

(1984) 09 KAR CK 0005

In the Karnataka High Court

Case No : Civil Revision Petition No. 1664 of 1979

Ramagouda Rudregowda Patil and Others

APPELLANT

Vs

Lagmavva and Others

RESPONDENT

Date of Decision : 05-09-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 18, 54

Citation : AIR 1985 Kar 82

Hon'ble Judges : P.A. Kulkarni, J

Bench : Single Bench

Advocate : S.S. Ujianavar, for the Appellant; N.A. Mandacri, for the Respondent

Judgement

1. This is a revision by the defendants against the order dt. 19-1-1979, passed by the Principal District Judge, Belgaum, in Execution Appeal No. 4 of 1977, reversing the order dt. 11-4-1977, passed by the Additional Civil Judge, Chikodi, in D. F. Original Suit No. 1.34 of 1972, dismissing the decree final proceedings.

2. The parties have been referred to in the course of this order with reference to their position in Original Suit No. 4 of 1924.

3. The plaintiffs in Original Suit No. 4 of 1924 are the decree-holders. The defendants in the said suit are the judgment- debtors.

4. The plaintiffs filed the suit in O. S. No. 4 of 1924 in the Court of the Subordinate Judge, First Class, Belgaum, for partition and possession of their share in the two suit schedule agricultural lands and a house. The said suit resulted in a compromise, as per the compromise decree dated 24-3-1926. Thereafter, the plaintiffs filed Execution Petition No. 368 of 1926 on the file of the Subordinate Judge, First Class, Belgaum, for sending the papers to the Collector, under S. 54 of the Civil P.C., for partition and separate possession. The Collector, it appears, refused to execute the decree, stating that the lands being sanadi lands could not be partitioned and they could not be divided by metes and bounds and sent back the papers to the Court. The Subordinate Judge, First

Class, Belgaum, dismissed the execution on 24-9-1942.

5. On 25-11-1965, the decree-holders filed D. F. O. S. No. 4 of 1924 for transmitting the papers to the Collector under S. 54, C.P.C. for partition and separate possession of the two items of lands. On the constitution of the Court of Civil Judge in Chikodi, the matter was transferred to the Court of the Civil Judge, Chikodi. The Civil Judge, Chikodi, numbered the same as D. F. O. S. 134 of 1970.

6. The defendants-judgment-debtors resisted the said execution contending that the order of the Collector in the course of the proceedings in Ex.Case No. 368 of 1926 that the lands being sanadi lands, could not be partitioned and divided by metes and bounds, was not challenged by the decree-holders and it had become final and thus the present execution was barred by res judicata. They also raised a contention that the Subordinate Judge, on the receipt of the report of the Collector, had dismissed the execution in 1942 and that dismissal order had not been challenged by preferring revision of appeal and therefore the dismissal of previous execution, operated as res judicata. They also urged that the present execution petition was barred by limitation as the decree was of the year 1926.

7. It is now a well settled principle of law that in the case of the execution of the decrees pertaining to partition and separate possession of agricultural lands assessed to Revenue, the Civil Court only declares the shares of the parties and the authority concerned has to effect partition or division by metes and bounds, as envisaged by S. 54 of C.P.C. Collector is the authority concerned to effect partition. Once the papers are sent to the Collector, the Civil Court has no control over the proceedings taken by the Collector. The Civil Court cannot direct the Collector to effect partition in a particular manner after the papers were sent to him. Therefore, S. 54, C.P.C. makes it absolutely clear that the execution is not at all contemplated in the case of decrees for partition and division of agricultural lands. What the Civil Court has to do is to -transmit the papers to the Collector for actual partition and possession. Therefore all execution petitions are to be filed in the Civil Court requesting the Court to transmit the papers to the Collector for partition and possession of agricultural lands. They are not, in any sense of the term, execution petitions. They are only in the form of request to the Court to do its duty as enjoined on it by S. 54, C.P.C. Therefore, the lower appellate Court rightly held that the execution petitions filed in such cases are only requests or reminders to the Court to send the papers to the Collector to effect the partition.

8. Learned counsel Sri Ujjannavar urged that the decree in question was a compromise decree and there was nothing in it to show as to whether any plea regarding the impartibility of agricultural lands had been raised or not by the defendants and as to how that plea was met by the Court. But, the compromise decree, as it is, is as good a decree passed on merits by the Court. Therefore, it follows that both the parties entered into the compromise with the full belief and knowledge that the lands were family lands and they could be divided and partitioned.

9. Sri Ujjannavar also urged that in the previous Execution Case No. 368 of 1927, the Collector was of the opinion that the lands being sanadi lands, could not be partitioned. According to him, the Collector, taking such a view, sent back the papers with his report, to the Court holding that partition could not be effected at all. Sri Ujjannavar then urged that in the decision of the Collector had not been challenged by preferring any appeal or revision, to the hierarchy of authorities mentioned in the Revenue Code, it cannot be re-agitated or re-opened now again.

10. Under S. 54 and O.20, R. 18, C.P.C., the only duty of the Collector, now called as the Deputy Commissioner, is to effect partition or division by metes and bounds in accordance with law, if any for the time being in force, relating to partition or separate possession of shares of such estate. The word "partition" used in S. 54 or O.20; R. 18, in my opinion, means that the partition is not confined to mere division of the lands concerned into the requisite parts, but also includes the delivery of shares to the respective allottees. To elaborate further, the word "partition" means actual division or partition by metes and bounds and handing over possession of the shares to the parties.

