
(2006) 09 KAR CK 0012
In the Karnataka High Court
Case No : Writ Petition No. 45359 of 2004

Kempaiah and Another

APPELLANT

Vs

Javaregowda and Others

RESPONDENT

Date of Decision : 11-09-2006

Acts Referred:

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

Citation : (2006) 4 KCCR 2489

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : P.S. Manjunath and H.C. Shivaramu, for B. Thilak Hegde Law Chambers, for the Appellant;

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—Petitioners herein are defendants 1 and 2 in O.S. No. 145 of 1996 on the file of the Civil Judge at Mandya.

2. Respondent 1 is the plaintiff in the suit. Javaregowda filed this suit to declare him as the absolute owner in lawful possession of the suit property and to grant an injunction to restrain the defendants from interfering with his peaceful possession and enjoyment of the suit property. After the evidence of Javaregowda, his wife Mariyamma who is the 2nd respondent in this case, filed an application under Order 1, Rule 1 of the CPC requesting the Court to allow her to come on record as an additional plaintiff, on the ground that the whereabouts of Javaregowda are not known to her since 1999 and since the suit property is the joint family property, she has a right to prosecute the case. This application is allowed by the Trial Court and she has been permitted to come on record as additional plaintiff. This order is called in question in this writ petition.

3. I have heard the learned Counsel for the petitioners. According to the petitioner, the Trial Court has committed a serious error in allowing the application of the 2nd respondent as there cannot be any presumption that the

1st respondent is deemed to be a dead person since his whereabouts are not known to the 2nd respondent from 1999. When she has filed an application to come on record as additional plaintiff, not even two years was completed from the date of alleged missing of plaintiff Javaregowda. Therefore, he requests this Court to set aside this order.

4. It is no doubt true that 7 years period has not been completed when the 2nd respondent filed an application to come on record as an additional plaintiff. But now the said period of 7 years is completed. It is not the case of the petitioners that the 1st respondent's whereabouts are known to the 2nd respondent or to the petitioners. When the 2nd respondent is contending that the suit schedule property is the joint family property, if the plaintiff is missing subsequent to the institution of the suit only on the ground that the whereabouts of the plaintiff is unheard, if other members of the family are not allowed to come on record, the case filed by the plaintiff would be dismissed and in such an event the entire family would be put to a lot of hardship. As there is a vested right to contest the case as a member of the joint family provided the suit property is a joint family property this Court cannot find fault with the orders of the Trial Court in permitting the wife of the plaintiff to come on record. Considering the fact that as on today the plaintiff Javaregowda is unheard of for more than 7 years, the petition has to be dismissed as having become infructuous.

5. Accordingly, it is dismissed as having become infructuous.