

(2015) 04 KAR CK 0359

In the Karnataka High Court

Case No : Writ Petition No. 102325 of 2015 (GM-CPC)

Chetan Mahaveer Dongare

APPELLANT

Vs

Kiran Srikant Dongare and Others

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10
Constitution of India, 1950 — Article 226, 227

Citation : (2015) 3 AKR 48 : (2015) 4 KCCR 3447

Hon'ble Judges : B. Veerappa, J

Bench : Single Bench

Advocate : Vinay S.K.C. Ujalagi, for the Appellant

Final Decision : Dismissed

Judgement

B. Veerappa, J.

1. The present petitioner who is 5th defendant in O.S. No. 73/2012 filed the above writ petition challenging the order dated 13.01.2015 on I.A. No. 6 rejecting his application under Section 10 of Code of Civil Procedure. It is the case of the present petitioner that his grand mother Smt. Sulochana Srikant Dongare has filed O.S. No. 159/1992 for declaration of title that she is the sole heir of her late father late Chandrappagouda Patil and also declaration that the deeds 1 to 8 described in para No. 6 of the plaint i.e. 4 gift deed 8.10.1986 in favour of defendant No. 3 and defendant No. 1 and the two sale-deeds dated 31.01.1987, 24.10.1987 in favour of the defendant No. 9 and defendant No. 2, the Will dated 02.01.1988 in favour of defendant No. 5, defendant Nos. 2 and 3 and the alleged trust dated 11.08.1987 in the name of the deceased Chandrappagouda Patil, be declared as null and void and the said documents are not binding on the plaintiffs and after the death of the grand mother the defendant Nos. 5 and 6 came on records as legal representatives under me Will as legatees and sought for further declaration to declare that the Will executed by the deceased Smt. Sulochana Srikant Dongare in favour of plaintiff Nos. 1(a)

and (b) dated 19.04.2007 is legal and valid and they are entitled to succeed the properties and the same is binding on the defendants and as consequential relief of permanent injunction be granted restraining the defendants from causing obstructions to the plaintiffs in enjoyment of the suit schedule properties and alternatively plaintiffs as legatees under the Will be put in the suit schedule property and injunction etc.

2. The respondents 1 and 2 in the present writ petition i.e. one Kiran Srikant Dongare and Surekha D. Patil the son and daughter of Smt. Sulochana Srikant Dongare have also filed O.S. No. 73/2012 for partition and separate possession by effecting equitable partition after holding that the Will dated 19.04.2007 executed by deceased Smt. Sulochana Srikant Dongare in favour of defendant Nos. 5 and 6 is not binding upon the share of the plaintiffs. The defendants in O.S. No. 159/1992 filed the written statement and resisted the plaint averments and specifically denied that the plaintiffs were aware of the documents in the 1st week of July, 1992 and hence, suit is barred by time etc..

3. The written statement filed in O.S. No. 73/2012 by the present petitioners who are defendant Nos. 5 and 6 in the said suit, i.e. the other son of Smt. Sulochana Srikant Dongare and Sangeetha who is the daughter-in-law of Smt. Sulochana Srikant Dongare, have contended that there was partition in the suit schedule properties. In respect of one of the properties, the Will is executed and suit filed by the plaintiff is not maintainable. Defendant Nos. 2 to 4 also filed the written statement and sought for dismissal. Defendant Nos. 5 and 6 who are the present plaintiffs have not filed any written statement. The original suit in O.S. No. 159/1992 is at the stage of evidence as per the statement made by the learned Counsel for the petitioner. The other O.S. No. 73/2012 filed by the plaintiffs therein is at the stage of arguments. The present petitioners are the defendants in the said suit. At that stage, defendant Nos. 5 and 6 in O.S. No. 73/2012 filed an application under Section 10 of Code of Civil Procedure to stay further proceedings in the said suit. The plaintiffs in O.S. No. 73/2012 filed objections to the said I.A. and specifically contended that the dispute is not in respect of the same cause of action. Further contended that O.S. No. 159/1992 is previously instituted suit by Smt. Sulochana Srikant Dongare is one for relief of declaration and possession and sought to cancel various gift deeds and sale deeds said to have been executed by her father. After the death of original plaintiffs, defendant Nos. 5 and 6 are continuing the said suit as legal heirs and subsequently, instituted the suit, i.e. O.S. No. 73/2012 for partition and separate possession. The present plaintiffs in O.S. No. 73/2012 are not parties to O.S. No. 159/1992. Causes of action for filing both suits are different. Therefore, the subject-matters involved in both the suits are quite different from each other. The reliefs are not one and the same. Thus, the matter in issue is not substantially same in two suits. Both the suits are independent from each other. Considering the application and objections filed by the parties to the lis, the learned Civil Judge by his impugned order dated 13.01.2015 rejected I.A. No. 6 holding that both the suits are entirely different and questions arose in both the

