the petitioner-defendant in his capacity as the Yejaman or the Kartha of the joint family, the Court could not have recorded it without notice to the other members of the joint family of the petitioner defendant. The fact that the parties to the compromise did not insist on notifying the members of the joint family of the petitioner-defendant and they only entered into a compromise and got it recorded would go to show that the parties to the compromise did not intend to fix the liability under the decree on the members of the joint family of the defendant. Therefore, there is no difficulty in inferring that the compromise between the plaintiffs and the petitioner-defendant was in the individual capacity of the petitioner-defendant and not as the Yejaman of the joint family.

9. Further, Clause 3 of the decree is completely severable. It does not affect or alter the decree if the same is deleted from the decree. By Clause 3, the liability under the decree is fixed on the defendant in his capacity as the Yejaman of the joint family which the parties at the time of compromise did not intend. Therefore, the contention of the learned counsel for the petitioner that the order amounts to altering the terms of the compromise, as such it cannot be done without the consent of the other side, cannot be accepted. By deleting clause 3, the compromise is not in any way altered. It is an undisputed proposition of law that the Court when it passes a decree on the basis of a compromise it must be strictly in accordance with the terms of the compromise. As in the instant case the compromise was not arrived at with their defendant in his representative capacity and the compromise was not recorded after complying with the requirements of R. 3B of O. 23 of the C. P. C. the Compromise in question could not have been considered as the one arrived at with the defendant in his representative capacity. Therefore, while drawing the decree, the Court could not have included prayer No. 2 contained in the plaint, as the parties to the suit did not effect the compromise to that effect. Hence, the first contention of the petitioner cannot be accepted.

10. The second contention that it is not open for the decree-holder to relinquish a portion of the decree does not really survive in view of the finding recorded by

me on the first contention of the petitioner. But, nevertheless, this contention also cannot be accepted for the simple reason that it is always open to the decree-holder to give up a portion of the decree; provided by doing so, he does not either pass on any higher burden to the judgment-debtor or increase the burden of the judgment-debtor or does not get himself relieved of any of the conditions of the decree which he is required to perform. Therefore, it is always open for the decree-holder to apply for deletion of a portion of the decree as long as it does not affect the decree as such and also the interest of the judgment-debtor. In this case, as it is already pointed out, Clause 3 of the decree is a severable portion and by deleting that portion, the decree is not in any way affected and it remains executable and at the same time the judgment-debtor-petitioner is also not affected in any manner. Hence, the 2nd contention also cannot be accepted.

11. As a part of the 2nd contention, it is submitted by the learned counsel for the petitioner that by allowing relinquishment (by deleting Clause 3 of the decree), the decree is made executable; therefore, the Court has no jurisdiction to allow that. This contention cannot also be accepted because as long as the portion of the decree which is sought to be given up is severable and it does not either affect the decree or the judgment-debtor, it is always open to the Court to permit the decree-holder to give up that portion of the decree. Therefore, the Court cannot be said to have acted illegally or without jurisdiction in allowing deletion of Clause 3 from the decree.

12. It was also submitted by the learned counsel for the petitioner that the proposed amendment did not either fall under Ss. 151 or 152 or 153 of the Code therefore, the Court could not have allowed it.

13. When it is the case of the respondents that the decree drawn pursuant to the compromise is not in conformity with the compromise, it becomes the duty of the Court to look into the matter and to find out whether the decree drawn is in conformity with the compromise. While doing so, if it finds that it is not drawn in accordance with the compromise, it is always open for the Court to rectify the mistake so as to bring the decree in conformity with the compromise arrived at by the parties; therefore, it is not possible to hold that the Court has no power under S. 151 of the C. P. C. to rectify such mistakes. If it is held that there is no such power, then it will amount to denial of justice to the parties inasmuch as in a case where the decree is not drawn in accordance with the compromise; if it is not amended so as to bring the decree in conformity with the compromise, it will result in great miscarriage of justice and the parties would be deprived of the fruits of the compromise arrived at by them and this all happens because of the fact that the Court has not drawn the decree in accordance with the terms of the compromise. In a case like this, the Court, has power to correct its errors so as to avoid an injury being caused to the parties. Therefore, the Court has power to rectify the defects or mistakes or errors in a compromise decree so as to bring the decree in conformity with the compromise. Of course, the lower Court ought

not to have allowed the application in its entirety since what was required was only to delete Clause 3 of the decree.

14. Accordingly, this civil revision petition is allowed in part and the order of the lower Court is modified. It is made clear that the application for amendment of the decree filed by the respondents stands allowed only to the extent of deletion of Cl.3 of the decree drawn by the Court below pursuant to compromise. The application stands rejected in other respects.

15. Several other contentions were also urged by the learned counsel for the petitioner regarding the legality and executability of the compromise decree. It is not necessary to go into those questions since the matter comes up before this Court only with regard to the amendment of the decree.

16. Revision partly allowed.