

(2009) 12 KAR CK 0103
In the Karnataka High Court
Case No : Writ Petition No. 19659 of 2007

Chandralekha Shetty

APPELLANT

Vs

B.V. Sujatha Gupta and Others

RESPONDENT

Date of Decision : 11-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3, 2 (11)

Citation : AIR 2010 Kar 104 : (2010) 1 KCCR 302

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : K.R. Nagendra, for Nag Assts, for the Appellant; Suresh D. Deshpande, for R-1 to R-6 and R. Manjunath Prabhu, for R-7 to R-8, for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—The petitioner is questioning the order dated 23-10-2007 passed in O.S. No. 82/2007 by the Principal Civil Judge (Jr.dn), Arasikere, allowing I.A. No. II for bringing the legal representatives of the deceased plaintiff on record and directing the petitioner herein to be arrayed as the third defendant.

2. Facts leading to the filing of this Writ Petition are as follows:

Smt. Annapurnamma W/o late B.S.Vishwanatha Shetty filed a suit in O.S. No. 82/2007 on the file of the Civil Judge (Jr.Dn), Arasikere for the relief of declaration and injunction against Sri. A.V. Gopalakrishna Shetty and his son Sri. A.G. Anil Kumar. During the pendency of the suit, plaintiff SmtAnnapurnamma expired on 10-7-2007. An application under Order 22 Rule 3 CPC came to be filed which interlocutory application was numbered as I.A. No. II. The said application was accompanied by an affidavit of one Sri. B.V. Sathyamurthy S/o B.S. Vishwanathshetty and Smt. B.V. Annapurnamma. In the said affidavit it was stated that names of the legal heirs of late Smt. B.V. Annapurnamma has been stated in the application at Sl. No. 1 to 7 and Smt. A.G.Chandralekha daughter of

Smt. B.V. Annapurnamma who was at Sl. No. 1 was acting contrary to the interest of the other legal heirs of late Smt. B.V. Annapurnamma and accordingly it was prayed that Smt. A.G. Chandralekha is to be brought on record as defendant and other legal heirs be brought on record as the plaintiffs representing the estate of the deceased since the right to sue survives on them. The said fact had also been stated in the application I.A. No. II. To this application objections was filed by Smt. A.G. Chandralekha contending that she cannot be brought on record as defendant merely because there is divergence of interest between herself and other legal representatives and the scope of application to bring the legal representatives on record being limited, she sought for dismissal of the application I.A. No. II.

3. The Court below on consideration of the rival contentions came to the conclusion that if the writ petitioner i.e., Chandralekha was showing any hostile attitude against other L.Rs she can be definitely be transposed as defendant and the same would not take away the right of the petitioner in getting her share and right over the suit properties and accordingly allowed the application by its order dated 23-10-2007.

4. It is this order which is now assailed in the present writ petition contending that said order is opposed to the provisions of Order 22 Rule 3 and the petitioner sought for setting aside of the said order in allowing the application for bringing the legal representatives of the deceased plaintiff on record in O.S. No. 82/2007 and allowing writ petitioner being arrayed as 3rd defendant.

5. I have heard Sri. K.R. Nagendra, Advocate appearing for M/s Nag Associates for the petitioner and Sri. Suresh D.Deshpande, Advocate for respondents 1 to 6 and Sri. RManjunath Prabhu for respondents 7 and 8.

6. Sri. K.R. Nagendra would submit that scope of Order 22 Rule 3 is very limited namely inter se dispute between the legal representatives cannot be gone into while bringing the L.Rs of the deceased plaintiff on record and hence the order of the Court below in allowing I.A. II by directing respondents 1 to 6 herein to be brought on record as the legal heirs of plaintiff on death Smt. B.V. Annapurnamma by excluding the plaintiff is erroneous and by ordering the petitioner herein to be brought on record as third defendant as prayed in I.A. No. II is contrary to Order 22 Rule 3 and thus seeks for quashing of the order dated 23-10-2007.