11. As an instance of law relating to partition, one will have to refer to the provisions of the Prevention of Fragmentation and Consolidation of Holdings Act and the Land Revenue Act and the Rules. If the Collector thinks that actual division by metes and bounds is not possible on account of the provisions of the Prevention of Fragmentation and Consolidation of Holdings Act, he will have to follow the procedure laid down by the Act in such cases. In fact the Prevention of Fragmentation and Consolidation of Holdings Act, lays down procedure in such cases. Therefore, this is the law within the meaning of S. 54, C. P.C. relating to partition or separate possession of shares. The law relating to partition in S. 54 or O.20, R.18, C.P.C. does not refer to the nature of the property to be divided. Therefore, S. 54, C.P.C., in my opinion, does not enable the Deputy Commissioner, to decide the question as to whether the agricultural lands in question are impartible or partible, That is the duty of the Civil Court and not of the Deputy Commissioner.

12. This Court, in the decision in Ramachandra Srinivasa Kulkarni v. Rzanakrishna Krishna Kulkarni (1967) 1 Mys LJ 97 : AIR 1968 Mys 11 has clearly stated :

"But the order made by the Collector in the case before us concerned itself with an objection to the partition which was directed by the Civil Court. That objection has been raised before the executing Court and had been overruled, An appeal from that order had also been dismissed. All that the Collector had, therefore, to do was to proceed to make a partition and, it was entirely beyond his competence when making a partition under S. 54 of the Civil P.C. to listen to an objection which had been repelled by the Civil Court which had the competence to adjudicate upon it."

Hence, it is clear that it is not within the jurisdiction of the Deputy Commissioner to consider the question as to whether the lands are partible or impartible. That is the sole and exclusive jurisdiction of the Civil Courts. The nature of the property viz. whether it is partible or impartible is not covered by the phrase "the law for the time being in force, relating to partition as occurring in S. 54, C.P.C. Therefore, the order passed by the Collector in the previous execution that the lands being sanadi lands could not be partitioned, is also without jurisdiction. It is a nullity in the eye of law. There is no necessity to go in revision or appeal against such an order. That is also the view taken by this Court in Ramachandra's case. Therefore, the argument of learned counsel Sri. Ujjannavar that the Order of the Collector in the previous execution having not been challenged, barred the present execution petition, cannot be accepted at all.

13. He then urged that the Civil Court itself had dismissed the petition Ex. No. 368 of 1926 on the receipt of the papers from the Collector along with his report. According to him, the dismissal of the previous execution barred the present execution at least by the principles of res judicata. As already stated above by me, the execution petition is a misnomer in such cases. It is only a letter of request. Its dismissal does not mean that there was any judicial decision on merits. Therefore, the dismissal of the previous execution petition does not operate as res judicata and it does not bar the present execution.

14. Learned counsel Sri Ujjannavar then urged that the Collector, either rightly or wrongly held that the lands are incapable of division. Sanadi lands are the lands the enjoyment of which is given to the holder person doing the sanadi service. What is done in such cases is that instead of recovering the full assessment, a portion of it is treated as "judi" and the holder of the land is called upon to pay the remaining assessment. It is this concession that is treated as remuneration to the person doing sanadi work. Sanadi lands are family lands. The sanadi lands were never treated, even in Bombay State, as impartible estate. Therefore, under these circumstances, the said argument also merits to be rejected.

15. Sri Ujjannavar then urged that a decree passed in a partition suit was not a preliminary decree and it amounts to saying that the decree has become final. It is no doubt true that it has been held by this Court in the decision in Ganapatrao Raoirao Desai v. Balavant Krishna Desai (1965) 2 Mys U 768 that :

"A decree passed under R, 18(I) of O. XX directing partition by the Collector cannot be said to be a preliminary decree. So far as the Civil Courts are concerned it is final for all purposes, though the partition of the property may remain to be effected by the Collector. Sub-rule (1) of Rule 18 does not contemplate any application to be filed by the parties for sending the papers to the Collector."

The purport of the said expression used by this Court is that though it cannot be said to be a preliminary decree, it became final for all purposes so far as the Civil Courts are concerned. Once a decree declaring the shares of the parties is

passed by the Civil Court, it has nothing more to do. It means that the case has come to an end in the Civil Court and it does not amount to a final decree. Therefore, it cannot be considered to be a final decree as understood in the Civil Procedure Code. Therefore, the argument of learned counsel Sri Ujjannavar that in the case of a final decree the limitation would begin to run, holds no substance and it is rejected.

16. In the result, there is no substance in the revision and it is accordingly dismissed.

17. I would like to make it clear that the parties have been litigating ever-since 1924. We are at the fag end of 1984. 60 years have rolled by. It is most unfortunate that the relief of partition and separate possession is not available to the parties even after 60 years. Therefore, the Deputy Commissioner is directed to carry out the actual partition and hand over the separate possession, as per S. 54, C.P.C., within six months from this day. Send a copy of this order to the Deputy Commissioner, Belgaum, for necessary action. Send a copy of this order to the Civil Judge, Chikkodi, within a fortnight, to take necessary action.

18. Revision dismissed.