

(2011) 11 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No. 6060 of 2010 (KLR-RR/SUR)

Sri K. Sham Bhat

APPELLANT

Vs

Sri K. Sitarama Bhat, Advocate and Others

RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 3, 4, 54

Citation : (2011) ILR (Kar) 5649

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

Bench : Single Bench

Advocate : B.M. Krishna Bhat, for the Appellant; T.N. Raghupathy, Advocate for R1, R4 and R5 and Sri R. Om Kumar, AGA for R6, for the Respondent

Judgement

H.G. Ramesh, J.—In this writ petition, the petitioner, who was the plaintiff in the suit in O.S.No. 134/1975 (originally O.S.No.55/1966), has challenged the order dated 16.01.2010 (Annexure-F) passed by the Karnataka Appellate Tribunal, Bangalore, wherein it has dismissed Appeal No.453 of 1988 filed by the petitioner against the order dated 05.07.1988 passed by the Deputy Commissioner, Dakshina Kannada.

2. Facts in brief: The petitioner had filed the aforesaid suit for partition. The preliminary decree in the said suit was passed on 12.04.1971. Pursuant thereto, a final decree proceeding was filed in FDP.No. 11/1978, which is still pending. In the final decree proceeding, the Court sent the case papers to the Deputy Commissioner along with the preliminary decree to effect partition in terms thereof. Thereafter, the Deputy Commissioner sent the papers to the Assistant Director of Land Records, Puttur, to submit his report to effect partition in terms of the preliminary decree. The Assistant Director of Land Records submitted his report to the Deputy Commissioner for his approval. The Deputy Commissioner did not accept the report in view of the objections raised by defendant nos.2 & 6. The Deputy Commissioner passed the following order on 05.07.1988:

Sri Ram Mohan Rao Advocate appeared for the plaintiff and Sri. Keshava Bhat

Advocate for the defendants. Heard the counsels for both the plaintiff and the defendants on 27.4.1987 and 25.5.87 and also perused the connected records. The Asst. Director of Land Records, Puttur is directed to draw up a revised Mahazar Panchanama and other connected records after due notice to the parties involved in this case and submit the revised partition records for further necessary action

This order made this day the 5th July 1988.

Aggrieved by the above order, the petitioner filed an appeal before the Karnataka Appellate Tribunal in Appeal No.453 of 1988. The Appellate Tribunal dismissed the appeal by its order dated 16.01.2010 (Annexure-F), the operative portion of which reads as follows:

Appeal stands dismissed confirming the order passed by Respondent - learned Deputy Commissioner in CLW II/CR/271 /85-86 dated 5.7.88.

Meanwhile Section 54 CPC has under gone amendment in view of Act 36/98 since no effective partition has taken place. The matter cannot be proceeded by Deputy Commissioner. Partition will have to be effected as per amended Section 54. Hence I accordingly direct office to forward papers to learned Deputy Commissioner, Dakshina Kannada District - 1st Respondent with copy of the order. Learned Deputy Commissioner shall forward records to Principal Civil Judge, Mangalore. Principal Civil Judge, Mangalore is requested to receive the papers in FDP 11/78 and proceed with final decree proceedings after giving adequate opportunity to both parties as per amended law. It is further requested that since matter is very old, learned Civil Judge, Senior Division shall to dispose of final decree partition at earliest.

Copy of the order be forwarded with lower court records to trial court.

(Underlining supplied)

The petitioner, being aggrieved of the above order, has filed this writ petition.

3. As could be seen from the above order, in view of amendment to Section 54 of the CPC ("the CPC for short) by the Karnataka Legislature by Karnataka Act No.36 of 1998, the Appellate Tribunal has directed the Deputy Commissioner, Dakshina Kannada District, to send back the record relating to the proceeding in FDP.No.11/1978 to the Civil Court and the Civil Court to proceed with the final decree proceeding in accordance with the amended Section 54 of the CPC.

4. The contention of the learned counsel for the petitioner is that the amended Section 54 of the CPC is not applicable to the proceeding in question and hence the partition shall be made by the Deputy Commissioner as per Section 54 of the CPC as it stood prior to its amendment by Karnataka Act No.36 of 1998. Therefore, according to the counsel, the direction of the Tribunal to the Deputy Commissioner to re-transmit the papers to the Court to effect the partition is not correct. However, the learned counsel appearing for the respondents supported

the order of the Appellate Tribunal by relying on the change brought in by the amendment Act.

