

(1991) 01 KAR CK 0069

In the Karnataka High Court

Case No : C.R.P. (F.R.) No. 2579/1990 & C.R.P. No. 467/1991

Dasarath Gangadhar Lalasangi

APPELLANT

Vs

Shanthappa Adappahalli

RESPONDENT

Date of Decision : 07-01-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1991) 1 KarLJ 400

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

Chandrakantaraj Urs, J.-I.A.I for impleading coming up for orders, learned counsel submit that the Court may take up the matter for admission itself. Learned counsel for the respondent is also heard.

This is plaintiffs revision against the orders of the Courts below. Plaintiff filed O.S. No. 157 of 1982 in the Court of the Munsiff, Indi, for recovery of some money due by respondent-Shanthappa Adappahalli, who is said to be the Principal of S.S. Junior College, Indi. The suit came to be dismissed on the ground that there was no cause of action against the Principal in his personal capacity; that the suit should have been brought against the Proprietor of the Institution on whose behalf the Principal, had acted. On appeal, the order of the learned Munsiff, Indi was confirmed by the lower appellate Court, viz., the Court of the Principal Civil Judge, Bijapur in R.A. No. 83 of 1986. Therefore the petition under Section 115 of the C.P.C.

The question of considering I.A.I. for impleading does not arise as the proposed respondents were not parties to the suit either at the initial stage or at the appellate stage.

The petitioner-plaintiff filed this revision under Section 115 because under proviso to Section 100 of C.P.C. bars jurisdiction where the amount is less than Rs. 3,000/- to prosecute a Second appeal.

That itself ipso facto does not confer jurisdiction to prosecute remedy under

Section 115, C.P.C. What is required to be demonstrated under Section 115, C.P.C. is whether there is material irregularity, fact of jurisdiction or the Court has in any other way acted illegally raising a jurisdictional question. If the three grounds are not present or any one of the three is not present in the order under revision, this Court will not assume jurisdiction under Section 115, C.P.C.

I see no such plea is taken. Courts below dismissed the suit for non-joinder of parties. That is not an error of jurisdiction or cannot be said to be an order passed with material irregularity by the trial Court. If that is the correct position, this Court cannot interfere with the order under revision. The revision is not maintainable.

If the plaintiff-petitioner is so advised, he may bring a fresh suit through persons against whom he has cause of action and have recourse to such benefits that may be available to him under Section 14 of the Limitation Act and it will be open to the Court in which suit filed to consider his plea for condonation of delay if any.

Subject to the observation petition is dismissed.

Petition dismissed.