

(2008) 08 KAR CK 0035

In the Karnataka High Court

Case No : Writ Petition No. 15215 of 2006

K.L. Shivananjamurthy

APPELLANT

Vs

K.L. Nagaraj @ K. Karehalli

RESPONDENT

Date of Decision : 07-08-2008

Acts Referred:

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

Citation : (2009) 4 CivCC 660 : (2008) ILR (Kar) 4537 : (2009) 6 KarLJ 174 : (2008) 5 KCCR 658 SN

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

Bench : Single Bench

Advocate : C.G. Gopalaswaray, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The petitioner being aggrieved by the order dated 5.9.2006 passed on I.A.V. in O.S. No. 4450/95 on the file of the XXII Additional City Civil Judge, Bangalore City, vide Annexure-A, presented the instant writ petition.

2. The second defendant in the above suit, respondent herein, has filed an application under Order 1 Rule 10(2) of CPC seeking transposition of himself as plaintiff. The said application had come for consideration before the Court below on 5.9.2006. The court after hearing both the sides and after considering the relevant material available on file, especially taking into consideration that the suit has been filed in the year 1995, the petitioner-plaintiff has not participated effectively for the due prosecution of the suit and taking into consideration the specific contentions of the respondent herein through his counsel that as there is a recent development regarding collusion between the petitioner herein, plaintiff in the suit, and the contesting defendant No. 1 and in that view of the matter the applicant is left in the lurch without being able to seek remedy of partition of his share. The Court has specifically observed that the conduct of the petitioner in making default in the matter of prosecution of the suit over a length of time virtually amounts to abandonment of his claim. By assigning valid reasons in

paras 7 and 8 of the order, I.A.V. filed by the respondent herein was allowed and directed the respondent herein to transpose him as a plaintiff and prosecute the suit after paying requisite court fee on his share. Assailing the correctness of the order passed by the court below the petitioner felt necessitated to file this writ petition.

3. I have heard the learned Counsel for the petitioner. After careful evaluation of the material on record and the order passed by the court below, what emerges, is that the court below after going through the material available on record and the averment made in the application filed by the respondent herein and after affording opportunity to the parties represented through their counsel, has specifically referred that it is a matter of fact that the petitioner has admittedly not participated in the due prosecution of the suit and prima facie there appears to be collusion with the first defendant in the suit and this has left the respondent in the lurch without being able to seek remedy of partition of his share. Therefore, the conduct of the petitioner making default in the matter of prosecution of the suit over a length of time virtually amounts to abandonment of his claim. It is a settled principal of law that, in a partition suit each plaintiff is a defendant and defendant, the plaintiff. Every legitimate sharer can claim partition and allotment of his share by paying court fees. If the suitor does not intend to prosecute the suit, it is open to any defendant to claim his legitimate share by transposing himself as plaintiff and to prosecute the suit. If such a course is not valid, it would lead to incongruous results and the suit have to be dismissed for non prosecution or kept in cold storage without there being any progress in the trial. Therefore, in such circumstances, definitely be detrimental to the interest of the defendant No. 2 i.e. the respondent herein who intends to seek partition and allotment of his sharer by paying court fee. Therefore he has opined that it is just and expedient to allow the application of the respondent herein to come on record as plaintiff and prosecute the suit by paying requisite court fee in respect of the property he has claimed share.

4. Therefore, I am of the considered view that interference by this Court is uncalled for and hence, decline to entertain this writ petition.

5 In the light of the discussions made above, the writ petition is dismissed as devoid of merits.

Ordered accordingly.