
(2015) 10 KAR CK 0134

In the Karnataka High Court

Case No : Writ Petition No. 84532/2013 (GM-CPC)

Ismailsab and Others

APPELLANT

Vs

The Special Land Acquisition Officer, Karnataka Industrial
Area Development Board and Others

RESPONDENT

Date of Decision : 30-10-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)

Citation : (2016) 1 AKR 35

Hon'ble Judges : R.S. Chauhan, J.

Bench : Single Bench

Advocate : Ravi Hegde, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The petitioners are aggrieved by the order dated 31.07.2013, passed by the Principal Senior Civil Judge, Hubli, whereby the learned Senior Civil Judge has allowed the application filed under Order I Rule 10(2) of the Code of Civil Procedure and has permitted Mr. Dhulesab Imamsab Habbunavar, to be impleaded as a party-defendant, in the suit pending before the Court.

2. This case has rather checkered history, which is as under:

"The father of the petitioner No. 1, Ismailsab Ghudusab Habbunavar, had filed a suit (in 1989) for partition against other family members. One of the properties involved in the suit was marked as R.S. No.646/2+3, situated in Unkal village. By the judgment and decree dated 30.10.1991, the suit was decreed. However, as the property marked as R.S. No.646/2+3 had been acquired, no share of the said property was given to either Mr. Ghudusab Habbunavar, the petitioners" father or to the petitioners in the said suit. Since Mr. Ghudusab Habbunavar was aggrieved by the said judgment and decree, denying him a share in the said property, he filed an appeal. However, by judgment and decree dated 27.07.1995, the said appeal was dismissed and the judgment and decree dated

30.10.1991 was confirmed by the First Appellate Court.

Thereupon, the petitioners, who were the legal representatives of Mr. Ghudusab Habbunavar, filed a Regular Second Appeal before this Court. By the order dated 13.08.1998, this Court decreed the appeal and directed that 1/4* of the compensation amount of R.S. No.646/2+3, the property which was acquired, should be paid to the petitioners. The petitioners followed the said order with the Special Land Acquisition Officer ("SLAO" for short), requesting him that, 1/4th of the compensation amount should be paid to them. However, the SLAO failed to do so. Therefore, the petitioners approached this Court for compliance of its order. This Court directed the SLAO to deposit 1/4th of the compensation amount before the Principal Civil Court. Therefore, the SLAO deposited 1/4th of the compensation amount i.e., Rs. 45,82,500/- with the Principal Civil Judge, Hubli."

3. The matter stood thus, before the Principal Civil Judge, Hubli. But before the said compensation amount could be disbursed to the petitioners, by the learned Principal Civil Judge, Mr. Dhulesab Imamsab Habbunavar (the respondent in the present petition), filed an application under Order I Rule 10(2) of the Code of Civil Procedure and prayed that, he should be impleaded as a party-defendant. By the order dated 31.07.2013, the learned Principal Civil Judge has allowed the said interim application. Hence this petition before this Court.

4. The learned counsel for the petitioner has vehemently raised the following objections before this Court:--

"Firstly, that the right of the petitioners to receive 1/4th of the compensation amount was crystallized by this Court, by its order dated 13.08.1998. To permit the respondent No. 2, Mr. Dhulesab Imamsab Habbunavar, to be impleaded, would tantamount to upsetting the order dated 13.08.1998.

Secondly, the respondent No. 2 has not given any cogent reasons, as to how he is a necessary party, as the dispute is strictly between the petitioner and the respondent No. 1 -SLAO. Therefore, the impugned order deserves to be set aside."

5. Heard the learned counsel for the petitioners and perused the impugned order.

6. This Court has asked a pointed query to the learned counsel for the petitioners, whether while filing the Regular Second Appeal before this Court, if respondent No. 2 was a party to the said appeal or not? To this query, the learned counsel has frankly conceded that, the respondent No. 2 was not a party to the appeal.

7. A perusal of the impugned order clearly reveals that, the respondent No. 2 claims to be the owner of R.S. No.646/2+3. Therefore, both the petitioners and respondent No. 2 claimed to be the owners of the same exact property. The learned Principal Civil Judge has also noticed the fact that, there are large number of litigations pending before the petitioners and respondent No. 2. This indicates that, if the respondent No. 2 were not impleaded as a party, his interest

in receiving the compensation for the same exact track of land would be adversely affected. Since the respondent No. 2 would be in a position to throw light on the issue, whether the petitioners are entitled to receive 1/4th of the compensation or not, the respondent No. 2 happens to be a necessary party to the proceedings, pending before the learned Principal Civil Judge.

8. According to the learned Counsel for the petitioners, respondent No. 2 was not arrayed as a party-defendant, before this Court. Therefore, any adverse finding given by this Court, will not be binding on the respondent No. 2. However, as the interest of the respondent No. 2 may be adversely affected by any order passed by the learned Principal Civil Judge, it is imperative that, he should be given an opportunity of hearing. In not permitting him to be impleaded as a party-defendant, the rights of the respondent No. 2 under the principles of natural justice would be violated. Therefore, the learned Judge was certainly justified in impleading the respondent No. 2 as a party-defendant in the Court proceedings.

9. The learned counsel for the petitioners is unjustified in claiming that the respondent No. 2 has not narrated any cogent reasons for his impleadment. Since respondent No. 2 claims to be the owner of the same piece of land, he has shown sufficient cause for being impleaded. As he may be entitled to receive the compensation, his right may be adversely affected, if the Court were to pass the order in favour of the petitioners. Hence the said contention raised by the learned counsel is clearly unacceptable.

10. For the reasons stated above, this Court does not find any illegality or perversity in the impugned order.

11. This petition being devoid of merits, is hereby dismissed.

12. The learned counsel for the petitioner prays that, at least a direction should be issued to the learned Principal Civil Judge to expedite the proceedings, as the proceedings are pending since 2011. Therefore, this Court directs the learned Principal Civil Judge to expedite the proceedings and to complete the proceedings, within a period of six months from the date of receipt of the certified copy of this order.