5. The question that falls for determination in this writ petition is, whether the partition in this case shall be made by the Court as per Section 54 of the CPC as amended (substituted) by Karnataka Act No.36 of 1998, which amendment was given effect to from 1st February 2001 or whether the partition shall be made by the Deputy Commissioner or any of his gazetted subordinates deputed by him in this behalf as per Section 54 of the CPC as it stood before the amendment?

6. To examine the aforesaid question, what requires to be considered is, whether the proceeding in FDP.No. 11/1978 is affected by Karnataka Act No.36 of 1998 namely the CPC (Karnataka Amendment) Act, 1995 ["the amendment Act" for short)?

It is relevant to refer to Section 54 of the CPC as substituted by the amendment Act

54. 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 of such an estate shall be made by the Court in accordance with law if any, for the time being in force relating to the partition or the separate possession of shares, and if necessary on the report of a revenue officer, not below the rank of Tahsildar or such other person as the court may appoint as Commissioner in that behalf

(Underlining supplied)

It is also relevant to refer to Sections 3 & 4 of the amendment Act

3. Transitional Provisions.- Where before the commencement of this Act, the court had transmitted papers to the Collector to carry out partition u/s 54 of the Principal Act, and no final order effecting partition is passed by the Collector or any Gazetted subordinate of the Collector deputed by him in this behalf before such commencement, such papers shall be re-transmitted to the court concerned, and which shall make partition of the estate or this separation of the share of such an estate in accordance with Section 54 of the principal Act as amended by this Act.

4. Savings:- (1) Nothing contained in this Act shall effect any order, act, right or liability which has been made, done, accrued or incurred before the commencement of this Act.

(2) Where, before the commencement of this Act, the Collector or any Gazetted subordinate of the Collector, deputed by him in this behalf has passed any final order effecting partition u/s 54 of the principal Act and,-

(i) any appeal is preferred or proceeding is initiated against such final order, after such commencement; or

(ii) any appeal is preferred or proceeding initiated against such final order, before such commencement is pending adjudication at such commencement:

before any authority or a Court or Tribunal, such appeal or proceeding shall be continued or disposed of in accordance with the provisions of Section 54 of the Principal Act, as if the said provisions had continued to be in force and as if this Act had not been enacted.

(Underlining supplied)

7. The effect of the amendment Act on a pending final decree proceeding is stated in Sections 3 & 4 of the amendment Act referred to above. For a final decree proceeding to be unaffected by the amended Section 54 of the CPC, the final order effecting partition under the unamended Section 54 of the CPC should have been passed prior to commencement of the amendment Act i.e. before 1st day of February 2001. However, if any appeal or proceeding had been initiated against such final order, whether prior to or after the commencement of the amendment Act, it shall be continued or disposed of in accordance with the unamended Section 54 of the CPC as if it had continued to be in force and as if the amendment Act had not been enacted. In the present case, admittedly, no final order effecting partition under the unamended Section 54 of the CPC was passed prior to commencement of the amendment Act. Therefore, as per Section 3 referred to above, the papers that were transmitted to the Deputy Commissioner have to be re-transmitted to the concerned Court which shall make partition in accordance with Section 54 of the CPC as amended by the amendment Act. Hence, the impugned order of the Tribunal is in accordance with the amendment Act. I find no legal infirmity in the impugned order to warrant interference.

8. At this stage, the learned counsel on both sides submitted that presently the jurisdictional Court is the Court of the Civil Judge, Puttur, and accordingly, the Deputy Commissioner, Dakshina Kannada District, may be directed to send back the case papers to the Court of the Civil Judge, Puttur. They further submitted that the parties whom they represent will not seek for any adjournment in the matter and hence a direction may be given to the Court to dispose of the proceeding expeditiously. Their submission is placed on record.

9. In view of the above, I make the following order:

The order passed by the Karnataka Appellate Tribunal at Annexure-F is affirmed. However, the Deputy Commissioner, Dakshina Kannada District, Mangalore, is directed to send back the case papers to the appropriate Court. As the final decree proceeding is of the year 1978, the Court is directed to take all necessary steps to dispose of the final decree proceeding within three months from the first date of listing of the proceeding after service of notice to all the necessary parties.

Petition disposed of.