
(1996) 09 KAR CK 0046
In the Karnataka High Court
Case No : Civil P. No. 833/96

R.S. Rajanna

APPELLANT

Vs

Sri Basavaiah and others

RESPONDENT

Date of Decision : 30-09-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114
Hindu Succession Act, 1956 — Section 14 (1), 14 (2)

Citation : AIR 1997 Kar 245 : (1997) ILR (Kar) 1824

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri Nagaraj for Sri K.N. Shankarlingappa, for the Appellant; Sri A.C. Rajashekar and Sri A.G. Devadar, for the Respondent

Judgement

1. This is a review application under O. 47, R. 1 of the CPC read with S. 114 thereof. This review application has been filed from the judgment and decree dated September 5, 1991 passed by the Hon"ble Mr. Justice B. Jagannatha Hegde in Regular Second Appeal No. 616/1983, allowing the appeal of the present opposite party No. 1 taking the view that Smt.Lingegowda (Smt. Nanjamma) succeeded to the suit properties or inherited the suit properties of her husband Sri Lingegowda by virtue of and under the Will dated 12-5-1948 which had been executed by Sri Lingegowda in favour of his wife Smt. Nanjamma.

2. The admitted position between the parties is that Sri Lingegowda died on 23-2-1956. As stated by the applicant's counsel, his death took place prior to the coming into force of Hindu Succession .Act. No doubt, Smt. Nanjamma is alleged to have executed the Will relating to the suit property on 10-6-1973 in favour of the applicant, the question involved in the case was whether Smt. Nanjamma was the absolute owner of the property and entitled to execute the Will in favour of respondent No. 1 or did she become the absolute owner under S. 114 of the Act. The Hon"ble Mr. Justice B. Jagannatha Hegde while allowing

the appeal of the appellant, who is the opposite party No. 1 in this application, held that Smt. Nanjamma succeeded to the property or inherited the property by virtue of Exhibit D-I dated 12-5-1948 and she did not have any interest pre-existing in the suit property on the date the Will was executed or the Will came into operation i.e., the date of death of Sri Lingegowda. The present case was covered by sub-sec. (2) of S. 14 of the Hindu Succession Act, 1956, which provides that,

"14(2):-- Nothing contained in sub-sec. (1) shall apply to any property acquired by way of gift or under a Will or any other instrument or under a decree or order of a Civil Court or under an award where the terms of the gift, Will or other instrument of the decree, order of award prescribe a restricted estate in such property."

The Hon'ble Mr. Justice B. Jagannatha Hegde applying the principles of law laid down in the case of Mst. Karmi Vs. Amru and Others, opined and held as in the present case only life estate was conferred on (sic) under the Will, the lady i.e., Smt. Nanjamma's right over the suit property did not enlarge into an absolute estate, the Will (Exhibit D-I) executed by Smt. Nanjamma in favour of respondent No. 1 could not confer any title interest or right in favour of respondents in the suit properties and with this finding allowed the Regular Second Appeal filed by the present opposite party No. 1 who was the appellant in the Regular Second Appeal.

3. Having felt aggrieved with the judgment/decreed passed by the learned Single Judge (the Hon'ble Mr. Justice B. Jagannatha Hegde), Sri R. S. Rajanna, who is one of the respondents i.e. respondent No. 1 in the Regular Second Appeal, filed this petition. The application for review has been filed delayed by 50 days and along with the application for review and application for condonation of delay had also been filed.

4. Sri A. C. Rajashekar, learned counsel, put in appearance for respondent No. 1, while on behalf of respondent No. 3 the power has been filed by Sri A. G. Devadar.

5. I have heard Sri Nagaraj, holding brief for Sri K.. N. Shankarlingappa, learned counsel for the applicant and Sri A. C. Rajashekar, learned counsel for respondent No. 1 who is the main and principal contesting respondent in this case.