7. Per contra Sri. Suresh D.Deshpande, learned Counsel appearing for respondents 1 to 6 would submit that the petitioner herein is the wife of first defendant and mother of defendant No. 2. The suit had been filed by the mother-in-law against the son-in-law since he claimed right in the suit schedule property and as such the petitioner being the wife of defendant No. 1 and mother of defendant No. 2 was acting contrary to the interest of deceased B.V. Annapurnamma that is the plaintiff and supporting defendants. Hence, submits that Court below was justified in passing the order now impugned in this writ

petition.

8. The question that arises for consideration in this writ petition is within a narrow compass namely:

Whether the Court below was justified in directing/ordering the petitioner to be brought on record as the third defendant by allowing I.A. II?

or

Whether petitioner herein had to be brought on record in O.S. No. 82/2007 as one of the plaintiffs.

9. In order to appreciate the contentions urged by the learned Counsel appearing for the parties, it would be necessary to extract the relevant provisions of CPC and Hindu Law namely, Section 2(11) of CPC, Order 22 Rule 3 of CPC and Section 15 of Hindu Succession Act.

Section 2(11) of CPC

2. Definitions. - In this Act, unless there is anything repugnant in the subject or context.

(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;

Order XXII Rule 3 of CPC

Order XXII

Death, Marriage and Insolvency of Parties

1. XXXX

XXX

3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.-(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under Sub-rule (1) the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in the defending the suit, to be recovered from the estate of the estate of the deceased plaintiff.

Section 15 of the Hindu Succession Act:

15. General rules of succession in the case of female Hindu. - (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16,

- (a) firstly, upon the sons and daughter (including the children of any pre-deceased son or daughter) and the husband;
- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in Sub-section (1)-

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in Sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in Sub-section (1) in the order specified therein, but upon the heirs of the husband.

The undisputed fact is that the applicants 1 to 7 as described in I.A. No. II (Writ Petitioner and Respondents 1 to 6 herein) are admittedly class-I heirs of deceased of Smt. B.V. Annapurnamma.

10. It would be necessary to understand the interse relationship between the parties to the suit. The suit has been filed by Srnt. B.V. Annapurnamma W/o late Vishwanatha Shetty against her son-in-law who is also her brother and her grand son for the relief of declaration and injunction as per the plaint averments which is at Annexure "B". It is contended that the suit schedule property was purchased by the plaintiff in the year 1963 and was in her possession and enjoyment and she had executed a general Power of Attorney in favour of her brother-cum-son in law i.e., the first defendant on 20-12-1990 which was in respect of Sy. No. 38/2 and by virtue of the said Power of Attorney he is attempting to sell the properties and has already sold certain properties in favour of his son with sole intention of cheating plaintiff and accordingly has sought for declaration and injunction.

11. During the pendency of the said suit the plaintiff expired on 10-7-2007 and hence an application came to be filed by one of the L.Rs of the plaintiff namely her son by name B.V. Sathyamurthy. It was contended in the said application by

specifying names of all the legal representatives and the first Legal representative namely Smt. A.G. Chandralekha was acting contrary to the interest of the deceased plaintiff and as such sought for she being arrayed as third defendant and other Legal representatives to be brought on record as plaintiffs. This application was opposed by Smt. A.G. Chandralekha contending that she cannot be deprived of her right to prosecute the suit as plaintiff. However, it is to be noted that she does not dispute the contention raised in the application where under it was contended by the proposed L.Rs (other than Chandralekha) that there was divergence of interest between Smt. Chandralekha on the one hand and other Legal representatives of B.V. Annapurnamma on other hand.

