

(2003) 10 KAR CK 0087

In the Karnataka High Court

Case No : CRP No. 786 of 2001 c/w CRP No. 787 of 2001 No. 374 of 2001

Smt. Akkamma and Another

APPELLANT

Vs

Narayana T. Amin and Others

RESPONDENT

Date of Decision : 16-10-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 18, Order 21 Rule 95, 115

Citation : (2004) ILR (Kar) 634 : (2003) 4 KCCR 3093

Hon'ble Judges : A.V. Srinivasa Reddy, J

Bench : Single Bench

Advocate : K.M. Nataraj, Krishna S. Dixit as Amicus Curiae, in CRP Nos. 786/2001 and 787/2001 in CRP No. 374/2001, for the Appellant; A. Ravi Kanth Advocate For R1 and Armugam, for R2 to R7 and 9, for the Respondent

Final Decision : Dismissed

Judgement

A. V. Srinivasa Reddy, J.—These revision petitions are filed u/s 115 of CPC by respondents 1 and 2 in F.D.P. No. 2/97 pending on the file of the Civil Judge, Udupi, aggrieved by certain orders. All the three C.R.Ps are inter-related. Therefore, they are taken up together for consideration. The petitioners are aggrieved by three orders dated 31.8.2000, 10.1.2001 and 15.1.2001 respectively, passed by the Trial Court in F.D.P. No. 2/1997.

2. The respondents in these revision petitions have filed the suit O.S. No. 29/1995 for partition against the petitioners herein, on the file of the Civil Judge, Udupi, D.K. District. A preliminary decree came to be passed in the suit on 30.9.1996. Thereafter, the plaintiffs filed F.D.P.No. 2/97 before the said Court. During the pendency of the said F.D.P. the Trial Court by order dated 28.5.1997 passed the following order:

"Heard.

Office to send the record to D.C. to effect partition of agricultural land as per the terms of the preliminary decree.

With reference to mesne profits enquiry by 11.6.1997."

A perusal of the order sheet reveals that the partition of the lands was never effected by the Deputy Commissioner. When the position remained thus, the plaintiffs filed I.A.No.13 u/s 151 of the CPC seeking permission to deposit the bid amount. The Court passed the following order:

"The application filed by the petitioner u/s 151 of CPC is allowed in part as per the decree.

2. The 1st petitioner is permitted to deposit the share amount to the 1st and 2nd respondent/opponents in the auction sale the purchase amount/bid amount in respect of the undivided joint family residential building and other various items of the properties, as per the share allotted to the respondents 1 and 2/opponents in the decree.

3. No order as to costs."

Thereafter, the respondents deposited the bid amount. Subsequently I.A. No. 15 came to be filed under Order 21 Rule 95 C.P.C. for delivery of property in occupancy of the judgment debtors, petitioners herein. The Trial Court allowed I.A.No. 15 and ordered issuance of delivery warrant as prayed for with a direction to secure the warrant, one week after the date of this order and compliance by 20th September, 2000. Aggrieved by the said order passed on I.A. 15 the defendants have filed C.R.P. No. 786/2001.

3. The defendants have filed CRP 787/2001 aggrieved by the order dated 10.1.2001, where under the Trial Court has ordered delivery warrant with police help as per the order dated 9.1.2001 and to deliver the possession of the suit properties by breaking open the lock of the premises returnable by 6.2.2001. The defendants are also aggrieved by another order dated 15.1.2001 passed on I.A.No. 23 filed u/s 151 of CPC for recalling the delivery warrant, issued in respect of the house of the defendants granting 15 days time for the applicant to make an alternative arrangement.

4. As the learned Counsel appearing for the respondents 1, 2 to 7 and 9 was not appearing before the Court and the other respondents though served with notice have also remained absent, Mr. Krishna S. Dixit, was appointed as Amicus Curiae to assist the Court.

5. I have heard Mr. K.M. Nataraj, learned Counsel for the petitioners and Mr. Krishna S. Dixit, the Amicus curiae.

Learned Counsel Mr. K.M. Nataraj submitted that the decree being one for partition of property and separate possession of a share therein, the Court-below having declared the rights of the parties to the suit and having directed such partition to be made by the Collector, ought not to have taken any further steps on its own to execute the decree in the absence of any report from the Collector. Mr. Krishna S. Dixit, amicus curiae, also submitted that once having directed the

Collector to effect partition by metes and bounds, the Court becomes functus officio and it can proceed to execute the decree only on receipt of the report from the Collector and not otherwise.

