

(2008) 08 KAR CK 0048
In the Karnataka High Court
Case No : C.R.P. No. 557 of 2007

Ishwara Gowda Patil, Smt. Shankarawa Gowda Patil and Sri. Shashidhar Gowda Patil APPELLANT

Vs

Siddeshwara Swami, Gurubrahmananda Swami, Brahmananda Matt (Ashram) RESPONDENT

Date of Decision : 13-08-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, Order 32 Rule 10, 151

Citation : (2011) 4 KCCR 2906

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : V.N. Bhat, for the Appellant; G.R. Gurunath, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J.—This Civil Revision Petition is filed by the Defendants in O.S. No. 279/2002 challenging the order passed on I.A. No. II dated 9.8.2007.

2. For the sake of convenience the parties shall be referred to in terms of their status before the trial court.

3. One Siddeshwara Swami Gurubrahmananda Swami Brahmananda Matt (Ashram) represented by its Swamiji has filed O.S. No. 279/2002 against the Defendants seeking a decree of declaration and injunction and in the alternative a decree for possession in respect of the suit schedule property. During the pendency of the said suit the Swamiji who represented the Matt died on 6.7.2006. Subsequently, an application in the form of I.A. No. II was filed by one Sri. Sangappa, S/o Channabasappa claiming as the President of the Mutt to come on record in the place of deceased Swamiji and to continue the prosecution of the suit. The said application was filed u/s 151 of Code of Civil Procedure, 1908. Objections to the said application were filed on behalf of the Defendant contending that there is no provision to implead the President in the place of the

deceased as there were no material to substantiate that he is entitled to come on record and that the application filed u/s 151 of Code of CPC was misconceived and not maintainable. The trial court has allowed the said application by order dated 9.8.2007. Being aggrieved by the said order, this civil revision petition has been filed, contending that if the said application had been dismissed the suit itself would have come to an end and therefore, the Civil Revision Petition against the impugned order is maintainable.

4. I have heard the learned Counsel for the Petitioner and the learned Counsel for the Respondent.

5. It is submitted on behalf of the Petitioners that the Tribunal failed to appreciate the fact that the Swamiji who represented the Plaintiff died on 6.7.2006 and thereafter no steps were taken till 30.11.2006 and it was only on 30.11.2006 that an application was filed for impleadment Further the said application has been filed u/s 151 of Code of CPC and the Plaintiff being a Matt represented by the Swamiji after the death of the Swamiji, the suit itself abated and therefore, the trial court failed to appreciate these aspects while allowing the application.

6. He has relied upon the judgment of the Hon'ble Supreme Court in the case of Union of India (UOI) Vs. Ram Charan and Others, to contend that the court has no inherent power u/s 151 of Code of CPC for the purpose of impleading the legal representatives of the deceased Respondent, if the suit had abated on account of the Appellant not taking appropriate steps within time to bring the legal representatives of the deceased on record. When the application for setting aside the abatement is not allowed on account of its failure to satisfy the court that there was sufficient cause for not impleading the legal representatives of the deceased in time and for not applying for the setting aside of the abatement within time, the suit cannot be revived by filing an application u/s 151 Code of Civil Procedure.

7. Per contra, it is submitted on behalf of the Respondent that after the death of Swamiji, the Committee had appointed the applicant as the President for managing the affairs of the Plaintiff Matt and that the Swamiji had earlier given a power of attorney to him and after the death of Swamiji the devotees of the Ashram had formed the committee and authorized the Respondent to look after the affairs of the Matt and a resolution was also passed to that effect. He further submits that this is not a case where the legal representatives of the Plaintiff had to be brought on record in as much as Plaintiff is a Mutt and it is a case of devolution of interest and Order 22 Rule 10 Code of CPC applies or Order 32 Rule 10 Code of CPC would apply and that there is no abatement of the suit and therefore, the trial court was justified in allowing the application. He has relied upon ILR 1954 Nag 302 in support of his submissions. It is strenuously urged by the learned Counsel for the Respondent that the provision of law under which the application has been filed may not be correct merely on that ground the application could not have been rejected by the trial court.

