

(1996) 07 KAR CK 0066

In the Karnataka High Court

Case No : Civil Revision Petition No. 1225 of 1992

A.C. Rangaswamy

APPELLANT

Vs

Smt. D.J. Renuka

RESPONDENT

Date of Decision : 12-07-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 21
Karnataka Small Cause Courts Act, 1964 — Section 8

Citation : (1997) 1 KarLJ 605

Hon'ble Judges : M. F. Saldanha, J

Judgement

1. This civil revision petition is directed against a decision of the Small Causes Court in Suit S.C. No. 3637 of 1988, dated 18-12-1991. The petitioner before me was the defendant to that suit and it was contended by the plaintiff that she had paid to him a sum of Rs. 5,001/- in connection with a site situated at Hebbal. The petitioner was the power of attorney holder and had acted on behalf of the owner. Subsequently, the transaction did not materialise because the plaintiff was not interested in the property and revoked the agreement. She demanded the refund of the amount of Rs. 5,001/- and since it was not forthcoming, the suit was filed. The learned trial Judge heard the parties and decreed the suit for the sum in question along with costs etc. It is against this order that the present civil revision petition has been filed.

2. Petitioner's learned Advocate has presented a serious challenge to the jurisdiction of the Small Causes Court. He relies on the provisions of Section 8 of the Small Causes Courts Act whereunder suits of the character as set out in the Schedule are excluded from the jurisdiction of that Court. Learned Advocate draws my attention to Item 10 of the Schedule which deals with "a suit for the determination or enforcement of any other right or interest in movable property" and he submits that since this transaction concerns the sale or purchase of the immovable property, that the suit must be construed as one being for enforcement of a right or interest in movable property. Learned Advocate submitted that this aspect of the matter has been overlooked by the Trial Court

and that it is very fundamental because that Court could not have exercised any jurisdiction in relation to a particular dispute. Reliance was sought to be placed on a Division Bench decision in the case of Shivamurthi Mallayya Swami v Mahadev Umarane, 1989(1) Kar. L.J. 83, wherein the Division Bench of this Court had occasion to consider various aspects of the law relating to the jurisdiction of the Small Causes Court and to hold that a very clear cut definite approach has to be taken in these matters and if the Court has no jurisdiction, no amount of effort to stretch the law or even agreement by the parties can confer jurisdiction. In the present instance, the submission that the suit is for enforcement of any right or interest in immovable property is totally misconceived. The suit was for recovery of the money that was paid to the defendant at a stage when the property transaction had come to an end. If the amount of money came within the pecuniary jurisdiction of the Small Causes Court, that was the only Court before which the suit could have been filed. The plaintiff was not enforcing any right or interest in immovable property because the present cause of action namely the recovery of the amount paid by her has nothing to do with enforcement of a right in respect of property.

3. The second submission canvassed was that a suit for the specific performance or recession of a contract is excluded from the jurisdiction of the Small Causes Court under Item 14 of the Schedule. The plaintiff in this case has not sued for specific performance nor has she come to the Court for recession of the contract. Her claim was a simpliciter money claim and to my mind, Item 14 of the Schedule will have no application to the facts of this case.

4. Another head of argument that was advanced was that admittedly the petitioner was acting as a power of attorney holder on behalf of the owner. Learned Advocate submitted that the principle of vicarious liability would have to be invoked in this case and that if at all the plaintiff had any cause of action that it was against the owner. He submitted that an agent is only an intermediary and that he had received the advance against the property, that this advance was transmitted to the principal and that the plaintiff would have to sue the principal and not the agent for the recovery of the amount. He therefore submitted that the suit against the present petitioner who was the defendant was not maintainable and that the cause of action if any existed was against the owner of the property and not the person who was only representing him. As far as this argument is concerned, there are certain inherent fallacies, the first of them being that the petitioner was not a mere agent but was acting as a power of attorney holder. In such a situation, he was synonymous with the owner of the property and further more, the learned trial Judge has very clearly discussed in some detail this aspect of the matter. The transactions were clearly between the plaintiff and the present petitioner and not between her and the owner of the property. Secondly, the petitioner was acting as power of attorney holder on behalf of the owner which in other words means that vis-a-vis the plaintiff, there was no difference between the power of attorney holder and the owner. More importantly, the defendant admits having received the money which position has

been accepted even in the written statement and in the evidence. Learned Advocate submits that the error has occurred in holding the defendant liable when, as power of attorney holder he could only have accepted the money on behalf of the owner to whom he has transmitted the amount and that therefore, if a decree was to be passed it could only be passed against the owner who was not even made a party to the proceeding. As far as this argument goes, there is nothing on record to justify the position that the defendant had transmitted the amount to the owner of the land because the onus of establishing this fact shifts to the defendant. On the other hand, there is positive admissions from him that he had received it and therefore, to my mind this head of argument will not avail the petitioner at all.

5. The last submission canvassed by the petitioner's learned Advocate is that if the sequence of the transactions is examined, it will be seen that the plaintiff was the one who stated that she was not interested in the purchase of the property. Learned Advocate submits that in these circumstances irrespective of whether the defendant did it or the owner did it, that the amount of Rs. 5,001/- was liable to be forfeited as the same was earnest money and his alternative submission is that having regard to the fact that the transaction has been revoked by the plaintiff, that the defendant was entitled to adjust the amount against loss or damage. Here again, what needs to be pointed out is that there was no agreement between the parties that the amount was earnest money but more importantly, that if the transaction does not materialise that the defendant or the owner were entitled to forfeit that amount. In the absence of such an agreement, no such argument can be pleaded before a Court of law. As regards the question of loss or damages if at all the same had occurred, the defendant would certainly have preferred a counter-claim against the plaintiff which has not been done. Under these circumstances, the submission canvassed under this head is wholly unacceptable.

6. No case is made out for interference with the order passed by the Trial Court. The civil revision petition fails and stands dismissed. Interim order if any to stand vacated. In view of the fact that this proceeding has been concluded, the respondent is permitted to withdraw the amount deposited in this Court and the same shall be adjusted against satisfaction of the decree.