6. The decree in the present case is one made under Order 20, Rule 18(1) C.P.C. which, by its very nature is preliminary. The provisions of Order 20, Rule 18 read:

"18. Decree in suit for partition of property or separate possession of a share therein - Where the Court passes a decree for partition of property or for separate possession of a share therein, then -

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of Section 54.

(2) If and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties, interested in the property and giving such further directions as may be required."

The procedure to be adopted by the Court in a case falling under Sub-rule (1) should be in accordance with the provisions of Section 54 CPC which contemplates that the partition and separate possession of shares shall be made by the Collector. Section 54 reads:

"Partition of estate or separation of share - Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates."

The procedure to be followed by a Court in giving effect to a decree under Order XX, Rule 18 C.P.C. is, thus, different in respect of property which is assessed to the payment of revenue to the Government covered as it is under Sub-rule (1) from the procedure that is required to be followed by the Court in respect of other immovable property or movable property both of which are covered by Sub-rule (2) of Rule 18. The "other immovable property" obviously refers to a property which is not assessed to revenue. Whilst the decree in respect of a property covered under Sub-rule (1) of Order XX, Rule 18 C.P.C. can be executed only in accordance with the procedure stipulated in Section 54, under Sub-rule (2) the Court itself could pass a preliminary decree declaring the rights of the several parties interested in the property and give such further direction as may

be required for partition and separate possession of such property. The decree passed by the court-below related to land, which is immovable property assessed to revenue, and the house property which is not a property assessed to revenue. In so far as the lands are concerned the Court-below having declared the rights of several parties, directed the Collector to make partition and separate possession of their respective shares and thereby acted in conformity with Section 54 of C.P.C. In respect of the house property the Court proceeded to appoint a Commissioner and executed the decree by putting the plaintiff in possession of the house property. The impugned orders passed by it in exercise of this power under Sub-rule (2) of Order XX, Rule 18 C.P.C. are called in question by the petitioners as being contrary to the procedure prescribed by law.

7. The enquiry that is contemplated by Sub-rule (2) is provided for by Rules 13 and 14 of Order XXVI. These rules read:

"13. Commission to make partition of immovable property :-Where a preliminary decree for partition has been passed, the Court may ,in any case not proved for by Section 54, issue commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

14. Procedure of Commissioner: (1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall not allot such shares to the parties, and may, if authorised thereto by the said order, award such sums to be paid for the purpose of equalizing the value of the shares.

(2) The Commissioner shall then prepare and sign a report or the Commissioner (Where the Commissioner was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objection which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; by where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit."

If we examine the steps taken by the Court-below in terms of the impugned orders to give effect to the decree, it becomes obvious that it has adhered to the rules of procedure prescribed by the Code for making partition of an immovable property not assessed to land revenue, which is covered by Rule 18(2). In cases covered by Sub-rule (1) the Civil Court shall appoint a Commissioner for effecting a partition or separation of the shares of the parties as declared by it under Order XX, Rule 18(1) C.P.C. Under Sub-rule (2) the Court itself could give further direction as may be required for partition and separate possession and in

cases covered under Sub-rule (2) the Court does not become functus officio in the matter of steps to be taken for partition and separate possession of the property not assessed to land revenue. This position is consistent with Rules 13 and 14 of Order XXVI and the use of the words "in any case not provided for by Section 54 in Rule 13 is significant in that it stipulates a separate procedure in respect of properties not assessed to land revenue and, therefore, not covered by Section 54 C.P.C. Bringing out the distinction that the Court has to observe in the matter of giving effect to a decree passed under Order XX, Rule 18 C.P.C., a Full Bench of this Court in GANAPATRAO ROAJIRAO DESAI v. BALAVANT KRISHNAJI DESAI AND OTHERS 1965 (2) My.L.J. 768 observed:

"Their Lordships then referred to the provisions of Order XX, Rule 18 and Order XXVI, Rule 13 and 14 and noted in the following terms how the Legislature has restricted the powers of the Civil Court as to partitions of immovable property not assessed to land revenue:

"... The Court retains complete control over the partition proceedings when it is a case of dividing immovable property which is not an estate assessed to land revenue, but where the partition is of an estate assessed to such revenue, the Court has no control over the Collector. The decree is transmitted to him to act in accordance with the rights of the parties declared therein and in accordance with the law for the time being in force relating to the partition or the separate possession of shares of such estate..."