6. As regards the application for condonation of delay, the explanation, furnished in the application for condonation: of delay does not appear to be sufficient and believable. I could have taken further steps in that matter and could have called upon the counsel referred in para 2 of affidavit to file an affidavit because certain unwarranted allegations have been made against the counsel. But that would result in delaying the proceedings and on the other hand, I might have compelled to take proceedings for contempt of Court because if I would have found that the affidavit is based on and contains incorrect allegation then such

an act i.e. filing of affidavit with false or incorrect allegations would have amounted to contempt of Court, or there would have been need to take action against counsel concerned if allegations would have been correct. So I think to initially examine if there, was any case made out in review petition for being admitted and if not review petition may itself be dismissed. So I proceeded to hear on merits.

7. The learned counsel for the applicant submitted that the review is being filed because S. 14(1) Hindu Succession Act herein referred as the "Act" is applicable and not S. 14(2). The learned Counsel submitted that the learned Judge committed an error in relying on S. 14(2) of the Act because the husband of Smt. Lingegowda (Smt. Nanjamma) had executed the Will in favour of Smt: Lingegowda so that she may lead pleasant life even after his death and may maintain it. The learned counsel submitted that so it may be taken to be in lieu of maintenance. The learned counsel submitted that the Hon'ble Mr. Justice B. Jagannatha Hegde wrongly relied on the case of Mst. Karmi Vs. Amru and Others, . The learned counsel submitted that this case was covered by S. 14(1) of the Act in view of the decision of the Supreme Court in the case of Vaddeboyina Tulasamma v. Vaddeboyina Sesha Reddy (Head) by Legal Representatives AIR 1977 SC 1944.

8. These contentions of the learned counsel for the applicant have been hotly contested by Sri A. C. Rajashekar, learned counsel for respondent No. 1. The learned counsel for respondent No. .1 submitted that the review is not an appeal in disguise and submitted that there is no case of error apparent on the face of record so as to interfere with the order and entertain the review application.

9. I have applied my mind to the contentions of the learned counsel for the parties. As regards the review under Code of Civil Procedure, review may lie in cases where some new material has been discovered, but which was either not within the knowledge of the party seeking review in spite of the best efforts made by him or in spite of best efforts made by him he could not produce that material. The other category of cases may be in which review application may lie is the category of those cases where the counsel shows and satisfies that there is an error apparent on the face of the record as per O. 47, R. 1. The learned counsel for the applicant submitted that his case was only a case of error apparent on the face of the record. Before I further proceed, it will be very appropriate on my part to make a reference to the two decisions of Their Lordships of the Supreme Court under O. 47, R. 1 which set out the yardsticks in the matter of entertaining review where it is sought on the ground of error apparent on the face of the record.

10. Dealing with the error apparent on the face of the record under O. 47, R. 1 of CPC in the case of Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, Their Lordships of the Supreme Court observed at page No. 1377 as under:--

"A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."

11. In the case of Smt. Meera Bhanja v. Smt. Nirmala Kumari Choudhury AIR 1995 SC 435 vide paragraph No. 8. Their Lordships have been pleased to observe (at page 457),

"It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of O. 47, R. 1, C. P. C."..... But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.

Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivable be two opinions. We may usefully refer to the observations this Court in the case of Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, wherein, K.C. Das" J., speaking for the Court has made the following observations in connection, with an error apparent on the face of the record :

"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ."

12. Keeping those broad principles in view, it has to be examined whether the

applicant had made out a case for review. When I apply (sic) yard sticks laid down by their Lordships of the Supreme Court, as above in my opinion, the applicant has failed to make out a case for review. The learned Single Judge (the Hon"ble Mr. Justice B. Jagannatha Hegde) considered the Will and reading "the Will found that it was a case of inheritance and there was no pre-existing right. Smt. Lingegowda (Smt. Nanjamma) acquired and inherited the property and got the rights in property only by virtue of succession under the Will and it was not in lieu of any pre-existing right and Hon"ble brother Hegde Sri followed the Supreme Court decision in the case of Mst. Karmi Vs. Amru and Others, . In the case of Karmi v. Amru, one Jaimal had died in 1938 leaving behind him his wife Nihali. Jaimal died after having left the property and after having executed a Will in favour of his wife and the Supreme Court observed (at page 746),

"Nihali having succeeded to the properties of Jaimal on the strength of that Will cannot claim any rights in those properties over and above that given to her under that Will. The life estate given to her under the Will cannot become an absolute estate under the provisions of the Hindu Succession Act."

