

(1970) 11 KAR CK 0001
In the Karnataka High Court
Case No : Civil Revn Petition No. 1752 of 1967

Bhujanga Hegde and Another	Vs	APPELLANT
Sakarama Hegde and Others		RESPONDENT

Date of Decision : 03-11-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 115
Evidence Act, 1872 — Section 91, 92

Citation : AIR 1971 Kar 208 : (1971) 1 MysLJ 81

Hon'ble Judges : B. Venkataswami, J

Bench : Single Bench

Advocate : N. Santosh Hegde, for the Appellant; Padubidri Raghavendra Rao, for the Respondent

Final Decision : Dismissed

Judgement

B. Venataswami, J.—This petition u/s 115, CPC has been Preferred by defendants 3 and 4, in Original Suit No. 6 of 1966, on the file of the Civil Judge, at Udipi. It is directed against an order made in I. A. No. 467 of 1967 in the said suit. The said I. A. had been preferred by the 13th defendant in the suit for impleading her brother as a supplemental defendant and being arrayed as 14th defendant in the said suit. The Civil Judge allowed the application.

2. The Original suit in question is one filed by a member of a "Kavaru" of an Aliyasanthana family against the other members of that "Kavaru" for partition and separate possession of the properties belonging to them. In the course of the proceedings in the suit the present proposed supplemental defendant, Sakarama Hegde, applied for being impleaded as a party to the suit in R. I. A. 425/66. His request was refused. During the hearing of the said I. A. it would appear that both the parties to the suit were opposed to the request made by Sakarama Hegde. Sometime subsequent to the date of the Order in R. I. A. 425/66, the present application came to be filed. Her case is that the proposed supplemental defendant would be necessary party to the suit as he is a member

of the same "Kavaru" to which all the parties in the suit belong and therefore, his presence would be necessary for an effective and complete adjudication of the controversies arising in the suit, one of which is said to relate to the construction of a document styled as a "partition deed" alleged to have been executed in favour of the said supplemental defendant on 28-6-55. It is, however, unnecessary for my present purpose to set out the actual questions that may arise in the context of such a "partition deed". It is sufficient to observe that one of the allegations in that behalf is that the said supplemental defendant had separated from the family and as such he was not entitled to any share in the properties of the "Kavaru". The learned Civil Judge allowed the application of the 13th defendant and permitted the impleading of the supplemental defendant No. 14. It is this order that is in question here at the instance of defendants 3 and 4 in the suit.

3. Sri N. Santosh Hegde, the learned counsel appearing on behalf of the petitioners urged the following contentions:--(1) That in view of the earlier order in R. I. A. 425/66 the application giving rise to the present Order was barred by general principles of law, if not on the principles of res judicator as enacted in Section 11, Civil Procedure Code; (2) That the order in question amounts to a review of the earlier order in R. I. A. 425/66 and the Court had no jurisdiction or power to review as such; and (3) that the person proposed to be added was not a necessary party to the suit.

4. I am unable to agree with any of the above contentions urged on behalf of the petitioners.

5. The Privy Council in the case of Rameshwar Singh v. Hitendra Singh AIR 1924 PC 202, while dealing with a "question whether a second application for the discharge of a Receiver would or would not be maintainable, the earlier one made by the same applicant for a similar relief having been dismissed, held that the earlier Order was a bar to the maintenance of such an application, observing that the binding force of the earlier order did not depend upon the principles enacted u/s 11, CPC but upon general principles of law. Their Lordships referred to with approval the general principle enunciated in Ram Kirpul Shukul v. Mt. Rup Kuari (1884) 11 Ind App 37. That principle has been reproduced at page 206 of that Report, and reads thus:

"The question, if the term "res judicator" was intended, as it doubtless was, and was understood by the Full Bench, to refer to a matter decided by a Court of competent jurisdiction in a former suit, was irrelevant and inapplicable to the case. The matter decided by Mr. Probyn was not decided in a former suit, but in a proceeding of which the application in which the orders reversed by the High Court were made was merely a continuation. It was as binding between the parties and those claiming under them as an interlocutory judgment in a suit is binding upon the parties in every proceeding in that suit, or as a final judgment in a suit is binding upon them in carrying the judgment into execution. The binding force of such a judgment depends not upon Section 13, Act X of 1877,

but upon general principles of law. If it were not binding there would be no end to litigation."

6. The Supreme Court in *Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another*, of the judgment has observed thus:

"7. The principle of res judicator is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicator has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.

8. The principle of res judicator applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. Does this however mean that because at an earlier stage of the litigation a court has decided an interlocutory matter in one way and no appeal has been taken therefrom or no appeal did lie, a higher court cannot at a later stage of the same litigation consider the matter again ?".

