

C.K. Prahalada & Ors vs State Of Karnataka & Ors on 6 May, 2008

Equivalent citations: 2008 AIR SCW 4161, 2008 (3) AIR JHAR R 454, 2008 (5) AIR KAR R 58, AIR 2009 SC (SUPP) 381, (2009) 107 REVDEC 256, (2009) 2 MAD LJ 959, (2010) 1 RAJ LW 416, (2008) 5 KANT LJ 561, (2008) 2 WLC(SC)CVL 452, (2008) 6 ALLMR 70 (SC), (2008) 3 ALL WC 3042, (2008) 3 GUJ LH 493, (2008) 8 SCALE 600, 2008 (15) SCC 577, (2008) 4 MAD LW 915

Author: S.B. Sinha

Bench: S.B. Sinha, Lokeshwar Singh Panta

CASE NO.:

Appeal (civil) 3325 of 2008

PETITIONER:

C.K. Prahalada & Ors

RESPONDENT:

State of Karnataka & Ors

DATE OF JUDGMENT: 06/05/2008

BENCH:

S.B. Sinha & Lokeshwar Singh Panta

JUDGMENT:

J U D G M E N T REPORTABLE CIVIL APPEAL NO. 3325 OF 2008 (Arising out of SLP (C) No.7452 of 2006) S.B. Sinha, J.

1. Leave granted.

2. This appeal is directed against the orders dated 24.10.2005 and dated 1.12.2005 passed by the High Court of Kanataka at Bangalore whereby and whereunder delay of 2487 days in filing the appeal has been condoned and the said appeal has been allowed.

3. The basic fact of the matter is not in dispute. The brother of Madwaramanachar, father of the appellant, was admitted to S.D.S. TB Hospital at Bangalore. All the articles from the body of his brother were removed by the father of the appellant. After his death, the father of the appellant requested the hospital authorities to hand over the obsquecies seized wherefor a written request was made on 9.6.1981. The Superintendent of the said hospital passed an order that the articles kept by the father of the appellants must be delivered back to the hospital authorities for being kept in a safe

custody so as to enable them to deliver the same to the persons entitled therefor. Delivery of the articles was insisted before handing over the dead body. The said articles were handed over to the hospital authorities wherefor an acknowledgment was issued.

4. An application for grant of succession certificate was filed by the father of the appellants on 24.8.1981. In the said proceedings, one Gowramma, wife of the deceased, was impleaded as a party. She expired during the pendency of the said proceedings. She, allegedly left behind one S. Basavarajappa, who is said to be her adopted son. By an order dated 5.7.1991, succession certificate was granted in favour of the appellant in respect of the following :

1.

Amount in vijay Bank Togarsi S.B. Account No.309 with interest Rs.5-00

2. Amount in Syndicate Bank, Shimoga S.B. Account No.27717 Ledger Folio No.30 with interest Rs.318-65

3. Amount in syndicate Bank, Shimoga Koppa, S.B. Account No.7/89 folio 4289/17 with interest Rs.19379-59 Gold Articles belonging to deceased in deposit in the Hospital at Bangalore.

Gram Mgs One Sudarshan ring I - 700 One Ring with red Stones 5 - 300 One Finb sing shigd stones 6 - 600 One Bar f - 800 +9 - 450 Cash No - 00

5. Despite production of the said succession certificate, the hospital authorities did not return the said articles and documents to the appellant's father, whereupon a suit in the court of Additional City Civil Judge, Bangalore seeking a direction to the hospital authorities-defendants to hand over the articles to the appellants or in alternative pay the value thereof which was assessed at Rs.45,000/- was filed

6. No notice under Section 80 of the Code of Civil Procedure, however, was served upon the State. An application under sub-section (2) of Section 80 of the Code was filed which is said to have been allowed. Before the learned Trial Judge, no written statement was filed by the State. It was decreed ex parte on decree was passed on 31.10.1997.

7. An execution case was filed in the year 2003 for execution of the said decree. Upon receipt of the summons from the executing court, a first appeal was preferred by the State of Karnataka. As indicated hereinbefore, the same was barred by 2487 days.

