

(2010) 09 KAR CK 0074
In the Karnataka High Court
Case No : Writ Petition No. 29035 of 2009

G. Krishnappa

APPELLANT

Vs

Smt. Paryathamma and Others

RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 295, 295 (2)

Citation : (2010) 09 KAR CK 0074

Hon'ble Judges : Manjula Chellur, J

Bench : Single Bench

Advocate : Somasundara Dixit, for the Appellant; K.R. Nagendra, for R6, for the Respondent

Final Decision : Dismissed

Judgement

Manjula Chellur, J.—Heard the learned Counsel for the Petitioner and so also the Respondents.

2. I have gone through the orders of the trial Court on I.A.5 in O.S. 25/2009 on the file of Prl. Civil Judge, (Jr. Divn.), Siddlaghatta.

3. The main contention of the Petitioner is non-inclusion of provision of Order 7 Rule 11 along with Section 295(2) of the Karnataka Panchayat Raj Act of 1993. It is not in dispute that a suit came to be filed by the Petitioner-Plaintiff against several Defendants, private parties and also Executive Secretary of Gram Panchayat concerned seeking for declaration of title and also for delivery of vacant possession of the suit schedule property, apart from permanent injunction. The Defendants by virtue of Section 295(2) of Karnataka Panchayat Raj Act sought for dismissal of the suit so far as 6th Respondent on the ground that without the prior approval of the Zilla Panchayat Act, the previous sanction of Zilla Panchayat or such Officer as the Zilla Panchayat may specify that no suit or other legal proceeding lies against a Chief Executive Officer or Executive Officer or Secretary or any other Officer of the Government or a Gram Panchayat

etc. Though in I.A.5 provision of Order 7 Rule 11 of CPC was not invoked and Section 295(2) of Panchayat Raj Act creates an embargo on the Plaintiff to seek relief against any of the officers referred to in Section 295(2) or Panchayat Raj Act without prior sanction of the Zilla Panchayath. Order 7 Rule 11 of CPC provides for rejection of a suit, if there is any legal impediment. The legal impediment as provided u/s 295(2) of Karnataka Panchayat Raj Act was invoked. It is well settled that it is not the nomenclature of the application, but actual prayer or relief sought for would be the criterion to grant such relief or otherwise by the Court.

4. The entire reading of application only indicate that the Defendant No. 6 was seeking dismissal of the suit on account of non-compliance of Section 295(2) of Karnataka Panchayat Raj Act, which is contemplated under Order 7 Rule 11 of Code of Civil Procedure, Therefore, in the absence of mentioning the provision of law, no prejudice would be caused to the Defendant. Therefore, the trial Court was justified in entertaining the said application even in the absence of correct provisions of law being mentioned.

5. Then coming to the contention of the Petitioner so far as merits, according to him unless the act of the Officer concerned as contemplated u/s 295(2) of the Act was involved, such prior approval was not required.

Section 295(2) of Karnataka Panchayat Raj reads as under:

Section 295: Bar of Suits, etc

(1) ...

(2) No suit or other legal proceeding shall lie against a Chief Executive Officer or Executive Officer or Secretary or any other officer of the Government or a Grama Panchayat or Taluk Panchayat or Zilla Panchayat or any member, officer, servant or agent of such Grama Panchayat, Taluk Panchayat or Zilla Panchayat acting under its direction in respect of anything done or purporting to have been lawfully done and in good faith under this Act or any rule, regulation, bye-law or order made there under except with the previous sanction of the Zilla Panchayat or such officer as the Zilla Panchayat may specify.

(3) ...

The very submission of the learned Counsel for the Petitioner indicates that the 6th Defendant colluding with the other Defendants who are none other than the relatives of the Plaintiff are trying to change the records pertaining to the suit schedule property. Therefore, in a suit for declaration none of the actions of the concerned officer as contemplated u/s 295(2) would come into play. When once the Petitioner-Plaintiff accuses the 6th Defendant colluding with the other Defendants in changing the records in Gram Panchayat pertaining to the property in question such act of the 6th Defendant has to be only under the colour of office, he was holding. Therefore, Section 295(2) of Karnataka Panchayat Raj act is applicable.

Viewed from any angle, no good ground is made out to entertain the present writ petition.

Accordingly, it is dismissed.