
(1973) 06 KAR CK 0016

In the Karnataka High Court

Case No : Civil Revision Petition No. 2638 of 1972

Baburao Vithalrao Sulunke

APPELLANT

Vs

Kadarappa Prasappa Dabbannavar and Another

RESPONDENT

Date of Decision : 07-06-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5, 10

Citation : (1973) 06 KAR CK 0016

Hon'ble Judges : Venkataswami, J

Bench : Single Bench

Advocate : G.R. Patil, for G.D. Shirgurkar, for the Appellant; S.L. Benadikar, for the Respondent

Final Decision : Allowed

Judgement

Venkataswami, J.—This petition is directed against an order made by the 1st Additional Munsiff, Belgaum. on I.A. No. III in O.S. No. 150/1966, on his file, I.A. No. III was an application made under Rule 5 of Order 38. CPC by the Petitioner herein. It would appear that, another suit raising substantially same issue. between the same parties had been filed earlier which was pending and consequently this suit had been stayed pursuant to the provisions of Section 10, Code of Civil Procedure, When the present suit had been so staved, the Plaintiff filed the aforesaid application for an order of attachment before judgment. The learned Munsiff has refused to consider that application on the short ground that once a suit was staved, the Court had no jurisdiction to pass even an interlocutory order of the nature claimed in this case.

2. It seems to me that this order is clearly unsustainable. This Court in C.R.P. No. 2745 of 1972 decided on 22-2-1973, has laid down that a Court which is seized of a suit which has been stayed pursuant to the provisions of Section 10, CPC had nevertheless jurisdiction to make interlocutory orders, if relief in that behalf, is claimed by any of the parties. Section 10, CPC also seems to refer to the stay of trial of a suit and not other proceedings of an interlocutory character.

3. In the result, this petition succeeds and is allowed The order made by the learned Munsiff on I.A. No 111 on 10-7-1972 is hereby set aside. The matter will, however, stand remitted to that Court for fresh disposal of I.A. No III on its merits. There will be no order as to costs.