

(2009) 03 KAR CK 0080
In the Karnataka High Court
Case No : Writ Petition No. 7282 of 2008

Siddagangamma and H.K. Hanumantharaya

APPELLANT

Vs

Smt. Rajalakshmi

RESPONDENT

Date of Decision : 31-03-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2, Order 21 Rule 2 (2), Order 21 Rule 2A (b), 151

Citation : (2010) ILR (Kar) 130 : (2009) 5 KarLJ 175 : (2009) 3 KCCR 1607

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : H.V. Harish, for the Appellant; K.K.R. Law Chambers, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J.—In this writ petition, petitioners are challenging the order dated 01.09.2007 passed by the learned Civil Judge (Jr.Dn.) and JMFC, Koratagere, rejecting I.A.No.3 filed under Order 21 Rule 2 read with Section 151 CPC in FDP No. 2/2006.

2. Petitioners-1 & 2 are defendants-1 & 2 in O.S. No. 78/2003. Respondent herein had filed the said suit seeking partition and separate possession of the joint family properties. The suit was decreed and a preliminary decree came to be passed on 22.12.2005 declaring that the plaintiff and the defendants had 1/3rd share in all the suit schedule properties. It was held that the plaintiff was entitled for partition and separate possession of her 1/3rd share and a direction was issued for effecting partition in terms of Section 54 CPC.

3. Pursuant to the said decree the plaintiff-respondent herein initiated final decree proceedings in FDP No. 2/2006. In the final decree proceedings, the Court below appointed a Court Commissioner for effecting partition. The Commissioner warrant was issued on 24.08.2006, The matter was adjourned to 25.10.2006. Subsequently, after several adjournments, petitioner No. 2 herein - respondent

No. 2 in the final decree proceedings was placed *ex parte*. However, petitioner No. 1 herein was represented by a counsel.

4. On 22.08.2007, the respondents in the final decree proceedings filed an application seeking advancement of the case along with another application filed under Order 21 Rule 2 read with Section 151 CPC requesting the Court to close the preliminary decree in O.S. No. 78/2003 and the proceedings in FDP No. 2/2006 by certifying satisfaction or adjustment of the decree outside the Court in terms of a partition deed allegedly effected on 21.08.2007 between the plaintiff and the defendants. This application was supported by an affidavit of petitioner No. 1 herein who stated that the parties had got executed a partition deed on 21.08.2007 wherein in lieu of 1/3rd share of the plaintiff-respondent herein she had taken a sum of Rs. 35,000/- in cash and had given up her share in favour of defendants/petitioners herein. The said partition deed was produced along with the application with a request to recall the warrant issued to the Court Commissioner for effecting partition of the suit schedule item No. 1 and to dismiss the final decree proceedings.

5. The plaintiff filed her objections. In paragraph-3 of the objection, she specifically contended that the alleged partition deed dated 21.08.2007 was a created one and it did not bear her signature. She further contended that her signatures were forged on the said documents, She also urged that such an application in the final decree proceedings was not maintainable. Allegations of mischief and fraud were also levelled against the defendants/petitioners herein imputing malafide intention and sinister design to get out of the clutches of the Court to avoid the obligation of effecting partition in terms of the decree passed.

6. The Court below has rejected the application noting the objections filed and keeping in mind the stand taken by the plaintiff that no such compromise with the judgment debtors was entered into. It is this order that is challenged by the petitioners in this writ petition.

7. Counsel for the petitioners placing reliance on the provisions contained in Order 21 Rule 2 CPC submits that the Court below was duty bound to hold an enquiry into the assertion made by the petitioners that the preliminary decree passed was adjusted by way of a compromise reached between the parties which was reduced into writing in the form of a partition deed. In this connection, he draws the attention of the Court to Order 21 Rule 2(2) and 2A(b) CPC. Order 21 Rule 2 CPC pertains to payment out of Court to the decree holder. It is necessary to refer to the provisions contained in the various sub-rules of Order 21 Rule 2 CPC, which read as under:

Rule 2. Payment out of Court to decree-holder.- (1) Where any money payable under a decree of any kind is paid out of Court, or a decree of any kind is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor or any person who has become surety for the judgment-debtor also may inform the Court (B) of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; (OR, P) and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

(2A) No payment or adjustment shall be recorded at the instance of the judgment-debtor unless-

(a) the payment is made in the manner provided in the Rule 1; or

(b) the payment or adjustment is proved by documentary evidence; or

(c) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under Sub-rule (2) of Rule 1, or before the Court.

