SUPREME COURT OF INDIA

Principal Govt. Pre-University College

Vs.

Mr.Jambu Kumar Mutha

C.A.No.10418 of 2014

(T.S.Thakur and R.Banumathi JJ.)

20.11.2014

JUDGMENT

T.S. THAKUR, J.

1. Leave granted.

2. These appeals arise out of a common order dated 13th February, 2012 passed by the High Court of Karnataka whereby Regular First Appeals No.806 of 2000 and 296 of 2011 filed by the appellants have been dismissed.

3. In OS No.125 of 1996 plaintiff-respondent No.1 in these appeals prayed for declaration of his title over the suit property, removal of unauthorised construction raised over the same and permanent injunction restraining defendants in the suit from interfering with the plaintiff's possession and enjoyment of the suit property. The plaintiff's case in a nutshell was that he is the owner of the land measuring 1 acre 38 guntas situate in Malur Town, Kalur District fully described in the plaint out of which the defendants had unauthorisedly occupied an area measuring 377 feet x 34 feet to construct a school building. This unauthorised occupation and construction was, according to the plaintiff, to be removed and possession over the entire suit property protected by issue of a permanent prohibitory injunction against the defendants.

4. The defendant's case, as set out, in the written statement filed on their behalf was

that the suit property belonged to the State Government and that the same had been used for construction of a Government school building subsequently upgraded as a pre-university college being run and maintained by the State Government. On the pleadings of the parties the trial Court framed as many as eight issues which were answered by the Court in terms of its judgment and decree dated 23rd June, 2000. The end result of the discussion on the issues was a decree in favour of the plaintiff-respondent No.1 to the effect that he was the owner of plaint Schedule "B" property unauthorised construction raised over which was liable to be removed. The trial Court further restrained the defendants from interfering with the possession of the plaintiff over Schedule 'A' property which was held to be in ownership and possession of the plaintiff.

5. Aggrieved by the Judgment and decree passed by the trial Court, appellants in SLP (C) No.20841 of 2012 approached the High Court for permission to file an appeal against the said judgment and decree which permission was granted by the High Court by its order dated 30th November, 2000 culminating in the filing of RFA No.806 of 2000. No appeal, it appears, was filed by the State Government or by the Principal of the Government Pre-University College defendants in the suit to challenge the judgment and decree suffered by them. I.A. No.2 of 2008 was, however, moved by them in RFA No.806 of 2000 seeking their transposition as appellants in the said appeal. That prayer was declined by the High Court by an order dated 18th November, 2010 with the observation that the defendants-respondents No.2 and 3 in RFA No.806 of 2000 being parties to the suit were free to challenge the judgment and decree passed against them in separate appeals, if they so advised.

6. It was thereafter that defendants-appellants in SLP (C) No.19634 of 2012 filed RFA No.296 of 2011 before the High Court of Karnataka at Bangalore in which they filed an application seeking condonation of intervening delay in the filing of the appeals. That application has been dismissed by the High Court in terms of the order impugned in these appeals.

7. The High Court has not only found the explanation offered by the appellants unacceptable but also considered the appellant's refusal to accept the offer made by the plaintiff-respondent No.1 to be what it has described as "inexplicable and deplorable". The relevant part of the order of the High Court reads as under:

> "Yet another circumstance that is equally inexplicable and deplorable is the fact that there was a voluntary offer from the respondent, who has benefit of a judgment and decree, to hand over the disputed suit property described in Schedule-B to the plaint for the benefit of the State Government, since it is adjoining college property and since it would be used for purpose of the College. The State Government represented by the Government Pleader, on instructions, has rejected the offer on the ground that any such acceptance of the proposal would require the approval of the cabinet and that concerned officials were not in a position to commit themselves in accepting the offer. Thereafter, this court, no being convinced about the stand of the State Government, which was indeed unexplained and unreasonable, since the property was being offered voluntarily for public benefit and the State Government negating the same had called upon the Government Pleader to obtain better instructions and if necessary, to obtain the approval of the Cabinet and the matter stood adjourned yet again. The learned Additional Advocate General had then entered appearance and had assured the court that steps would be taken to accept the offer made by the respondent. Again when the matter is listed today the Government Pleader seeks an adjournment on the specious plea that he needs to file an application to tender additional evidence.
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> This stand on the part of the appellant is indeed unfortunate and since the transfer to be complete, even if there is an offer by the respondent, would necessarily require a judgment and decree to be passed in terms of a compromise that may be effected and having regard to the stance of the appellant it is painful task of this court to deal with the appeal on merits."

8. It is evident from the above passages extracted from the main order that the High Court was not very happy with the Government's response to the proposal made by the plaintiff-respondent No.1 to part with Schedule "B" property by way of a settlement leaving the remainder of the property to the plaintiff. Apart from the fact that Schedule "B" property comprises just about 377 feet x 34 feet which is already built upon thereby leaving hardly any space for the students to use as a playground, Mr. Bhat, learned Counsel for the appellants, argued that the High Court was not justified adopting a coloured approach to the prayer for condonation. He urged that the offer made by the plaintiff-respondent was not acceptable and was in any case no substitute for a proper determination of the issues that fell for consideration.

9. The High Court has while dismissing the application for condonation of delay made by the State dismissed even the appeal preferred by the appellants in RFA No.806 of 2000 after obtaining the leave of the Court. While doing so the High Court has not gone into the merits of the controversy and has simply declined to interfere with the impugned judgment and decree with the following observations:

> "In view of the State Government having filed an appeal in respect of the very judgment and decree, the appeal in RFA 806/2000 would not merit consideration and accordingly rejected."

10. We are, in the peculiar facts and circumstances of the case, are of the opinion that the High Court was not correct in dismissing RFA No.806 of 2000 summarily as it has done. Whether or not an appeal was maintainable at the instance of someone who was not a party to the suit was itself a matter which ought to have engaged the attention of the High Court. The High Court has not, however, adverted to that aspect and dismissed the appeal simply because the appeal preferred by the State had been dismissed. That apart, since an appeal against the very same judgment and decree as was challenged in RFA No.296 of 2011 was already pending before the High Court, the High Court ought to have taken a more pragmatic view of the matter and condoned the delay in filing of the said appeal on such terms as it may it consider it proper. It is no doubt true that the delay in filing of the State appeal was considerable but given the circumstances in which the delay had occurred, we are inclined to condone the same. We accordingly allow these appeals, set aside the orders passed by the High Court, condone the delay in the filing of RFA No.296 of 2011 subject to payment of costs of Rs.50,000/- to be paid to the defendant-respondent in the said appeal and remit the matter back to the High Court for hearing and disposal of RFA Nos.806 of 2000 and 296 of 2011 on merits.