

(2015) 11 KAR CK 0022
In the Karnataka High Court
Case No : CRP No. 100058/2015

Kankappa and Others

APPELLANT

Vs

Hanumantappa and Others

RESPONDENT

Date of Decision : 03-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 9
Karnataka Irrigation Act, 1965 — Section 2(8), 5, 69(5)

Citation : (2015) 11 KAR CK 0022

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

Bench : Single Bench

Advocate : S.H. Mittalkod and Vinay S. Koujalag, Advocates, for the Appellant;
Rajashekhar R. Gunjalli, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The petitioners are aggrieved by the order dated 16/6/2015, passed by the III Additional Civil Judge and JMFC, Gangavathi, whereby the learned Additional Civil Judge has dismissed the petitioners' application under Section 9 read with Section 151 of CPC and read with Section 69(5) of the Karnataka Irrigation Act 1965 ("the Act" for short).

2. Briefly, the facts of the case are that, the respondent Nos. 1 and 2 had instituted a suit for mandatory injunction against the petitioners and other defendants for payment of damages. According to the respondents, the petitioners are cultivating a land, and digging a canal unauthorisedly nearby the land belonging to the respondents. Due to the seepage of water, from the land belonging to the petitioners to the land belonging to the respondents, the respondents are finding it extremely difficult to grow the dry crops. Therefore, the respondents are suffering a huge loss.

3. Upon issuance of summons to the petitioners, the petitioners filed an application under Section 9 of CPC read with Section 151 of CPC r/w Section 69(5) of the Act; in the application the petitioners prayed for the dismissal of the

suit as the civil court did not have the jurisdiction to try a suit under the Irrigation Act ("the Act", for short). However, by order dated 16/6/2015, the learned Additional Civil Judge, Gangavathi, has dismissed their application. Hence, this petition before this Court.

4. The learned counsel for the petitioners has vehemently contended that a civil suit filed by the respondent was clearly covered by the Irrigation Act. According to Section 69(5) of the Act, the jurisdiction of the Civil Court in entertaining the suit is ousted. Therefore, the Civil Court did not have the jurisdiction to try the civil suit filed by the respondents. Hence, the civil suit should have been dismissed on this ground alone. Therefore, the impugned order deserves to interfere with.

5. On the other hand, the learned counsel for the respondents has strenuously contended that before Section 69(5) of the Act comes into force, barring the jurisdiction of the Civil Court, it is imperative for the petitioners to prove the fact that the case is covered by the provision of the Act. Since the petitioners have failed to do so, the learned Judge was unjustified in dismissing their application. Therefore, the learned counsel for the respondents has supported the impugned order.

6. Heard the learned counsel for the parties, and perused the impugned order.

7. A bare perusal of the plaint filed by the respondents clearly reveals that the case against the defendants is that the defendants are digging a canal through the land which is adversely affecting the land-adjacent land belonging to the respondents. But, the respondents nowhere claimed that they are filing the suit under the provision of the Irrigation Act.

8. Moreover, Section 2(8) of the Act defines words "Irrigation work" as under:-

"2(h) "Irrigation work" includes:-

(i) all reservoirs, tanks, wells, anicuts, bandharas, ponds, spring ponds, canals, field-channels, thalapariges, pipes, channels, aqueducts and sluices constructed maintained or controlled wholly or partly by Government for the supply, conveyance or storage of water;

(ii) all works, embankments, structures, supply and escape channels, connected with such reservoirs, tanks, anicuts, bandharas, channels, canals, pipes, sluices and all roads constructed for facilitating the construction or maintenance of such reservoirs, tanks, anicuts, bandharas, canals, channels, pipes and sluices;

(iii) All drainage works and flood embankments;

(iv) Any part of a river, stream, lake, natural collection of water or natural drainage channel to which the State Government may apply the provisions of Section 5 or of which the water has been applied or used before the commencement of this Act for the purpose of any existing irrigation work;

(v) All lands appropriated by the State Government for the purpose of such reservoirs, tanks anicuts, bandharas, canals, channels, pipes, sluices and all buildings, machinery, fences, gates and other erections upon such lands."

9. A bare reading of the definition of the words "irrigation work" clearly reveals that the case of the respondents does not fall within the definition of "irrigation work". For, the respondents are nowhere claiming that the canal being dug by the defendants is being done at the instance of the Government; therefore, it is wholly or partly controlled by the Government. Moreover, the respondents do not claim that a structure is connected with irrigation work and the construction carried out by the petitioners is for the maintenance of such irrigation work. Since the plaintiffs have never claimed that the work being allegedly undertaken by the defendants falls within the definition of the words "irrigation work", obviously their case does not fall within the four corners of the Act.

10. The question of applicability of Section 69(5) would arise if and only if the plaintiff had brought their case within the four corners of the Act. Since the plaintiffs have nowhere pleaded that the case is within the ambit of an act, obviously, the bar contained in Section 69(5) of the Act cannot be applied so as to oust the jurisdiction of the Civil Court.

11. This is the very logic given by the learned Additional Civil Judge. Thus, the said logic cannot be faulted by this Court.

12. For the reasons stated above, this court does not find any merit in the present petition. It is, hereby, dismissed.