
(2014) 08 KAR CK 0035

In the Karnataka High Court

Case No : Writ Petition Nos. 6588-6589 of 2012 (GM-CPC)

Jayantilal N. Shah

APPELLANT

Vs

Nagarathna Murthy

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Citation : (2014) 4 AKR 728 : (2014) 6 KarLJ 116 : (2014) 4 KCCR 3812

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : S.S. Naganand, Senior Advocate for S. Sriranga, Advocate for the Appellant; Basavaraj R. Bannur, K.V. Hirmath, Advocates, W.M. Sundaramurthy, Advocate for Sundaraswamy, Advocates and Legal Consultants and H.S. Ramamurthy, Advocate for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—This writ petition is filed in the following circumstances.

The petitioners No. 1 to 3 are said to be arraigned as defendants No. 3 to 5 in a pending civil suit in OS 562/2010, on the file of the Court of the Senior Civil Judge and JMFC, Devanahalli. Respondent No. 4, herein is said to be the plaintiff in that suit. The plaintiff has sought for a declaration that he is the absolute owner of the agricultural land measuring in all about 105 acres, comprising several parcels bearing individual survey numbers, of Shettarahalli, Devanahalli taluk. The plaintiff is said to have purchased the same under a sale deed dated 8.10.1969. The same are said to be more fully described in the Schedule to the plaint. It is stated that defendants No. 1 and 2 were the power of attorney holders of the plaintiff. The said power of attorney granted in favour of the said defendants is said to have been revoked subsequently. But notwithstanding such revocation, the said defendants 1 and 2 are said to have executed sale deeds in respect of the suit properties, fraudulently, in favour of the defendants 3 to 5, the petitioners herein. The plaintiff is thus said to have sought for a declaration that the 13 sale deeds said to have been executed by Respondent no. 5 herein,

in favour of the petitioners, in respect of the suit Schedule properties, as being null and void. And is also said to have sought for injunctory reliefs restraining the petitioners from alienating the suit properties or from creating any charge on the same.

The petitioners are said to be contesting the suit and have filed their written statement to contend that the fourth respondent herein had initially entered into agreements to sell the suit properties as on 20.1.1994 and had thereafter executed sale deeds, through the fifth respondent acting as power of attorney holder, as on 9.4.2008. And are said to have asserted that they are the absolute owners of the property.

It is said that respondents 1 to 3, of whom neither the plaintiff nor the defendants had spoken and were apparently not concerned with, had filed applications (IA no. III and IA no. IV) seeking leave of the court to be joined as defendants in the suit. It was said to have been claimed that their father had been conferred with occupancy rights by way of a re-grant, in respect of portions of the suit properties, u/s 5 of the Mysore (Personal & Miscellaneous) Inams Abolition Act, 1954. And that they have succeeded to the same. And are said to have claimed absolute ownership of the said properties. The petitioners are said to have resisted the application by filing their objections. It was urged that the said respondent were neither proper or necessary parties to be impleaded as defendants. The very claim of the said respondents 1 to 3 was disputed. It was pointed out that the lands said to have been inherited by the said respondents were not any part of the suit properties. In that, it was asserted that in the year 1958, there had been a re-survey of the suit properties and the survey numbers assigned to the lands were different from the numbers indicated in the purported re-grant made in favour of the father of respondents 1 to 3 as claimed.

The trial court however, is said to have allowed the applications holding in favour of the said respondents. It is that which is sought to be challenged in the present writ petition.

2. The learned Senior Advocate, Shri S.S. Naganand, appearing for the counsel for the petitioners would contend that the very application of the respondents was misconceived, having regard to the fact that the plaintiff has not claimed any relief as against the applicants.

It is contended that the dispute is as between the plaintiff and the petitioners on their respective title deeds. The applicants seeking to set up an independent title in such a suit is totally incongruous. The claim, if any, ought to be agitated in an independent suit. And that such a suit has in fact been instituted by the first respondent, in OS 391/2012, on the file of the Court of the Senior Civil Judge, Devanahalli, which is said to be pending as on date. A copy of the plaint in the said suit is produced. It is pointed out that the petitioners and the plaintiff are named as the defendants in the said suit.

It is contended that on principle, the questions involved in the suit would mean

only those questions concerning the parties to the suit and not questions concerning any third-party. In deciding whether a party is a necessary party-, the court would have to determine whether any relief can be granted to the plaintiff or the defendant, without the presence of such a party. When the claim of the applicants was totally alien to the rival claims of the plaintiff and defendant, there was no necessity for the presence of the applicants. It is contended that by the impugned order the trial court has imposed the applicants on the parties to the suit, which is contrary to the settled principle.

