

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 25TH DAY OF NOVEMBER 1998

B E F O R E

THE HON'BLE MR.JUSTICE T.N. VALLINAYAGAM

R.S.A.NO.35/1997

Between :

Mahantaswamigalu Guru
Sengana Basavana Swamigalu
Hiremath, aged about 56 years
Occ : Agriculture and Swami
Resident of Mangoli
Taluk Basavan Bagewadi
District Bijapur
by G.P.A. Holder
Basagondappa
S/o. Gulappa Paragond
aged about 56 years
Occ : Business
Resident of Mangoli
Taluk Basavan Bagewadi
District : Bijapur

.. Appellant.

(By Sri. Praveen Kumar Raikote, Adv.)

And :

1. The Chairman
Grama Panchayat of Mangoli
Taluk Basavan Bagewadi
District : Bijapur
2. The Deputy Commissioner
of Bijapur District
represented by the Tahsildar
Basavan Bagewadi
District : Bijapur

.. Respondents.

(By Sri. Ashok R. Kalyana Shetty for R1
Sri. H.S. Surendra, GA for R2)

Mr.

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R.S.A. filed U/s.100 of CPC., against the judgment and decree dated 11.12.96 passed in R.A. No.122/95 on the file of the I Addl. Civil Judge, Bijapur, allowing the appeal and setting aside the judgment and decree passed by the Munsiff, Basavana Bagewadi in O.S. No.101/90, dated 3.7.95.

This R.S.A. coming on for Admission this day, the Court delivered the following :

J U D G M E N T

The plaintiff is the appellant. The suit for declaration and injunction that the plaintiff is the owner in possession of the suit land in C.B.No.1686 (Sy.No.1233) measuring 4 acres 20 guntas, situated at Managuli village, Bagewadi Taluk was decreed by the trial court, but came to be reversed by the first appellate court. Aggrieved by the same, the plaintiff is before this court in this second appeal.

2. It is claimed that the suit land is the ancestral property of Math-plaintiff. Math is in possession and enjoyment of the property . During 1940 by creating false documents the suit land is separated in the R of R behind the back of the plaintiff and the name of the Local Board Oversear was entered in the R of R by showing Hindu Smasan in Kabjedar Colony of R of R which has no value. The plaintiff and his predecessor in

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title has never consented to create such document. The suit land was never taken possession from the plaintiff by the defendant nor was there is any acquisition. Therefore when there was obstruction to the plaintiff's enjoyment, the suit came to be filed.

3. The first defendant who is the Deputy Commissioner, represented by B. Bagewadi, did not file written statement at all despite time being granted and the second defendant the Chairman, Grama Panchayat also did not file written statement though both are represented by advocates. On the basis of the evidence, the trial court decreed the suit though in my opinion under Order VIII Rule 10 the suit should have been decreed without even embarking upon the luxury of trial. The appellate court unfortunately without appreciating either the evidence or the law, has chosen to reverse the judgment, trying to look holes in the in the case of the plaintiff. It is not the duty of the appellate court to go into the pleadings made by the

plaintiff and the question of veracity or otherwise. So long as the subject matter of the suit has no bar under Order VII Rule 11. In any event, the dismissal of the suit by the appellate court is not sustainable even on the reasoning given by the first appellate court. Therefore, the question before this court is whether the dismissal of the suit by the first appellate court without following Order VIII Rule 10 is proper. Order VIII Rule 10 is as follows;

" Procedure when party fails to present written statement called for by Court:

Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the court, as the case may be, the Court shall pronounce judgment against him or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up. "

4. After the amendment, it has been made clear that the court shall "pronounce judgment against him" and no option is given to the

Court to do otherwise. Despite the fact that this position of law has been repeatedly pointed out the courts below have been showing deaf ear to the provisions of the law and the pronouncement made by this court. When a mandatory provision is made in CPC, it is for the court to follow it and not throw it in winds.

5. In this view, holding that the judgment and decree by the first appellate court is prima facie illegal and not warranted either in law or the facts of the case, this second appeal is allowed restoring the judgment and decree of the trial court and setting aside the judgment and decree of the first appellate court.

Learned Govt. Advocate is permitted to file memo of appearance within four weeks.

Sd/-
Judge

mv/-