The Hon"ble Mr. Justice B. Jagannatha Hegde followed the principle laid down in this case.

13. The case of Vaddeboyina Tulasamma, relied by the learned counsel for the applicant stands on a different footing and does not appear to apply to the facts of the present case. Dealing with sub-section (1) of S. 14 in Vaddeboyina Tulasamma's case. Their Lordships of the Supreme Court observed as under (at page 1948) :--

"The language of sub-section (2) is apparently wide to include acquisition of property by a Hindu female under an instrument or a decree or order or award where the instrument, decree, order or award prescribes a restricted estate for her in the property and this would apparently cover a case where property is given to a Hindu female at a partition or in lieu of maintenance and the instrument, decree, order or award giving such property prescribes limited interest for her in the property. But that would virtually emasculate sub-section (1), for in that event, a large number of cases where property is given to a Hindu female at a partition or in lieu of maintenance under an instrument, order or award would be excluded from the operation of the beneficent provision enacted in subsection (1), since in most of such cases, where property is allotted to the Hindu female prior to the enactment of the Act, there would be a provision, in consonance with the old Sastric law then prevailing, prescribing limited interest in the property and where property is given to the Hindu female subsequent to the enactment of the Act, it would be the easiest thing for the dominant male to provide that the Hindu female shall have only a restricted interest in the property and thus make a mockery of sub-section (1)."

Their Lordships of the Supreme Court further observed in the context of social purpose of law as under :--

"Sub-section (2) must, therefore, be read in the context of sub-section (1) so as to leave as large a scope for operation as possible to subsection (1) and so read, it must be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right, under a gift, Will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property."

Their Lordships further observed,

"Where, however, property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of sub-section (2), even if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property."

14. In the present case, the Will has been executed and it has been provided that she will succeed the property as under it cannot be said as the view of the learned single Judge as well to be in lieu of pre-existing right. By Will, succession was provided and it was provided that after the death of her husband, the wife will be entitled to inherit the property of her husband. When it is stated (sic) in lieu of certain pre-existing right it means that some right must be existing against the petitioner to be operating, may be right of maintenance. After the death of Sri Lingegowda, Smt. Nanjamma could not claim maintenance against her deceased husband Lingegowda i.e. against the dead person. Here it was purely a case of succession under the Will. In my opinion, the decision of the Supreme Court in the case *V. Tulasamma v. V. Sesha Reddy* AIR 1977 SC 1944 the case which has been relied is distinguishable. That, in that case there existed a right of maintenance against the brother of deceased husband of Vaddeboyina Tulasamma and a decree was there of maintenance against the husband's brother of Vaddeboyina Tulasamma and thereafter parties entered into compromise and in that context it was held even if in compromise the properties were allotted in lieu of her maintenance, it was merely in recognition of her right to maintenance which was pre-existing right. No such case has been taken nor any such plea or facts were nor have been brought to the notice either of Hon"ble Hegde, J. or before me on the basis of record. In my opinion, even if for a moment it would be taken that there was a possibility of two views, then also that cannot furnish a ground for review as that does not amount to be an error apparent on the face of the record. If by any stretch of long arguments is be shown that there is an erroneous view taken by Judge concerned it may be open to seek leave of Supreme Court if it so grants. But this is not a case for review on the ground of error apparent on the face of the record which the learned counsel for the applicant tried and attempted to make out by his genuine and lengthy arguments. Their Lordships of the Supreme Court have held that when lengthy arguments are made and there are two possible views even then it cannot be a case for error apparent on the face of the record. In my opinion, when review application itself has got MO merits, apart from the delay for which

no believable explanation has been given. The review application is hereby dismissed. No order as to costs.

15. Application dismissed.