(underlining supplied)

Mr. Nataraj also relied on the decision in SMT. KALYANI v. SANJEEVA SOANS AND ORS. 1989 (1) Kar L.J. 139 wherein a learned Single Judge of this Court has held that Farm House is part of an agricultural land and division of it has to be effected by Deputy Commissioner u/s 54. The relevant observations are at para 8 and they read:

"Farm house is a part of an agricultural land only. Even Section 95(1) of the Karnataka Land Revenue Act, 1964 provides that subject to any law for the time being in force regarding erection of buildings or construction of wells or tanks, an occupant of land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents or other legal representatives, to erect farm buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land or its more convenient use for the purpose of aforesaid. Sub-section (2) which provides for seeking permission for diverting agricultural land to any other purpose states that if any occupant of land assessed or held for the purpose of agricultural wishes to divert such land or any part thereof to any other purpose, he shall apply for permission to the Deputy Commissioner, who may subject to the provisions of Section 95 and the rules made under the Act, refuse permission or grant it on such conditions as he may think fit. Thus, a reading of Sub-section (1) and (2) of Section 95 of the Act makes it clear that for the purpose of construction of a farm house it is not

necessary to seek permission to divert agricultural land for any other purpose because a farm house is constructed for the purpose of facilitating better cultivation of the land. A farm house is a part and parcel of agricultural land."

This decision draws support from the definition of "land" as contained in Section 95(1) of the Karnataka Land Revenue Act, 1964 whereas in the present case we are only concerned with how the term "building" has to be construed for deciding on the procedure to be adopted for purpose of drawing up the final decree under the CPC which does not define the term. It is a well-settled principle of law that meaning of the words used in a particular statute has to be construed with reference to the context and not in isolation, nor is it possible to lay down any rule of universal application. Therefore, the definition of the term "building" u/s 95(1) of the Land Revenue Act cannot be made a basis for construing the meaning of the term "land" as accruing in the Civil Procedure Code.

8. In Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah, the Apex Court had occasion to lay down as to how an expression not defined in a statute has to be interpreted. Laying down the rule of construction in such cases, the Court observed:

"It is not correct to give as wide a meaning as possible to terms used in a statute simply because the statute does not define an expression. The correct rule is that Courts have to endeavour to find out the exact sense in which the words have been used in a particular context. They are entitled to look at the statute as a whole and give an interpretation in consonance with the purposes of the statute and what logically follows from the terms used. They are to avoid absurd results."

In the light of the full bench decision of this Court in GANAPATRAO ROAJIRAO DESAI, supra, and of the Apex Court in W.T. COMMISSIONER A.P. v. COURT OF WARDS, PAIGAH, (Supra) the other decision in Md. Makbul Hussain and Another Vs. Must. Zubeda Khatoon and Others, also cannot be relied upon for our purpose. The said decision is on a different point altogether in that it only lays down that where the suit property is a plot of land on which a house is constructed, it is difficult to declare the right of any one party in 1/7th portion of the land without taking into account the house thereon. Therefore, the ultimate decision in the case of Md. Makbul Hussain being on a different point altogether is of no aid to the petitioner.

9. The Court-below having due regard to the procedure to be adopted by it has, while transmitting the decree in respect of the landed property to the Collector to effect partition in accordance with the rights of the parties declared therein, itself taken the steps necessary to give effect to the decree in respect of the house property. The impugned orders passed by it in the course of such steps taken by it in accordance with Rules 13 and 14 of Order XXVI C.P.C. do not suffer from any illegality and do not call for interference from this Court.

10. In the result, I find no merit in these revision petitions and they are accordingly dismissed. In parting with this case, the Court places on record its

appreciation for the valuable services rendered by the learned Amicus Curiae Sri Krishna S. Dixit, Advocate in the matter.