An application for condonation of delay was filed in the said appeal being IA No.1 of 2005 which, by reason of a judgment dated 24.10.2005 was allowed. The High Court by reason of its judgment dated 1.12.2005 pointed out various deficiencies in the said decree and opined that the judgment and decree passed by the learned Trial Judge was not sustainable in law, stating :

(i) No urgency was shown for filing the suit in terms of sub-section (2) of Section 80 of the Code of Civil Procedure;

(ii) Smt. Gowramma was a necessary party in the suit; and

(iii) The value of the articles was not mentioned in the succession certificate. There was nothing to show that the plaintiff was the only heir of the deceased.

It was directed :

"The appeal is allowed and the impugned judgment and decree dated 31.10.1997 made in O.S. No.3830/1994 on the file of II Additional City Civil Judge at Bangalore City, is set aside and the matter is remitted back to the Trial Court, with a direction to the parties to appear before the Trial Court for further proceedings on 23.12.2005, without notice. Further, the Trial Court is directed to afford an opportunity to the defendants to file the written statement within 30 days from 23.12.2005 and dispose of the suit in accordance with law."

8. Ms. Kiran Suri, learned counsel appearing on behalf of the appellant, would submit that the High Court committed a serious error in condoning the delay of 2487 days in preferring the appeal by the State. It was furthermore urged that the appellant has failed to prove any cause far less any sufficient cause therefor. The learned counsel contended that the High Court should not have remitted the matter back to the trial court keeping in view the fact that the short question which arose for its consideration was as to whether the hospital authorities having asked the appellants' father to obtain a succession certificate was bound to return the articles to him on production thereof.

9. Mr. Hegde, learned counsel appearing on behalf of the respondents, however, supported the impugned judgment.

10. One Gowramma, as noticed hereinbefore, was impleaded as a party in the proceedings for grant of succession certificate. She claimed herself to be the wife of the deceased. Appellant knew that the hospital authorities had handed over the documents and goods to her. She was, therefore, a necessary party. As she expired during the pendency of the proceedings, her heirs and legal representatives should have been impleaded as parties in the said proceedings.

The decree might have been passed ex parte but when the same has been brought to the notice of this Court, in our opinion, in exercise of our discretionary jurisdiction under Article 136 of the Constitution of India, we should not interfere therein.

It is now a well settled principle of law that this Court would not exercise its extraordinary jurisdiction only because it is lawful to do so. (See M/s. Tanna & Modi v. C.I.T. Mumbai XXV & Ors. [2007 (8) SCALE 511]) This Court has the power to pass necessary orders for doing complete justice to the parties. The High Court, in our opinion, has rightly held that in the aforementioned situation,

Gowramma was a necessary party. A succession certificate is granted for a limited purpose. A Court granting a succession certificate does not decide the question of title. A nominee or holder of succession certificate has a duty to hand over the property to the person who has a legal title thereto. By obtaining a succession certificate alone, a person does not become the owner of the property.

11. In *Vidhyadhari & Ors. v. Sukhrana Bai & Ors.* [(2008) 2 SCC 238], this Court held :

"14. Therefore, though we agree with the High Court that Sukhrana Bai was the only legitimate wife yet, we would choose to grant the certificate in favour of Vidhyadhari who was his nominee and the mother of his four children. However, we must balance the equities as Sukhrana Bai is also one of the legal heirs and besides the four children she would have the equal share in Sheetaldeen's estate which would be 1/5th. To balance the equities, we would, therefore, choose to grant succession certificate to Vidhyadhari but with a rider that she would protect the 1/5th share of Sukhrana Bai in Sheetaldeen's properties and would hand over the same to her. As the nominee she would hold the 1/5th share of Sukhrana Bai in trust and would be responsible to pay the same to Sukhrana Bai. We direct that for this purpose she would give a security in the trial court to the satisfaction of the trial court."

(Emphasis added)

12. It may be true that there was enormous delay in filing the appeal. Ordinarily, this Court would not have condoned the said delay in filing the appeal but in this case, the First Appeal filed by the State has also been allowed by the High Court.

Keeping in view the nature of the order passed by the High Court, we are of the opinion that it is not a fit case where we should interfere with the judgment of the High Court dated 24.10.2005 which will have the effect of setting aside its order dated 1.12.2005 also. We, however, are of the opinion that the State must pay a sum of Rs.10,000/- by way of costs to the appellant. We further direct that Basavarajappa should be impleaded as a party in the suit. It will also be open to the appellant to pray for such other relief or reliefs in the suit as she may be advised in the matter.

13. The appeal is dismissed with the aforementioned directions. In the facts and circumstances of the case, however, there shall be no order as to costs.