7. The question as posed above was answered by Their Lordships in para 16 of the above cited report thus:

"It is clear therefore that an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay an appeal was not taken could be challenged in an appeal from the final decree or order."

8. Before advertent to the bearing the principles above enunciated have on the case on hand, I should like to refer to the only other case relied on by the learned Counsel for the petitioners. The Supreme Court in *Razia Begum Vs. Sahebzadi Anwar Begum and Others*, has enumerated some of the principles governing the application of the Rule in Order 1, Rule 10, CPC in regard to suits relating to property and declaratory suits involving status of a party. In addition, it has also referred to the question of reversibility of such Orders u/s 115, Civil Procedure Code.

9. At page 895 of the above cited report, in paragraph 13, it is set out thus:--

"13. As a result of these considerations, we have arrived at the following conclusions:

(1) That the question of addition of parties under Rule 10 of Order 1 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the Court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case; but in some cases, it may raise controversies as to the power of the Court in contradistinction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in Section 115

of the Code;

(2) That in a suit relating to property, in order that a person may be added as a party, "he should have a direct interest as distinguished from a commercial interest, in the subject matter of the litigation;

(3) Where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy"

(Sub-paras (4) to (7) are not set out as they are not necessary for the purposes of the case).

10. Keeping in view the principles enunciated in the above extracted passages I shall proceed to consider the questions canvassed on behalf of the petitioners. In the present case the earlier Order made in R. I. A. 425/66 was at the instance of the present supplemental defendant himself and neither of the parties to the suit had applied for such impleading. On the other hand, as could be seen from the Order under revision, both the parties were interested in opposing the application made by him. It is plain, therefore, from this that the parties as such had made common cause against him and therefore there was no occasion at all for raising an issue as between them in regard to the question of impleading.

The present order has been made at the instance of a party, that is, the 13th defendant, for bringing the supplemental defendant on record. The question would arise whether she could not have endeavoured to achieve the same object in the previous proceeding regarding this matter. It is manifest that she could not have questioned the Order in R. I. A. 425/66, as she could not be said to have been aggrieved by it, even on the assumption that as a matter of law she had a right to approach this court for relief u/s 115," Civil Procedure Code. The only person! aggrieved by the Order made in R. I. A. 425/66 is the present supplemental defendant whose application it was for being impleaded as such. It is also plain that the proceedings in the previous and present! R. I. As. cannot at all be said to be between the same parties. Hence the decisions relied on behalf of the petitioners cannot be of much assistance to him. In these circumstances, I am clearly of the opinion that there is no force in the first of the above contentions of the learned counsel for the petitioners.

11. On the next contention, the argument of Sri Hegde is that the parties stood concluded by the earlier order and no circumstances have been placed on record warranting such a review. It is also his contention that there was no power in the court to review such interlocutory orders. This argument, in my opinion, also is devoid of merit. No authority was brought to my notice denying such power of review to a Civil Court. As regards the other facet of the above argument, it is relevant to notice that the present application to implead is by a party to the suit. The position was not the same in the earlier R. I. A. 425/66. In these

circumstances, it is difficult to see how the position obtaining now is akin to a review in the strict legal sense of the term. Even otherwise, I am satisfied with the reasons given in this behalf by the lower court and, indeed, no argument was addressed on this particular aspect of the matter.

12. The last contention urged on behalf of the petitioners was that the person sought to be impleaded was not a necessary party to the suit. In my opinion, this contention does not also deserve to be accepted. From the facts appearing from the record, it is clear that Sakarama Hegde, the person to be impleaded, is a member of the very "Kavaru", in respect of the properties of which the present suit for partition has been laid. Therefore, but for the alleged "partition deed" of 28-6-1955, in favour of the said Sakaram, on which more than one construction is sought to be placed by the parties to the proceeding, no doubt whatsoever could have been raised as to his being a necessary party to the suit. Without him on record, it may perhaps be DOt possible to completely adjudicate on the controversies arising in the suit. The learned Civil Judge has come to the conclusion that such would be the position if the impleading prayed for was not permitted. I see no reason to differ from it.

13. Lastly, one other contention of Sri Hegde has to be noticed. The argument is that if the supplemental defendant were allowed to come on record, it would amount to allowing him to plead in regard to the aforementioned "partition deed", in total contravention of the limitations imposed under Sections 91 and 92 of the Evidence Act. This is a matter with which the trial Court should concern itself in the course of the trial of any issue that may be raised in regard to it, I therefore, reject this contention also.

14. For the above reasons, the petition fails and is dismissed with costs.