
(2001) 01 KAR CK 0106

In the Karnataka High Court

Case No : Regular Second Appeal No. 740 of 1997

Puttabasappa since dead by L.Rs. and Others

APPELLANT

Vs

Girijamma and Others

RESPONDENT

Date of Decision : 18-01-2001

Acts Referred:

Citation : (2001) 01 KAR CK 0106

Hon'ble Judges : V. Gopala Gowda, J.

Bench : Single Bench

Judgement

V. Gopala Gowda, J.—For the sake of convenience, the parties in this appeal are referred to as per their rank in the trial Court.

2. This appeal is filed by Defendant Nos. 2 to 4 in O.S. No. 65 of 1984 filed by Plaintiffs/Respondents 1 and 2 for partition and separate possession of the suit schedule properties. The trial Court partly decreed the suit. Aggrieved by the same, the Plaintiffs filed R.A. No. 14 of 1994. The first appellate Court allowed the appeal, set aside the judgment and decree of the trial Court and decreed the suit declaring that Plaintiffs are entitled to 1/4th share in all the suit schedule properties. The same is challenged in this second appeal.

3. When the appeal was pending before the first appellate Court, the 6th Respondent died. However, without impleading his legal representatives the appeal was prosecuted. Hence, while admitting this appeal, the third substantial question of law was framed as under:

Whether the impugned judgment and decree of the lower appellate Court is to be considered as nullity since the said judgment was passed against Defendant No. 6, a dead person and whether the matter is to be remanded to the lower appellate Court for fresh disposal?

4. In this appeal I.A.II was filed for impleading the legal representatives of deceased 6th Defendant and the same had been allowed by this Court on

17.9.1999. In the case of The Special Land Acquisition Officer v. Sanjeevappa 1979 (2) KLJ 376 this Court has held as under:

Where pending a suit or appeal, a party thereto dies, but in ignorance thereof a decree is passed and an appeal is preferred against it, and the question of substitution of heirs or setting aside the abatement is raised in appeal, the Court which is competent to deal with it is the Court in which the abatement took place and not the Court of appeal.

The appellate Court should set aside the decree of the Court below and remand it to the Court below to deal with the application for setting aside the abatement and substituting heirs of the deceased.

Similar is the view taken by the Calcutta High Court in the case of Kanailal Manna and Others Vs. Bhabataran Santra and Others, . In view of the law laid down in the aforesaid decisions, this Court ought not to have allowed I.A. II to bring the legal representatives of deceased 6th Defendant on record. But, this Court has wrongly allowed the said application. Hence the said order dated 17.9.1999 is hereby recalled.

5. As on the date of passing of the judgment and decree under challenge by the first appellate Court, the 6th Defendant was not alive and his legal representatives had not been brought on record. Soon after the death of 6th Defendant the appeal had been abated. Therefore, the judgment and decree of the first appellate Court are nullity in the eye of law as the same are passed against a dead person without bringing his legal heirs on record. Hence, as per the law laid down in the decisions referred to above, the judgment and decree of the first appellate Court have to be set aside and the matter has to be remanded to that Court for fresh disposal.

6. For the foregoing reasons, this appeal is allowed setting aside the judgment and decree of the first appellate Court. The matter is remanded to the lower appellate Court for fresh disposal in accordance with law. It is open to the Plaintiffs to file necessary application for impleading the legal representatives of deceased 6th Defendant before the lower appellate Court.