

(2001) 06 KAR CK 0055
In the Karnataka High Court
Case No : Writ Petition No. 23588 of 2001

Shekar Alva

APPELLANT

Vs

Ramanna Shetty and Others

RESPONDENT

Date of Decision : 26-06-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 54

Citation : (2001) 4 KCCR 2879

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : K.M. Nataraj, for the Appellant;

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—Petitioner is seeking to quash the impugned orders at Annexures-A and B. Annexure-A is the proceedings of the Deputy Commissioner partitioning the properties pursuant to reference made u/s 54 CPC in F.D.P. No. 18 of 1988 based on the judgment and decree in O.S. No. 77 of 1983. Annexure-B is the order dismissing the appeal filed against the order at Annexure-A.

2. The reliefs sought for in this writ petition cannot be granted. Admittedly, the suit filed by the Petitioner in O.S. No. 391 of 1995 on the file of IV Additional Civil Judge (Junior Division), Mangalore, for declaration had been dismissed. The judgment and decree in O.S. No. 77 of 1983 became final. Pursuant to the same, final decree proceedings were initiated and on reference the Deputy Commissioner partitioned the properties under Annexure-B. There is nothing wrong in the said order. The same is in accordance with law.

3. While considering the appeal filed against the order at Annexure-B, the karnataka Appellate Tribunal noted that the appeal was filed after a lapse of four and half years. The tribunal was of the opinion that the appeal was hopelessly barred by limitation. That being the position, the Tribunal has rightly declined to exercise the discretionary power in a matter like this. Therefore, there is no

scope for interference.

4. The suit for partition was filed in the year 1983. The same has been culminated in the impugned order at Annexure-B in the year 1995. Petitioner neither filed appeal against the judgment and decree passed in the said suit nor filed the appeal before the Tribunal immediately after passing of the order at Annexure-B. As of now nearly 18 years have elapsed ever since the date of institution of the suit. Since the matter reached finality, it is not proper for this Court to cause interference at this lapse of time.

5. Writ Petition is accordingly dismissed.