
(2014) 12 KAR CK 0150

In the Karnataka High Court

Case No : Civil Revision Petition No. 1121/2010

Sajjed Hale Koteppa

APPELLANT

Vs

Sajjed Rudrappa

RESPONDENT

Date of Decision : 11-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152, 153

Citation : (2014) 12 KAR CK 0150

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : S.B. Hebballi and S.C. Hiremath, Advocate for the Appellant

Judgement

S.N. Satyanarayana, J.—The plaintiffs in O.S. No. 24/2000 on the file of Civil Judge (Sr. Dn.) and JMFC, Hospet has come up in this revision petition impugning the order dated 16.08.2010 passed in Misc. Case No. 21/2009 on the file of very same Court, where the prayer of the plaintiffs for correction of the judgment under Section 152 read with Sections 153 and 151 of the Code of Civil Procedure is dismissed.

2. The brief facts leading in this revision petition are as under:

"The petitioners herein are the plaintiffs in O.S. No. 24/2000 which was filed for the relief of partition and separate possession of the 1st plaintiffs share in the suit schedule properties. Admittedly, 1st plaintiff Sajjed Hale Koteppa and respondent Nos. 1 and 2 namely Sajjed Rudrappa and Sajjed Shivayogeppa are sons of late Sajjed Veeranna. The suit schedule properties are the joint family properties of the 1st plaintiff, defendant Nos. 2 and 3 and their father deceased Sajjed Veeranna. At the time of filing of the suit, the father of 1st plaintiff and defendant Nos. 2 and 3 namely Sajjed Veeranna had died. However, his widow Smt. Kotramma, who is the mother of 1st plaintiff and respondent Nos. 1 and 2 was alive. Hence, she was made as 1st defendant in the original suit. In the original suit, the 1st plaintiff Sajjed Hale Koteppa had impleaded his two sons as

party, though they were not necessary parties he had included them. In the said suit, after recording of the evidence, the suit of the plaintiffs came to be allowed in granting share to the plaintiffs in suit "B" schedule property. In the said suit, "A" schedule is genealogy, "B" schedule is in respect of suit schedule property which consists of five items in all. It is seen that the Court below awarded 1/3rd share in item No. 1 of "B" schedule property to the 1st plaintiff and 1/4th share in item Nos. 2 to 5 of "B" schedule property."

3. It is clearly seen that the 1/3rd share in item No. 1 of "B" schedule is granted under the premise, as if Smt. Kotramma is also alive as on the date of decreeing of the suit which typographical error was sought for correction in Misc. Case No. 21/2009 filed under Section 152 read with Sections 153 and 151 of the Code of Civil Procedure which is dismissed by the Court below holding that the judgment and decree passed by the Court below is just and proper. Therefore, question of rectifying the same does not arise. Hence, this revision petition is filed by the petitioners.

4. Heard the learned counsel appearing for the petitioners as well as contesting respondent Nos. 1 and 2, who are defendant Nos. 2 and 3 in the Court below.

5. On going through the judgment and also the order passed in Miscellaneous Case No. 21/2009, it is clearly seen that there is an error committed by the Trial Court while deciding about the shares i.e., due to 1st plaintiff and defendant Nos. 2 and 3 in the original suit. Admittedly, as on the date of filing of the suit, besides 1st plaintiff who had 1/4th share in suit schedule property, his mother Smt. Kotramma and other two brothers namely Rudrappa and Shivayogeppa were entitled to 1/3rd share each. However, as on the date of decreeing the suit, Smt. Kotramma died intestate. In that view of the matter, the share which she would have received which is at 1/4th, should again devolve upon the 1st plaintiff and defendant Nos. 2 and 3 in the said suit which in effect would increase the share of 1st plaintiff and defendant Nos. 2 and 3 in the said suit from 1/4th each to 1/3rd to each of them which is lost sight by the Trial Court and in the miscellaneous case which is filed, the Court has again failed to correct the mistake which is crept in the judgment.

6. In that view of the matter, this Court finds that the order passed by the Civil Judge (Sr. Dn.) and JMFC, Hospet, in Misc. Case No. 21/2009 in refusing to correct the typographical error in the judgment is incorrect and accordingly, the same is set aside. While doing so, the said miscellaneous filed under Section 152 read with Sections 153 and 151 of the Code of Civil Procedure is hereby allowed and accordingly, the share of 1st plaintiff and defendant Nos. 2 and 3 in O.S. No. 24/2000 is redefined as 1/3rd share to each one of them. Accordingly, they shall be entitled to get the final decree drawn and by levying execution receive their respective share in the aforesaid properties. Accordingly, this revision petition is allowed.