

(2010) 09 KAR CK 0037

Karnataka High Court

Case No: Regular First Appeal No. 268 of 2004

Dr. H.V.R. Iyengar since
deceased by L.Rs.

APPELLANT

Vs

Mrs. Indira Bipin Patel

RESPONDENT

Date of Decision: Sept. 21, 2010

Citation: (2011) 1 KCCR 89

Hon'ble Judges: K.L Manjunath, J; B. Manohar, J

Bench: Division Bench

Advocate: M.V. Vedachala, for the Appellant; W.M. Sundara Murthy, for the Respondent

Final Decision: Allowed

Judgement

K.L. Manjunath, J.

The legality and correctness of the judgment and decree dated 18.12.2003 passed in O.S. No. 6983/2000 by the XX Additional City Civil Judge, Bangalore, is called in question by the Appellant.

2. The Appellant was the Defendant and the Respondent was the Plaintiff in the suit.

3. The facts leading to this case are as hereunder:

Plaintiff filed the suit for partition and separate possession claiming half share by metes and bounds and for rendition of accounts. The suit property is Sy. No. 125, 126/32 situated at 6th Cross, Rajmahal Vilas Extension, Bangalore - 560 080. According to the plaint averments, the Plaintiff is the younger sister of the Defendant. They are the children of late H.V.R. Iyengar and late Sushila Iyengar. The father of the parties died on 22.02.1978 and their mother Sushila Iyengar died on 07.09.1999. The suit schedule property was bequeathed to Sushila Iyengar by her husband H.V.R. Iyengar under the registered Will dated 10.05.1976. It is the case of the Plaintiff that after the death of Sushila Iyengar, all the properties were required to be divided among her legal heirs in equal proportion. It is the case of the Plaintiff that the Defendant being the elder brother, instead of dividing the property,

addressed a letter on 25.11.1999 enclosing a copy of the document, stated to be the last Will and testament of Sushila Iyengar dated 25.02.1997. Contending that the Will propounded by the Defendant was created on account of undue influence of the Defendant on the deceased mother Sushila Iyengar, the Plaintiff filed the suit for partition.

4. The Defendant contested the suit denying the allegations made in the written statement. According to him, the Will was executed by his mother, out of her will and volition and it was not executed on account of undue influence. Therefore, he requested the Court to dismiss the suit.

5. Based on the above pleadings, the Trial Court framed the following issues:

i) Whether the Defendant proves that Smt. Sushila Iyengar has executed the registered Will dated 25.02.1997 in respect of the suit schedule property in his favour?

ii) Whether the Plaintiff is entitled to half share in the suit schedule property?

iii) Whether the suit is not maintainable?

iv) To what relief, the parties are entitled to?

v) What decree or order?

6. In order to prove their respective contentions, the Plaintiff got herself examined as P.W. 1 and in addition to that, she relied upon the evidence of one B.N. Ramdas and Dr. A. Raghavan who were examined as P. Ws.2 and 3 and relied upon Exs. P1 to P10. Defendant got examined himself as D.W.1 and also relied upon the evidence of Visweshwaran and C. Premalatha, who were examined as D. Ws.2 and 3. He relied upon Exs. D1 to D5.

7. The Trial Court heard the arguments on 18.12.2003. On the same day, it has delivered the judgment holding that the Plaintiff is entitled for equal share in the suit schedule property both movable and immovable. Being aggrieved by the same, the present appeal is filed.

8. Though several grounds are urged by the Appellant in the appeal memo, at the time of arguments, learned Counsel for the Appellant Mr. Vedachala contends that the Trial Court has committed a serious error in decreeing the suit without giving an opportunity to the parties to let in evidence on the modified issues. According to him, the Trial Judge, who heard the arguments on 18.12.2003, has pronounced the order on the same day which runs to 88 pages and during the course of judgment, the Court on its own modified the issues and framed in all, 7 modified issues. When modified issues were framed by the Court below, the Court below did not even brought to the notice of the learned Advocates who were appearing for the parties about re-framing of issues by the Court suo motu and no opportunity was given to the parties to let in evidence on the modified issues or atleast it was the duty of the

Court to bring to the notice of the learned Counsel for the parties about the reasons for recasting of issues and re-framing of issues and thereafter to give a reasonable opportunity to them to let in evidence or to address the arguments on the modified issues. If the Advocates for the parties are of the opinion that no additional evidence is required based on the re-framed issues, then also it was for the Court below to request the learned Counsel for the parties to address the arguments on the modified or re-framed issues. Therefore, only on this short ground, he requests the Court to set aside the judgment and decree passed by the Court below and however requests the Court to remand the matter for fresh consideration to let in evidence on the modified issues.

9. Mr. Sundara Murthy, learned Counsel for the Respondent though made an attempt to support the judgment of the Trial Court, is unable to meet the arguments advanced by the learned Counsel for the Appellant in regard to the Court below reframing the issues suo motu and passing the judgment without giving an opportunity to let in evidence or to address the arguments on modified issues.

10. In the circumstances, the only point to be considered by us in this appeal is:

Whether the Court below is justified in decreeing the suit by re-framing the issues suo motu without giving an opportunity to the parties either to let in evidence or to address further arguments on the modified issues?

11. The facts of this case are not in dispute to the following extent. The Plaintiff is the younger sister of the Defendant. The suit property was owned by her father late H.V.R. Iyengar. In the year 1976, her father executed the registered Will bequeathing the property in favour of her mother - Sushila Iyengar. The Defendant has relied upon the Will executed by his late mother Sushila Iyengar. In the plaint, the Plaintiff has also relied upon the Will said to have been executed by Sushila Iyengar. According to her, the copy of the will was sent to her by the Defendant in the year 1999. It is also not in dispute that based on the pleadings, the issues were framed and the evidence was also let in by both the parties.

12. On perusal of the order sheet maintained by the Court below, it is clear to us that the arguments were heard on 18.12.2003 and on the same day the judgment, which runs to 88 pages, has been delivered by the Court below.

13. The only grievance of the Appellant before us is that the Court suo motu has re-framed in all 7 issues and without giving an opportunity to the parties, behind the back of the parties the judgment and decree has been passed answering the newly framed issues in its own manner. Therefore, he contends that the procedure followed by the Court below is wrong.

14. On perusal of the order sheet, it is clear to us that additional issues have been framed suo motu by the Court below and were not made known to the learned Counsel for the parties or to the respective parties. When the Court below has

re-casted the issues and framed additional issues suo motu placing the burden of proving some of the issues on the Defendant and some of the issues on the Plaintiff, in all fairness, it was for the Court below to give an opportunity for both the parties to let in evidence If they so desire and if the parties are of the opinion that the evidence already let in is sufficient, then also it was for the Court below to request the learned Counsel for the parties to address the arguments on the modified or re-framed Issues. Since such a procedure is not followed, we are of the opinion that the judgment and decree has to be set aside only on the illegality committed by the Court below. Accordingly, we answer the point that arises for our consideration in favour of the Defendant and against the Plaintiff.

15. In the result, the judgment and decree dated 18.12.2003 passed" in O.S. No. 6983/2000 by the XX Additional City Civil Judge. Bangalore, are hereby set aside. The matter is remanded to the Trial Court for giving an opportunity to both the parties to let in evidence, if they so desire, on the Issues re-framed by the Court below suo motu and dispose of the suit on merits. Parties to bear their costs.