
(2008) 02 KAR CK 0096

In the Karnataka High Court

Case No : Civil Revision Petition No. 1179 of 2004

Juvam Bouthis Pinto (deceased) by LRs.

APPELLANT

Vs

Nonu Moily (deceased) by LRs.

RESPONDENT

Date of Decision : 12-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 2008 Kar 2236 : (2008) 3 KCCR 1634

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

Bench : Single Bench

Advocate : Prasanna V.R, for the Appellant;

Judgement

N.K. Patil, J.—The instant Civil Revision Petition arises out of the order dated 17th April 2004 passed by the learned Civil Judge (Jr. Dvn.) and J.M.F.C. Belthangady on I.A.V in O.S. No. 212/1992.

2. Since the original petitioner is dead, he is represented by his legal representatives 1(a) to 1(d). The only grievance of petitioners in the instant revision petition is that, when the original suit in O.S. No. 212/1992 was pending adjudication before the Trial Court and the same was at the stage of recording evidence, learned Counsel appearing for deceased respondent, now represented by his legal representatives in this revision petition, had filed a memo on 16th March 2004 stating that, the deceased respondent has expired recently. The said memo was placed on record and the matter was adjourned to 23rd March 2004. Thereafter, petitioners have filed the application, I.A.V under Order XXII, Rule 4 read with Section 151 of the CPC (CPC) praying that, petitioners may be permitted to bring the legal representatives of deceased respondent on record as defendants Nos. 1(a), 1(b) and 1(c). The said application had come up for consideration before the Trial Court and the Trial Court after hearing, dismissed the application filed by petitioner and consequently dismissed the suit also as abated on the sole ground that, petitioners have not chosen to bring the legal representatives of deceased on record within the mandatory period of ninety

days from the date of death of deceased respondent in as much as the respondent had died on 13th December 2003 and in spite of giving sufficient opportunity to make necessary application to the petitioners, they have not filed the necessary applications within time. Accordingly, the Trial Court has proceeded to dismiss the application filed by petitioners and consequently dismissed the suit also as barred by time. Assailing the correctness of the impugned order passed on I.A.V as referred above, vide Annexure-A, petitioners herein have presented the instant revision petition.

3. I have heard learned Counsel appearing for petitioners. Respondents are served and un-represented.

4. After careful perusal of the impugned order passed by the Trial Court on I.A.V and after going through the certified copy of the order sheet maintained by the Trial Court, produced along with the instant revision petition filed by petitioners, it is manifest on the face of the reasoning given by the Court below for dismissing the application as well as the suit that, the Trial Court has committed grave error and illegality resulting in serious miscarriage of justice in as much as the Trial Court has proceeded to pass the impugned order on I.A.V on hyper technical ground, without affording reasonable opportunity to the parties to make necessary applications to bring the legal representatives of the deceased respondent on record. It is significant to note that, the Counsel representing the deceased defendant has filed a memo dated 16th March 2004 stating that, the defendant has expired recently who is in the above numbered suit and hence, the memo is filed. The said memo was placed on record. The Counsel who represented the deceased defendant has intentionally and deliberately not furnishing the date, month and year in respect of the death of the deceased defendant and in view of non-mentioning of the correct date, month and year of the death of deceased defendant, petitioners could not file the applications to bring the legal representatives of the deceased defendant on record. Without further delay, the Trial Court ought to have looked into this aspect of the matter and permitted the parties to make necessary applications to bring the legal representatives of the deceased defendant on record by using its discretion, in the interest of justice and to safeguard the interest of both parties. This aspect of the matter has been completely lost sight of by the Trial Court and mechanically proceeded to pass the order after hearing both sides by taking hyper technical ground and dismissing the application and consequently, the suit also as barred by time. The reasons assigned by the Court below at paragraphs 6 and 7 of the order for dismissing the application and consequently the suit also as barred by time are highly unsustainable. Hence, the impugned order passed by the Trial Court on I.A.V is liable to be set aside at the threshold.

5. In the light of the facts and circumstances of the case, the revision petition filed by petitioners is disposed as follows:

I] The revision petition filed by petitioners is allowed in part;

II] The impugned order passed by the Trial Court dated 17th April 2004 on I.A. No. V in O.S. No. 212/1992 on the file of the learned Civil Judge (Junior Division) and JMFC, Belthangady, Dakshina Kannada District, is hereby set aside;

III] Matter stands remitted back to the Trial Court for reconsideration of the matter afresh;

IV] Further, petitioners herein are permitted to file necessary applications to bring the legal representatives of deceased respondent-defendant by way of filing the necessary applications before the Trial Court, for delay in filing the LR application, for setting aside abatement and for bringing the legal representatives of deceased respondent- defendant on record within two weeks from the date of receipt of a copy of this order;

V] In case such applications are filed by petitioners, the Trial Court is directed to receive the same and pass appropriate order, after issuing notice to the legal representatives of deceased respondent-defendant and decide the same, in accordance with law, subject to petitioners paying a sum of Rs. 2,500/- (Rupees Two Thousand Five Hundred Only) to the legal representatives of deceased respondent.