12. The following citations would be of relevance for considering the contentions of the parties:

i) AIR 1927 Mad 1071 Govindaswamy v. Annamalai

If one of the legal representatives does not choose to be brought on the record as the representative of a deceased plaintiff his share in the suit does not thereby abate. If no legal representative is brought on the record, no doubt the suit would abate, but where some legal representatives come on the record and they contend that some other persons are not legal representative even though their contention may be found to be untrue, that would not make the whole of the suit or any portion of the suit abate in favour of the defendants.

ii) AIR 1927 Lahore 94 Md. Hassan v. Inayat Hussain

We have to look into the provisions of Order 22, Rule 3 of the Civil P.C. read with Rule 11 of the same Order. Now, when a party dies, then, in order that the suit or the appeal may proceed, it is necessary that his legal representatives should be brought on the record within the prescribed period of limitation. The question is about the meaning of the expression "Legal representative." These words mean the representation before the court of the plenary interest of the deceased party. Sometimes that interest may be represented by a single individual, but it may also be represented by number of persons as the case may be. But there should be a complete representation of the interests of the deceased person, whether through a single individual or through a number of persons, so that there cannot be partial representation of that interest. In other words, the expression "legal representative" means and includes one person as well as several persons according as they represent the whole interest of the deceased person. This view is supported by at least three reported cases of the Allahabad High Court, namely Ghamandi Lal v. Amir Begum; Haidar Hussain v. Abdul Ahad; Fazal Muhammad Khan v. Habibullah Khan. It may be noted that this view is not opposed to the law as laid down in the cases of Abdul Rahman v. Shahab-ud-Din and Mallapragada v. Lingam Viraragava.

In this view of the case we find that the full and complete interest and Ahmad Hassan, deceased was not represented in appeal before the Court in that the

name of Mt. Saida Begum, his daughter, is not included in the array of appellants. If she was unwilling to appear as a party appellant it was open to the two legal representative, who appear as appellants, to implead her as a respondent. This has not been done.

(Emphasis supplied)

iii) 43 Calcutta Weekly Notes (1938-39) Pg. No. 1088 Hafijul Hoque and Ors. Plaintiffs, Appellants v. Altap Hossain Molla and Ors. Defendants, Respondents CPC (Act V of 1908), Order 22, Rules 3, 11 - Appeal by sole defendant - Death of defendant and substitution of some of the heirs in appeal - Abatement Where a decree is passed against a person who is the sole defendant in the suit and he prefers an appeal and after his death and during the pendency of the appeal, some only of his heirs are substituted as appellants, the appeal abates. The position may be different when the heirs who are left out are unknown; if they are known the above rule applies but if some are unwilling to join as appellants, they must be made party respondents.

(Emphasis supplied).

iv) Abdul Samad and Others Vs. Wasal and Others,

5. The spirit of Order 22 of the CPC may be taken to be to determine the rights and liabilities of the parties finally and conclusively, if it is possible to do so, in cases in which any one of the parties dies. A case should not be left undecided. It is not meant to be left at an intermediate stage if it is possible to have it finally determined. In case of the death of a plaintiff when the Court comes to know of the death and of a plaintiff when the Court comes know of the death and of the persons who are competent to represent the deceased plaintiff after his death, it is competent for the Court to take suitable action. Viewed in this light, words legal representative must be construed as including those persons who are in a position to carry on further proceedings in the suit. Normally such persons are all the heirs of the deceased plaintiff. There may be cases where even some of the heirs may represent the deceased plaintiff. In all these cases, such persons may be the legal representatives of the deceased within the meaning of Order 22, Rule 3, Civil Procedure Code.

6. An application must be made for bringing on records those persons who had the right in law to continue the suit filed by the deceased plaintiff, that is who represent him for the purpose of prosecuting the suit. If their names have been brought to the notice of the Court, it becomes the duty of the Court to array them as party whether as plaintiffs or defendants. Order 22 Rule 3(1) is purposely worded in sufficiently wide language. Once the court is made aware of the persons who are in the position to prosecute the suit, it is left to it to make them a party.

v) P.B. Rammohanreddy and Another Vs. Chintal Achaiah and Others,

Index Note: (C) Civil P.C. (1908) Order 1, Rule 10 and Order 22, Rule 3 - suit in

name of A and B as plaintiffs - A found to have died before institution of suit - legal representative of A already on record as defendant could be substituted as plaintiff by transportation under Order 1, Rule 10 even if Order 22, Rule 3 may not apply. AIR 1938 Nag 458 and AIR 1947 73 (Nagpur) , Followed; Amar Kaur and Others Vs. Sadhu Singh and Others, , Dissented from.

vi) ILR 1894 Allahabad 211 Ghamandi Lal (Plaintiff) v. Amir Begam (Defendant).