It is urged that the purported cause of action of the applicants being permitted to be urged by the applicant-respondents, as defendants in a suit is not tenable. The joining of the said parties as defendants would require, issues not germane to the suit being raised and rendering the scope of the suit to be enlarged without any purpose being served in deciding the lis between the plaintiff and the defendant, but when the endeavour of the applicants is obviously to have their nebulous claim adjudicated in the present suit, the same is wholly foreign to the controversy between the plaintiff and the defendants. In other words the defendant would be facing two plaintiffs as it were, in the third claim of the of the applicants being permitted to be raised in the suit.

The learned Senior Advocate places reliance on the following authorities in support of the above legal propositions.

1. Sri Vardhaman Stanakvisi Jain Sravak Sangh Vs. Chandrakumar and Another, ,
2. Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, ,
3. Basavanneppa Yellapa Angadi Vs. Shivappa Mallappa Hooli,
4. Ramesh Chandra Vs. Mukhtyar Singh and Others,

3. The learned counsel for the respondents, on the other hand, seeks to justify the impugned order and would contend, that it is significant to note that the plaintiff has not sought to question the impugned order and therefore, the present petition filed by the defendants is not maintainable.

It is contended that the trial court has after being satisfied of the bona fides of the applicants and their claim to portions of the suit properties and has come to a definite conclusion as to the respondent-applicants being proper and necessary parties to the suit. This is in exercise of the discretion vested in it and it is therefore contended that the petition be dismissed.

4. In the above background, the question that arises for consideration is whether the exercise of discretion by the trial court in coming to a conclusion that the respondents 1 to 3 herein, were proper and necessary parties to the suit, was reasonable and legally tenable.

It is evident from the pleadings that the claim sought to be set up by the impleading applicants, is an independent right of inheritance claimed over

portions of the suit properties totally measuring about 66 acres and 03 guntas out of the suit properties measuring 105 acres.

As between the plaintiff and the present petitioners, their pleadings would indicate that the plaintiff was the owner of the suit properties, is not disputed. The controversy is only as regards the conveyance of the suit properties said to have been made by the power of attorney holders of the plaintiff, in favour of the petitioners as being fraudulent.

The impleading applicants are said to have been prompted to join as parties to the suit, when they had seen a notice published in the newspapers bringing to the attention of the general public the pendency of civil litigation with reference to the suit properties, issued by the plaintiff.

The trial court, in passing the impugned order, has not indicated its reasoning in arriving at the conclusion that the independent claim of the impleading applicants requires to be considered at the trial. The claim was totally foreign to the controversy between the plaintiff and the defendants. By allowing the application, a triangular contest has been created, in the plaintiff and the defendants denying each other's claim to title on the one hand and the impleading applicant denying the title of both the plaintiff and the defendants, and setting up their own, on the other. This has resulted in the impleading applicants virtually engrafting a plaint of their own, as it were, notwithstanding their capacity as defendants, into the pending suit. This is especially so when the plaint and the written statement had no occasion to even remotely refer to the said impleading applicants.

It is well settled that a necessary party is one without whom no order can be effectively made. A proper party is one whose presence is necessary for a complete and final decision of the question involved in the proceedings. (See: Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, ; Ruma Chakraborty Vs. Sudha Rani Banerjee and Another,)

Where the impleadment of a party results in changing the complexion of the litigation-the said party's presence is neither necessary for the decision of the question involved in the proceedings nor would it enable the court to effectively and completely adjudicate the matter (See: J.J. Lal Pvt. Ltd. and Others Vs. M.R. Murali and Another,)

In determining the question as to who is a necessary party, there are two tests:

- (i) there must be a right to some relief against such party in respect of the matter involved in the proceeding in question and
- (ii) it should not be possible to pass an effective decree in the absence of such party.

The eventual interest of a party in the fruits of litigation cannot be held to be the true test to implead a party. (See: The Benares Bank Ltd., Benares Vs. Bhagwan

Das and others and Ratanlal and another ; approved in Deputy Commr., Hardoi, in charge Court of Wards, Bharawan Estate Vs. Rama Krishna Narain and Others,)

In the case on hand, given the facts and circumstances and with the legal principles referred to above being kept in view, if one were to ask whether the suit is capable of being completely and finally decided in the absence of the impleading applicants, the answer would be in the affirmative. For it is possible for the trial court to either to decree the suit in favour of the plaintiff or to dismiss the suit, with reference to the title deed set up by him. In that, the dispute between the plaintiff and the defendants 3 to 5 is capable of being fully and finally decided without the participation of the impleading applicants. The fact that they are claiming to be interested in the suit properties under an independent title would not make them necessary or proper parties to the suit, the power of the court to add a party to the suit cannot depend solely on the question that an interest is claimed in the suit property. The trial court has hence committed an error in allowing the applications of the impleading applicants.

Accordingly, the writ petitions are allowed. The impugned order of the trial court is quashed.