8. The undisputed facts are that the Plaintiff is a Matt, which is not living person but a juristic entity, which cannot by itself file a suit but has to be represented by a living person. Admittedly, the Plaintiff was represented by Swamiji till he died on 6.7.2006. The suit is for declaration and for possession. Therefore, the reliefs claimed are in respect of and on behalf of Matt and not by Swamiji in his individual capacity. Therefore, the person who is entitled to prosecute the suit would be a successor to the Swamiji as a representative of the Matt who could be either another Swamiji or a Committee which would manage the affairs of the Matt. Further it is noticed that the person who has now filed the application for impleadment was earlier a power of attorney holder of the Swamiji who represented the Matt and there can be no Legal Representative of the Swamiji to be brought on record. Therefore, the suit cannot be said to have abated. Therefore, in my opinion, the trial court was correct in allowing the application to bring on record Sri. Sangappa as the President as the representative of the Matt who is the Plaintiff in the suit so as to continue prosecution of the said suit.

9. As for as the decision relied upon by the learned Counsel for the Petitioner is concerned, it is seen that in Union of India (UOI) Vs. Ram Charan and Others, , Respondent had died and the suit had abated on account of the Appellant not taking appropriate steps within time to bring the Legal Representatives of the deceased Respondent on record and when the application for setting aside the abatement was not allowed on account of there being a failure to show sufficient cause for not impleading the Legal Representatives of the deceased in time and for not getting the abatement aside within time, application for impleadment u/s 151 of Code of CPC was rejected by the Hon"ble Supreme Court.

10. However, in the instant case the Plaintiff is a Matt, which is a charitable institution as well as a juristic entity and when the person representing the Matt dies and another person is not brought on record within time to represent the Matt, there cannot be an abatement of the suit, as the position of a representative of a Matt is analogous to that a guardian of a minor or person of unsound mind and on his death the suit does not abate but another guardian is appointed. Therefore, an appointment has to be made under Order XXXII Rule 10 of Code of CPC which states that on the retirement, removal or death of the next friend of the minor, further proceedings shall be stayed until the appointment of another next friend in his place and any person interested in the minor or in the matter issue may apply to the court for appointment of next friend of the minor and the court may appoint such person as it thinks fit.

11. In the same manner under Order XXII Rule 10 Code of CPC in the case of devolution of interest during the pendency of the suit, the same may, by leave of the court be continued by a person upon whom such interest would devolve. Under both these provisions the question of abatement of the suit or the bar of limitation for bringing the legal representatives or successors on record cannot arise under law. This proposition is supported by a judicial dicta wherein it has been stated that a Matt has a Judicial status, in the sense of being a juristic

person in law. Therefore, the Plaintiff as a juristic entity can act only through a representative who is analogous to the next friend of a minor and such a suit is not governed by Order XXII Rule 3 of Code of Civil Procedure. The appropriate provision is Order XXII Rule 10 Code of CPC where an appointment of another person can take place on the death of a representative of the institution such as Mutt in the instant case and the suit does not abate. Therefore, Order XXII Rule 3 would not apply to the facts and circumstances of this case as the Plaintiff was not suing in a personal capacity, but in a representative character that is the Swamiji suing on behalf of the Matt. Similarly, where any of the Trustees dies or retires during the pendency of the suit and new trustees are elected to the vacant place, it is a case of devolution of interest During the pendency of the suit the elected Trustees can be added as parties under Order XXII Rule 10 not withstanding the question of limitation.

12. Hence the contention of the counsel for the Petitioner that the suit itself had abated is not correct and further this is not a case where impleadment is being made under Order XXII Rule 3 and since the suit had not abated, question of setting aside the abatement does not arise. As the Plaintiff is a Matt, the question of limitation in filing an application does not arise for the reasons stated above.

13. It is further noted that the applicant who had filed impleading application was earlier the power of attorney holder of the deceased who represented the Matt and who has been subsequently authorized by a resolution to represent the Matt as the President of the Matt in the suit Therefore, the application for impleadment cannot be considered to be an application to bring the Legal Representatives on record. Though application ought to have been filed under Order XXII Rule 10 Code of Civil Procedure, on the said ground, the application for impleadment could not have been dismissed by the trial court.

14. In view of what is stated above, there is no merit in this civil revision petition which is accordingly dismissed by confirming the order dated 9.8.207 passed on I.A. No. II in O.S. No. 279/2002 by the XI Addl Civil Judge (Sr. Dn), Hubli