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree.(P).

8. Contention of the Counsel for the petitioners in terms of Sub-rule (2) of Order 21 Rule 2 read with Rule 2A(b) CPC is that since the decree holder had denied the adjustment of the decree and as there was a documentary evidence produced to prove the adjustment, the Court below ought to have held an enquiry, recorded evidence and passed a detailed order applying its mind to the controversy raised. In support of this contention, Counsel for the petitioners placed reliance on the judgments in the case of Manuraj Chandrakant Babar Vs. Bapusaheb Babasaheb Deshmukh, ; Lakshmi Narayanan Vs. S.S. Pandian, .

9. Having heard the learned Counsel for the petitioners and on careful consideration of the contentions urged by the petitioners, in the light of the provisions contained in Order 21 Rule 2 CPC and the judgments referred to and relied upon, I find that there is no substance in the contentions canvassed. As is clear from the provisions contained in Order 21 Rule 2 CPC there is no mandate or requirement for holding an enquiry when the judgment debtor sets up a case of satisfaction of the decree followed by denial of the same by the decree holder. In Sub-rule (1) of Order 21 Rule 2 CPC, the requirement is that the adjustment will be recorded only if the satisfaction of the decree is certified by the decree holder. As per Sub-rule (2) of Order 21 Rule 2 CPC when the judgment debtor alleges satisfaction of the decree and informs the Court of such payment or adjustment and applies to the Court to issue notice to the decree holder, then the Court will call upon the decree holder to show cause why the payment or adjustment should not be recorded as certified. If the decree holder fails to show cause to such a notice, then the Court shall record certifying the satisfaction.

10. As per Sub-rule (2A) of Order 21 Rule 2 CPC, it is categorically stated that no payment or adjustment shall be recorded at the instance of the judgment debtor. However, exceptions for such recording of satisfaction at the instance of the

judgment debtor are enumerated in sub-clauses (a to c) of Sub-rule (2A) of Order 21 Rule 2. They are: (a) if the payment were to be made and the satisfaction was certified in terms of Order 21 Rule 2(1) CPC (b) if the payment or adjustment is proved by documentary evidence or (c) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under Sub-rule (2) of Rule 1, or before the Court.

11. In the instant case, the petitioners have set up a partition deed alleged to have been executed between the parties in terms whereof adjustments of the decree is pleaded. It is well established that a partition, if entered into between the parties and has the effect of bringing about division of the property is required to be compulsorily registered. Petitioners intended to produce an unregistered partition deed alleged to have been executed between the parties that too when the final decree proceedings were going on and the warrant appointing the Commissioner to divide the property and put the respective parties in possession of the same was issued by the Court below. The Court below has rightly not taken note of such material placed before it. Although the plaintiff had alleged fraud, mischief and sinister design on the part of the defendants in creating such a document, the Court below has not thought it fit to go into this aspect as the stand taken by the plaintiff stating that she had not executed such a document was enough to reject the application in the facts and circumstances of the case.

12. The conduct of the petitioners in coming forward with such a document stating that a partition deed was executed between the parties whereunder the decree holder in lieu of her 1/3rd share had taken a sum of Rs. 35,000/- and given up her right was not worth enquiring into by the Court below. The Court below has rightly not harped on an enquiry into the same. If such conduct is encouraged, there will be no end to the litigation and parties will never get the benefit of the decree.

13. This is a case where petitioners have suffered the decree and are under an obligation to effect partition in terms of the decree by giving the plaintiff her legitimate share. They are trying to abuse the process of the Court by protracting the litigation indulging in making such kind of application. The judgments relied upon by the Counsel for the petitioners have no application to the facts of the present case as it is not held therein that in a situation like this the Executing Court or the Court dealing with the final decree proceedings should record evidence and pronounce upon the issues by holding an enquiry. Hence, this writ petition, being devoid of merits, is dismissed.