
(1989) 06 KAR CK 0036
In the Karnataka High Court
Case No : C.P. No. 193/1989

Sharanappa H.A.

APPELLANT

Vs

Karnataka Electricity Board and Others

RESPONDENT

Date of Decision : 28-06-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (1989) 2 KarLJ 181

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-This is a petition filed under Order 47 Rule 1 C.P.C. for a review of the judgment and decree dated 7-4-1986 passed in Regular Second Appeal No. 218 of 1986.

2. Two points arise for consideration in this Civil Petition and they are (1) whether, in the facts and circumstances of this case, the explanation to Order 47 Rule 1 of the C.P.C. is a bar; and (2) whether a petition for review of a judgment passed by another learned Judge of the same High Court is maintainable.

3. The relevant facts are that an appeal in R.S.A. No. 218 of 1986 was preferred by the 1st respondent against the judgment and decree dated 16-10-1984 passed in Regular Appeal No. 69 of 1983 by the Civil Judge, Davangere, dismissing the appeal and confirming the judgment and decree dated 28-7-1983 passed in Original Suit No. 455 of 1981 on the file of the Munsiff, Davangere. The appeal came up for admission on 7-4-1986 before a learned Judge of this Court who has since retired from service. The appeal was admitted in order to consider the following substantial question of law:

"Whether the suit of respondent-1 is maintainable in view of the decision of this Court in State of Karnataka v Viswanath-I.L.R. 1985 Karnataka page 2460?"

The learned Judge, in the course of the order, observed that when notice of I.A-I was issued, respondent No. 1 therein remained absent though he was served

with notice and that, therefore, no purpose would be served by issuing notice of the appeal to him. Hence, he took up the appeal for hearing as it was covered by the said decision according to him. Therein, he passed the following order:

"Respondent-1 filed a suit for declaration of his date of birth as 11-10-1939. It has been held in the aforesaid decision that such suits are not maintainable. Hence the appeal is allowed. The judgments and decrees of the courts below are set aside. The suit of respondent-1 is dismissed. No order as to costs throughout."

It is this judgment and decree which the petitioner is requesting this Court for being reviewed.

4. The learned Counsel for the petitioner in this Civil Petition has contended that the ruling rendered by a learned single Judge of this Court on which reliance was placed in the impugned judgment and decree has been reversed by a Division Bench of this Court in *State of Karnataka v. T. Srinivas*, 1987(1) Kar L.J. 387 and, therefore, the impugned judgment and decree deserve to be reviewed and set aside.

5. On the other hand, it is contended by the learned Counsel appearing for the 1st respondent that the review petition deserves to be dismissed on the threshold for the reason that the explanation to the provision of Order 47 Rule 1 of the C.P.C. is a clear bar to its maintainability. In the alternative, it is contended by the learned Counsel for the 1st respondent that in view of the principle laid-down by the Supreme Court in *Devaraju Pillai v. Sellayya Pillai*, AIR 1987 SC 1160, this Court has no jurisdiction to review a judgment passed by another learned single Judge of the same Court as is in the instant case, even though the said learned Judge is not available for a review of his own judgment.

6. The learned Government Pleader appearing for respondents-2 to 4 adopted the arguments of the learned Counsel appearing for respondent-1.

7. I shall now consider the question whether the explanation to Order 47 Rule 1 of the C.P.C. precludes the entertainability of the review petition.

Order 47 Rule 1 of the C.P.C. reads as follows:

"1. Application for review of judgment:

(1) Any person considering himself aggrieved- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred, (b) by a decree or order from which no appeal is allowed, or (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a

review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation:-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgments."

8. It would be appropriate to deal with the explanation to Order 47 Rule 1 of the C.P.C. in order to ascertain the connotation of the explanation. A plain reading of the explanation leads to the construction that any reversal or modification by a subsequent decision of a superior Court in any other case of the decision on a question of law on which the judgment of the Court is based, shall not constitute a ground for review of such judgment. In other words, when, on a question of law, a decision has been rendered and which has come to be reversed or modified subsequently by a superior Court, the change in law so emerging cannot be a basis for an aggrieved person to apply for a review of the judgment under Order 47 Rule 1 of the C.P.C. The case of the petitioner is that the impugned judgment and decree was based on a decision rendered by a learned single Judge of this Court who had taken the view that a suit for declaration of date of birth is not maintainable. On the day when the decision was rendered in R.S.A. No. 218/86, this decision was holding the field. Later on, on an identical question as to whether a suit is maintainable for declaration of date of birth, the matter was referred to a Division Bench of this Court and the Court decided that the suit is maintainable and it is on the basis of this decision which was subsequently rendered that the petitioner is seeking a review of the judgment and decree passed in R.S.A. No. 218 of 1986. Admittedly, the ruling of the Division Bench was not in existence on the date when the judgment was rendered In R.S.A. No. 218 of 1986 on 7-4-1986. The said ruling of the Division Bench of this Court is in the case of State of Karnataka v T. Srinivas, 1987(1) Kar.LJ. 387. The actual date of the said ruling is 6th and 7th April 1987. The facts speak for themselves inasmuch as the judgment and decree sought to be reviewed was passed on 7-4-1986 whereas the decision of the Division Bench relied upon by the petitioner came to be passed on 6th and 7th April, 1987. In short, the Division Bench ruling did not hold the field on the date of pronouncement of the judgment and decree in the said Regular Second Appeal.

9. The facts and circumstances of this case do attract the application of the explanation to Order 47 Rule 1 of the C.P.C. The ingredients set out in the explanation which bar review of a judgment and decree under Order 47 Rule 1 of the C.P.C. manifest themselves and, therefore, I hold that the review petition is not maintainable.

10. In the ordinary course, it would not have been necessary for me to decide upon the second point. But, however, since the principle laid down by the Supreme Court is of far reaching consequence, it would be appropriate to give a finding on the second point also.

11. In the decision in *Devaraju Pillai v Sellayya Pillai*, AIR 1987 SC 1160, the Supreme Court has laid down as follows:

"On an application being filed for review of the judgment of the learned single Judge, another learned single Judge of the High Court-the Judge who heard the Second Appeal not being available-, virtually sitting in judgment over the decision of the learned Judge who decided the Second Appeal construed the document differently and held that it was a will and not a deed of settlement. This the learned single Judge was not entitled to do. If the party was aggrieved by the Judgment of the learned single Judge sitting in Second Appeal the appropriate remedy for the party was to file an appeal against the judgment of the learned single Judge. A remedy by way of an application for review was entirely misconceived and we are sorry to say that the learned single Judge who entertained the application totally exceeded his jurisdiction in allowing the review and upsetting the judgment of the learned single Judge, merely because he took a different view on a construction of the document."

12. The ratio of the decision is that even if the Judge who passed a judgment is not available for a review of his own judgment, it is not open to another Judge of the same Court to review the judgment passed by the Judge not available, and the only remedy for the aggrieved person is to prefer an appeal against the judgment of the learned single Judge and a remedy by way of an application for review is misconceived and the entertaining of such a petition was beyond the jurisdiction of another learned Judge of the same Court.

13. No decision of the Supreme Court subsequent to this ruling taking a different view on the question is brought to my notice. In such a circumstance, the ratio of the decision is binding on this Court and, therefore, it has to be held that the Civil Petition for review of a judgment and decree passed by another learned Judge of this Court who has since retired, cannot be entertained.

14. For the reasons stated above, the Civil Petition is dismissed.

Petition dismissed.