
(1976) 12 KAR CK 0004
In the Karnataka High Court

B.G. Guttal

APPELLANT

Vs

R.R. Diwakar

RESPONDENT

Date of Decision : 09-12-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20, 20 (b)

Citation : AIR 1977 Kar 211 : (1977) ILR (Kar) 287 : (1977) 1 KarLJ 50

Hon'ble Judges : K. Jagannatha Shetty, J

Bench : Single Bench

Advocate : K.J. Shetty, for the Appellant; A.N. Jayaram and R.N. Narasimhamurthy for A.S.R. Murthy, for the Respondent

Judgement

1. This is a revision petition by the plaintiff, directed against the order made by the III Addl. First Munsiff, Bangalore, under S. 20(b) of the Code of Civil Procedure.

The plaintiff was once an employee in the Loka Shikshana Trust of which defendant 1 was the sole Trustee. Defendant 2 was its Secretary. The said Trust was publishing a Daily newspaper styled as ""Samyukta Karnataka". The said publication was taken over by a Company called as "Karnataka Patrika (P.) Ltd.", which is defendant 3. Defendant 4 is the Editor-in-chief of the newspaper and defendant 5 is its Financial Manager.

2. The plaintiff complaining that he was prevented from discharging his duties after defendants 3 and 5 took over the management of the newspaper, has filed a suit for twin reliefs, viz., (i) for a permanent injunction restraining defendants 1 to 5 or their servants, agents or any one on their behalf from interfering with the discharge of the duties by the plaintiff as the Manager and Business Manager of "Samyukta Karnataka" and the publications; and (ii) for passing a judgment and decree directing the defendants to pay a sum of Rs. 1,274 being the salary and other allowances due to the plaintiff with a further direction to the defendants to pay the salary and allowances to the plaintiff as and when it becomes due.

3. The suit was instituted in the Munsiff Court, Bangalore City area. Defendants 1 and 2 alone reside within the territorial jurisdiction of that Court. Defendants 3 to 5 are residing within the jurisdiction of another Court situated at the Civil Station, Bangalore. Since defendants 3 to 5 are residing outside the jurisdiction of the Court in which the suit is pending, the plaintiff came forward with an application under S. 20(b) of the CPC for leave to sue them. Defendants 3 to 5 resisted the said application on the ground among others that defendants 1 and 2 are only formal parties; and since the defendants against whom the plaintiff claims an effective relief, are residing within the territorial jurisdiction of another Court, the Court should not grant the leave prayed for. That objection was accepted by the trial Court.

Hence this revision petition.

4. The only basis upon which the trial Court refused leave under S. 20(b) of the CPC was that defendants 1 and 2 are pro forma defendants, and the main defendants reside outside the jurisdiction of the Court. That decision was arrived at on a perusal of the plaint averments. I have also perused the same. It is premature to say that the said averments would lead to an inevitable conclusion that defendants 1 and 2 are formal parties and no decree could be made against them. Moreover, such an observation, even before the trial of the suit, is really prejudicial to the interests of the plaintiff. The learned Munsiff, in my opinion, ought not to have made that observation to reject the leave prayed for.

5. The Court's jurisdiction to grant leave under S. 20(b) does not depend upon the residence of the pro forma or real defendants in the suit. Section 20, so far as it is relevant provides:

"20. Other suits to be instituted where defendants reside or cause of action arises - Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction

(a)

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c)

The principle to be borne in mind while granting or refusing leave by the Court under the above provisions, as stated by the Supreme Court in Union of India (UOI) and Another Vs. Ladu Lal Jain, is that those defendants should not be unduly troubled and the suit be instituted at a place where they are able to defend themselves.

6. The trial Court has not expressed any view that defendants 3 to 5 would be in any way inconvenienced to defend the suit in the Court where it has been now instituted. I have also asked learned counsel for respondents 3 to 5 whether his clients would be in any way troubled or prejudiced to defend the suit in the Court in which it is now pending. Learned counsel said nothing on the inconvenience of his clients.

7. I, therefore, allow the revision petition, set aside the impugned order and direct the learned Munsif to grant leave to the plaintiff as prayed for and proceed with the suit on merits.

8. No costs.

9. Revision petition allowed.