
(2015) 01 KAR CK 0290
In the Karnataka High Court
Case No : Civil Petition No. 200025/2014

Gangabai

APPELLANT

Vs

Sharnappa

RESPONDENT

Date of Decision : 08-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24
Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2015) 01 KAR CK 0290

Hon'ble Judges : K.N. Phaneendra, J.

Bench : Single Bench

Advocate : Naresh V. Kulkarni, for the Appellant

Final Decision : Allowed

Judgement

K.N. Phaneendra, J.—This petition is filed under Section 24 of CPC seeking transfer of Original Suit No. 2/2013 pending on the file of the Family Court at Bijapur, to the Family Court at Kalaburagi, wherein an execution petition filed by the petitioner in Criminal Execution Petition No. 236/2014 is pending.

2. After filing of this petition, notice was ordered to the respondent. In fact, earlier notice issued to the respondent was returned for want of correct address. Subsequently, after furnishing the correct address a notice was further ordered under registered post to the respondent herein. The said notice returned with postal endorsement that respondent refused to receive the notice. Hence, this Court has held that service of notice on the respondent as sufficient. As the respondent did not appear before this Court inspite of deemed service of notice on him, the matter is heard on merits on the part of the petitioner and disposed of by this order.

3. The brief factual matrix that emanate from the records are:

"Petitioner-Gangabai filed a Criminal Miscellaneous No. 119/2010 on the file of Family Court at Kalaburagi, under Section 125 of Cr.P.C., seeking maintenance

against the respondent herein. After due contest, petition came to be allowed vide order dated 05.01.2012 awarding maintenance of Rs. 2,000/- per month in favour of the petitioner from the date of the petition. It appears, the said order reached finality as the respondent did not choose to challenge the said order. Petitioner-wife in order to enforce the said order passed by the Family Court, sued out execution in Criminal Execution Petition No. 236/2014 on the file of the Family Court, Kalaburagi. Even earlier to the present execution petition, she had also filed another execution petition in Criminal Execution Petition No. 31/2012 and the same came to be closed as the respondent evaded to appear before the Family Court at Kalaburgai. In the mean time, the respondent has filed a suit before the Family Court, Bijapur, in O.S. No. 2/2013 seeking for a declaration that plaintiff Nos. 1 and 2 in the said case are husband and wife and with consequential relief of injunction restraining the defendant (petitioner herein) from calling herself as wife of plaintiff No. 1 and also sought for cancellation of maintenance order passed in Criminal Miscellaneous No. 119/2013." 4. The order passed in Criminal Miscellaneous No. 119/2013 clearly discloses that the respondent contested the proceedings throughout by means of filing objections to the main petition. In spite of best efforts by the Court, conciliation was failed and ultimately, the matter went on merits and disposed of. The objections taken out by the respondent in the Criminal Miscellaneous shows that he specifically denied the relationship with the petitioner as well as her daughter Manjula. The said factum of defence taken up by the respondent was negatived by the Family Court and ultimately, granted the maintenance order. Of-course, there is no bar to file suit, because under Section 125 of Cr.P.C., for a limited purpose the Court can consider the relationship between the parties, ultimately, parties are at liberty to prove their pleas before the Civil Court. But the question here is respondent has accepted the jurisdiction of Family Court, Kalaburagi, with reference to the case dealing under Section 125 of Cr.P.C., and he contested the proceedings and ultimately, he has not challenged the said order and findings given therein. Therefore, in my opinion, in order to make the petitioner to run from pillar to post and to go from Kalaburagi to Bijapur to attend the original suit, he filed the original suit at Bijapur Court.

5. Looking to the above said circumstances, when the petitioner said to have been living on the basis of monthly maintenance to be payable by the respondent who is still evading payment of the said amount, in my opinion, would suffer great inconvenience and loss to attend the Court at Bijapur on every date of hearing in the original suit and also contest the proceedings. Therefore, under the above said circumstances, petitioner has made out a good ground for granting transfer as prayed for. On the contrary, the respondent in spite of service of notice remained absent before the Court. This goes without saying that he has nothing to say so far as the prayer sought for by the petitioner in this petition is concerned.

6. Hence, I pass the following:

ORDER

The petition is allowed. Consequently, original suit filed in O.S. No. 2/2013 pending on the file of the Family Court at Bijapur, is hereby withdrawn and the same is transferred to the Family Court at Kalaburagi, wherein execution petition in Criminal Execution Petition No. 236/2014 is pending. The transferor Court i.e., Family Court at Bijapur, is hereby directed to transmit the entire records after intimating the plaintiffs and their counsel to the Family Court at Kalaburagi. The transferee Court has to take up the matter i.e., original suit and Criminal Execution Petition No. 236/2014 together and pass appropriate orders.