Civil Procedure Code Section 365 - Nonjoinder ? Death of appellant during pendency of appeal - One only of three representatives brought upon the record - Abatement of appeal.

The words "the legal representatives" in Section 365 of the CPC must, where there are more than one legal representative, be read in the plural.

Hence where a sole appellant died during the pendency of his appeal, leaving three legal representatives, and only one of such legal representatives was brought upon the record in the place of the deceased appellant within the prescribed period of limitation; Held that the appeal must abate. Either all the legal representatives of the deceased appellant should have been brought upon the record as appellants, or, if any had refused to be joined as appellant, they should have been brought on as respondents.

vii) Radhakrishna Padhi etc. Vs. Bhajakrishna Panda and Others,

9. We have already indicated above that in the facts of a case like the present one, the substituted legal representative are entitled to continue the suit on the basis of the claim laid by the original plaintiff. They are not entitled to plead to the contrary and obtain reliefs, which the plaintiff herself was not entitled to, i.e. the substituted legal representatives are not entitled to claim independent title of theirs contrary to what had been claimed in the suit. In view of such position in law, relief granted to the plaintiffs seems to be wholly out of place. Prejudice is bound to have occurred to the defendants inasmuch as there has been no claim of title on the basis of the settlement or under the Will and yet the transposed legal representatives have got their rights declared without a claim being laid. In view of the limitation regarding the scope of the continuation of the suit by the legal representative of a deceased plaintiff, the learned Subordinate Judge was not justified in giving the decree to the present plaintiffs on the basis of the Settlement and the Will. We think it appropriate that the decree of the learned Subordinate Judge should be vacated and the legal representatives of the original plaintiff should be left to work out their own rights in independent suits. Similarly, the question of adoption should be left to be examined without being concluded by the findings in the present suit. We accordingly, allow the appeals, vacate the judgement and the decree of the learned Subordinate Judge and dismiss the suit filed by Urmila. We make it explicitly clear that the claim laid by the legal representative of Urmila or the claim of adoption are left open to be adjudicated as and when raised in appropriate proceedings.

(Emphasis supplied)

13. In the light of provisions of CPC above referred to and the decisions enumerated herein above, it is to be examined as to what is contemplated under Order 22 Rule 3 CPC when sole plaintiff or sole surviving plaintiff dies and the right to sue survives on Class I Legal heirs and how they can be brought on record. The action brought about by a deceased plaintiff devolves on them when they acquire that "Right to Sue" and it is this right which cloth them with the power to continue the suit/appeal which the deceased plaintiff/Appellant possessed against the defendant/respondent. Thus, "Right to Sue" should accrue to the legal heirs.

14. The stress is to be given to the word "right to sue survives". If one of the legal heirs of the plaintiffs is not brought on record the automatic application of Order 22 Rule 3 would apply and the suit gets abated in so far as that legal representative who remains unrepresented the estate of the deceased. The "right to sue" is to be understood with reference to the claim made by the deceased plaintiff. It is in this background that the definition of legal representative as enumerated u/s 2(11) of CPC is to be looked into. In the instant case, it is seen that the names legal representatives of the deceased plaintiff have been described in the application to be brought on record. It is the specific contention of the legal representatives of deceased plaintiff that one of the legal representatives namely Smt. B.G. Chandralekha being the wife of the first defendant and the mother of the second defendant is acting contrary to their interests. When the relationship between the parties is not in dispute and when Chandralekha in her objection statement does not dispute the fact of divergence of views between her and other legal representatives, she cannot be said to possess a "right to sue" or "right to prosecute" the claim of the plaintiff continues with her. If that interpretation is to be given it would be contrary to spirit of Section 2(11) as also Order 22 Rule 3 CPC.

15. Hence, in view of the above, I do not find any error or illegality in the order passed by the Court below and accordingly the following order is passed;

ORDER

The writ petition is dismissed. The order of the Court below dated 23-10-2007 is affirmed. No order as to costs.