suits are entirely different, there is no necessity to stay the present proceedings. Against the said order, the present writ petition is filed.

4. Learned Counsel for the petitioner Sri Vinay S. Koujalagi strenuously contended that the impugned order passed by the Trial Court rejecting I.A. No. 6 is erroneous and contrary to law and with out proper application of facts and provisions of law and the same is liable to be quashed. He further contended that O.S. No. 73/2012 is entirely based on the Will executed by the grandmother of petitioner and respondent No. 7. He further contended that in O.S. No. 73/2012, the petitioner and brother of respondent No. 7 are claiming the ownership and right in the said properties. The Trial Court has held that the issue in O.S. No. 73/2012 is purely based on the Will. Under this circumstance, the Court below ought to have stayed the present suit. Therefore, he sought to set aside the impugned order passed by the Trial Court.

5. I have given my thoughtful consideration to the arguments advanced by the learned Counsel for the petitioner and perused the entire material on record.

6. It is not in dispute that O.S. No. 159/1992 filed by Smt. Sulochana Srikant Dongare, the alleged grandmother of the present petitioner for declaration of title and injunction on the basis of succession of her late father Chandrappagouda and also for cancellation of 4 gift deeds said to have been executed by her father. It is also not in dispute that the application under Section 10 of C.P.C. filed by defendant Nos. 5 and 6 in O.S. No. 73/2012. But in the present writ petition, only 5th defendant has challenged the impugned order passed by the Trial Court. O.S. No. 73/2012 has been filed on 11.10.2012. They are none other than the son and daughter of Smt. Sulochana Srikant Dongare. O.S. No. 159/1992 has been filed by Smt. Sulochana Srikant Dongare for various reliefs in the year 1992 and also for a different cause of action and the cause of action arose to file the said suit was in the last week of July, 1992 and she also sought for cancellation of various sale deeds, gift deeds and trust deeds dated 11.08.1987. The cause of action in O.S. No. 73/2012 arose in the year 2011 and the reliefs sought for in both the suits are entirely different and the schedule properties in O.S. No. 159/1992 in respect of six items of agricultural properties and three house properties. The schedule in O.S. No. 73/2012 in respect of A, B and C. B schedule in O.S. No. 73/2012 is one of the subject-matters in O.S. No. 159/1992. The present plaintiffs in O.S. No. 73/2012 are not parties to O.S. No. 159/1992. The causes of action to file both the suits are entirely different and the subject-matters involved in both the suits are quite different from each other. Reliefs sought are also not one and the same. Thus, the matter in issue is not substantially same in two suits and both the suits are independent from each other.

7. By reading of Section 10 of Code of Civil Procedure no Court shall proceed with the Trial of any suit in which the matter in issue is also directly or substantially in issue in a previously instituted suit between the same parties or between the parties, under whom they or any of them claim litigating under the

same title where such suit is pending in the same or any other Court in [India] having jurisdiction to grant the relief claimed, or in any Court beyond the limits of [India] established or continued by [the Central Government] [***] and having like jurisdiction, or before [the Supreme Court]. The reliefs sought in the present suit is not directly or substantially issue in the previous suit and not between the same parties and not between the same properties. The Trial Court on appreciating the entire material on record came to the definite conclusion that both the suits are entirely different, there is no necessity to stay the present proceedings as prayed by the defendants. The same is in accordance with law and the petitioner has not made out any case to interfere with the impugned order passed by the Trial Court under Articles 226 and 227 of Constitution of India. Accordingly, writ petition is dismissed with costs of Rs. 2,000/-.