

(2000) 06 KAR CK 0017

In the Karnataka High Court

Case No : Civil Revision Petition No. 1963 of 2000

Sri. N.A. Ramakrishna

APPELLANT

Vs

Sri. K.N. Panduranga Setty and Others

RESPONDENT

Date of Decision : 12-06-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, 115, 2 (14)

Citation : (2000) 3 KCCR 2022

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : P. Srinivasaiah, for the Appellant; G.M. Paramasivaiah, for the Respondent

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—Heard the learned Counsels for the parties.

2. This revision petition arises from order dated 25.3.2000 in Execution Case No. 64 of 1980. The order of the Court namely dated 25.3.2000 reads as under-

25.3.2000 DHR - KPK JDR - GSV Applicant - MJ A.P - GMP

To hear further-

Heard both the counsels at length. Perused the records and earlier order sheets. Both the parties directed to address arguments on all the points including maintainability and also the objector application so that the Court can dispose of the objector application and right of auction purchaser to seek possession. In view of the ensuing vacation, call on among to hear an application of objector and auction purchaser.

Sd/- 2.6.2000.

3. The learned Counsel tried to submit that the Court below acted illegally in not considering the request for deciding the question of maintainability of the

application of objector and auction purchaser on the ground of limitation. From the order it does not appear that the Court below has decided or recorded any finding about the maintainability of the application. What the Court below has done is it has postponed the hearing and adjourned the date for hearing with respect to points relating to application of the auction purchaser including its maintainability and also on application of objector. Thus, the Court has not given any decision on the point including the question of maintainability. It has only adjourned the case.

4. The first question I put to the learned Counsel for the applicant is, whether the order in question amounts to a case decided and the second question which I did put to the learned Counsel, is, whether the Court is always bound and obliged to decide an issue as a preliminary issue, in every case, on the request of the Counsel? and third question is, whether the Court cannot postpone the hearing and decision along with other issues?

5. The learned Counsel contended regarding second question that "may" should be read as "shall" and the Court is bound to decide and obliged to decide an issue as to maintainability as preliminary issue and it cannot postpone it especially and only in cases where it relates to a question of law and touching jurisdiction.

6. As regards whether an order amounts to a case decided, learned Counsel failed to satisfy this Court that this order in question amounts to case decided. The learned Counsel invited the attention of the Court to the Provisions of and explanation to Section 115 which reads as under-

Section 115. Revision.-(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such Subordinate Court appears.-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.

Explanation.-In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.

This learned Counsel contended that every order will amount to a case and even an order of the nature of postponing the hearing will amount to a case and therefore, the order in question in this case postponing or adjourning the case can be said to be a case decided.

7. I am unable to accept the contentions raised by the learned Counsel for the revision Petitioner. The expression "order" has well been defined in Section 2(14). It reads as under.-

Section 2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-

(14) "Order" means the formal expression of any decision of a Civil Court which is not a decree.

When the section speaks of formal expression of any decision, it means it is a decision of some point in dispute or issue between the parties, may be relating to merits of the right or case or may be some other right of the party relating to litigation and the order postponing the hearing and decision of objections and adjourning it to some other day cannot be said an expression of any decision between the parties on any point in dispute. To be a case decided the order in legal terms, as defined in Section 2, has to be a decision in the case. The order impugned does not come within the framework of expression "Order" and Section 2(14) does not cover within itself order of adjournment or order postponing hearing to be an order for the purpose of Section 115 and if it is not an order of Section 2(14), such an order does not amount to a case decided. In this view of the matter, in my opinion, the order impugned does not amount to a case decided.

8. As regards the merits, Order 14, Rule 2 reads as under-

Order 14, Rule 2, Court to pronounce judgment on all issues.-(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of Sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to.-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

9. Earlier to this, Order 14, Rule 2 had been amended by Civil Law Amendment Act of 1976 and the present Rule 2 is substituted for old Rule 2 of Order 14.

The first general principle under Order 14, Rule 2 is that, notwithstanding anything that case may be decided on a preliminary issue, the Court shall pronounce judgment on all issues subject to exceptions created in Sub-rule (2). Sub-rule (2) confers a discretion on the Court to try any issue of law if it relates to jurisdiction of the Court or bar to the suit created by the law for the time being in force and it provides that it may try such an issue as a preliminary issue and may for that purpose, if it thinks fit, postpone settlement of other issues until that issue is determined. Unamended Rule 2 Order 14 reads as under-

Issues of law and of fact-Where issues both of law and of fact arise in the same

suit and the Court is of the opinion that the case or any part thereof may be disposed of on issues of law only, it shall try those issues first and for that purpose may, if it thinks fit, postpone settlement of issues of fact until after issues of law have been determined.

10. By 1976 amendment, the tenor of the language had been changed and Sub-rule (2) of Order 14 uses the expression, "may try issues of law relating to jurisdiction or bar to suit created by law and may postpone settlement of other issues". If the Legislature would have been intended that it is obligatory on the Court to try issues of law touching jurisdiction as a preliminary issue every time, then it would not have modified the Rule 2 when Rule 2 says, "it shall try" and then provides that it may postpone. The expression "shall try" under the rule was a mandate and it was necessary for that purpose that it provided for postponement or settlement of issues. The Legislature with eyes open and intentionally modified the language used in Rule 2 and substituted the expression "may" for "shall ". The intention of the Legislature appears to be that it did not make obligatory in every case for the Court to try even such an issue which may be an issue of law involving question of jurisdiction or bar to the maintainability of the suit to try as a preliminary issue. It left it to the discretion of the Court to try such an issue as preliminary issue or not. It left to the discretion of the Court to try preliminary issue or to try and decide that issue with all other issues. When I so observe, I find support for my view from the Full Bench decision of the Allahabad High Court in the famous Ayodhya Case. The parties names are as under-

Sunni Central Waqf Board and others Vs. Gopal ingh Vishrad and others, .

In paragraph 11, Hon"ble Mr. Justice S.C. Mathur delivering judgment on behalf of the Full Bench as under-

11. The word "shall" used in old Order 14, Rule 2, has been replaced in the present Rule by the word "may". Thus now it is discretionary for the Court to decide the issue of law as a preliminary issue or to decide it along with the other issues. It is no longer obligatory for the Court to decide an issue of law as a preliminary issue.

Their Lordships further observed,

32. We have observed hereinabove that after the amendment brought about in the year 1976 it is discretionary with the Court to take up an issue as in preliminary issue. All judicial discretions have to be exercised reasonably.

In this view of the matter, in my opinion, there is no substance in this contention of the learned Counsel for the revision Petitioner. Thus considered, firstly this order impugned does not amount to be a case decided and the first essential condition for invoking jurisdiction u/s 115 of the CPC has not been established and apart from that, the order impugned cannot be said to be illegal or passed illegally. The order impugned cannot be said to be suffering from any error or

jurisdictional error coming within the framework of either of the Clauses (a), (b) or (c) of Section 115.

The revision petition, as such, is hereby dismissed.