

(2015) 01 KAR CK 0089

In the Karnataka High Court

Case No : Writ Petition No. 205786 of 2014 (GM-CPC)

Guruswamy

APPELLANT

Vs

Gajadandaiah and Others

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 39 Rule 1, Order 39 Rule 2

Citation : (2015) 01 KAR CK 0089

Hon'ble Judges : L. Narayana Swamy, J.

Bench : Single Bench

Advocate : Srivatsa, Senior Advocate for V.S. Patil, Advocate, for the Appellant;
Shivakumar Kaloor, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

L. Narayana Swamy, J.—Defendant No. 2 in Original Suit No. 30 of 2006 on the file of Civil Judge (Junior Division), Lingsugur, has filed this petition challenging the order passed by the learned Judge on IA.I filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure.

2. The respondent No. 1 who is the plaintiff, filed the said suit OS No. 30 of 2006 for declaration and injunction. The application came to be partly allowed by the trial court on 14th March 2014 observing that both the defendant and plaintiff are restrained from sitting in the chariot in the jaatra mohotsava for the present year. The learned judge further directed the Temple Committee headed by the Assistant Commissioner to conduct the jaatra mohotsava by installing the idol of Lord Amareshwar in the chariot.

3. The petitioner-defendant No. 2 has taken a ground that the said order is an error in the eye of law and also on fact. The suit filed by the respondent No. 1-plaintiff is for declaration and injunction declaring that he has got right to be declared as peetadhikari of the said math. It is also the case of the defendant No. 2 that he is the peetadhikari. In the backdrop of the said disputed claim

between the parties, the Court below committed an error in his submission. According to the petitioner, the learned judge has failed to decide as to who is the peetadhiari for Devarabhupur Math. He submits that the learned Judge, at paragraph 10 of the order, has observed that "defendant No. 2 claim to be peetadhikari, and therefore, there is a dispute as to who is the peetadhikari and no decision can be arrived at this stage". Similarly, in paragraph No. 11, in the last four lines, it is further observed "hence, it cannot be concluded that the plaintiff is the peetadhikari and conducting the jaatra mahotsava, similarly it cannot also be said that defendant No. 2 is the peetadhikari of the math". When such is the opinion expressed by the learned judge, he should have dismissed the application IA.I filed by the respondent No. 1-plaintiff for temporary injunction; instead he has prevented both the plaintiff and the defendant, and however, directed the Assistant Commissioner to conduct the jaatra by keeping the idol of Lord Amareshwar in the chariot. When the rights of the parties are not established, then granting injunction on the basis of the same is an error in law in his submission. In support of his submission, the learned counsel referred the judgment reported in the case of J.C. Dias v. J.T. Alphonso reported in , AIR 1934 Sindh 1980 wherein at paragraph 5 of the judgment it is held thus:

"In doubtful cases where the question as to the legal right is one on which the Court is not prepared to pass an opinion, or the legal right being admitted the fact of its violation is denied three course of the Court is either to grant the injunction pending the trial of the legal right, or to order the motion to stand over until the legal right has been tried."

4. The learned counsel further submitted that earlier the respondent No. 1 filed OS No. 198 of 2001 seeking injunction and the said suit came to be disposed of as having been abated by its order 3rd December 2005. The said suit was filed against the predecessor of the petitioner. After the suit is abated, the appropriate course of action is to file necessary application to restore the said suit, instead he filed the present suit and hence the same is contravened by Order II Rule 2 of the Code of Civil Procedure. The learned counsel submits that on this ground also the learned judge should have dismissed the suit. In support of this submission, the learned counsel relied upon the judgment in the case of Sri Thakur Bejai Ragho Niwasji Vs. Tej Narain Lal, wherein at paragraph 3 of the judgment it is observed thus:

"...the abatement is that the plaintiff in the suit abated or those claiming under him are prevented from suing again on the same cause of action."

5. When the right itself is not decided by the Trial Court, at the most the application IA.I should have been just dismissed not inducting or inserting new things which are not the subject matter. To buttress this submission, the learned counsel relied upon the judgment of this Court in the case of C. Rudre Gowda Vs. Angadi Chikkanna, . On the same lines, he referred the judgment of this Court in the case of Jeevajyothi Ashrama Vs. B.P. Ramamanohara and Others, wherein it is observed thus:

"Reading of the above provisions shows that Court has got power to impose conditions while granting an injunction under Order 39 Rule 2 and these provisions do not enable the Court to impose conditions while rejecting the prayer for injunction by dismissing the application filed under Rules 1 and 2 of Order 39 of CPC."

6. The learned counsel appearing for the respondent No. 1 submits that the petitioner was hurriedly inducted by the defendant No. 1 in OS No. 30 of 2006 in the year 2006. The petitioner was a minor in the year 2006 and it is held that a minor shall not be considered as peetadhikari. The action of the defendant No. 1 in installing defendant No. 2 is with an ulterior motive and under the circumstance, what has been held by the learned judge, though may be an error logically, but it sounds proper. The practice prevailing in jaatra is performing pooja by keeping an idol of the Lord in the chariot, and specially under these disputed facts and when the question as to who is the peetadhikari is in ambiguity, it is not appropriate to allow the petitioner to sit in the chariot and to perform jaatra is his submission.

7. Heard the learned counsel for the parties and gone through the order of the court below. Respondent No. 1 filed IA.I under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure and the suit is for declaration and injunction and the disputed right between the plaintiff and the defendant is with regard to the office of the peetadhikari. This is yet to be decided and the suit filed in that regard is still pending. When the dispute is not decided, as is held by the learned Judge that both the plaintiff and the defendant have not proved the prima facie case to consider the injunction, then he rightly rejected the case restraining both the petitioner and the respondent. The submission of the learned counsel for the petitioner that since the application IA.I is filed by the plaintiff, the learned Judge should have dismissed the same but putting conditions on the petitioner-defendant No. 2 is unwarranted. It is true that the learned trial Judge has committed an error in putting condition, viz. giving direction to the Assistant Commissioner to carry on jaatra by keeping the idol of Lord Amareshwar on the chariot. The judgments referred by the learned counsel for the petitioner that when the disputed facts are not yet decided no conditions be put, though seems logically good, but in the background of the dispute between the parties it is appropriate. The judgment relied, more particularly, in the case of Banappa Dyavappa KUMBAR; and in the case of J.C. Dias (supra) are relevant and appropriate for the present case. These issues should have been considered by the learned Judge while passing the said order. Since contradictions have been expressed by the learned Judge in deciding the right of peetadhikari among plaintiff and the defendant, disposing of the matter by putting condition, is required to be reconsidered.

8. Under these circumstances, the order passed by the learned Judge is set aside and the matter is remanded for fresh consideration of IA.I. Accordingly, IA.I filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure is required to be

restored on file and the learned Judge is to be directed to dispose of the same strictly in accordance with law. In the result, I pass the following:

"ORDER

1. Order dated 14th March 2014 passed on IA.I filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure is set aside and the IA.I is restored on file.
2. Consequently, order 14th March 2014 passed in OS No. 30 of 2006 by the Civil Judge, Lingasugur and the order dated 10th October 2014 passed in MA No. 1 of 2014 by the Senior Civil Judge, Lingasugur, are set aside.
3. The learned Judge is directed to insist the plaintiff to implead the Assistant Commissioner as party respondent to the proceedings and further directed to dispose of the IA.I within a period of four weeks from the date of receipt of a certified copy of this order.
4. Till then, the parties are directed to maintain peace and tranquility by not resorting to create any differences of opinion in conducting the jaatra."

Petition is accordingly disposed of.