

(2015) 01 KAR CK 0157

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 7671 of 2014 (CPC)

Krishnamurthy M.

APPELLANT

Vs

Karnataka Regional Kurabura Sangh and Others

RESPONDENT

Date of Decision : 09-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1, Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1(r)

Citation : (2015) 1 KarLJ 625

Hon'ble Judges : A.V. Chandrashekara, J.

Bench : Single Bench

Advocate : Amit Deshpande, for the Appellant; H.K. Kenchegowda, Kantharaja and Shanmukhappa, Advocates for the Respondent

Judgement

A.V. Chandrashekara, J.—A considered order dated 19-4-2013 passed by the VII Additional City Civil and Sessions Judge, Bengaluru, in O.S. No. 2878 of 2013 is called in question in this appeal. An application had been filed under Order 39, Rules 1 and 2 of Civil Procedure Code, 1908 by the present appellant as 1st plaintiff and the same has been dismissed after contest. It is this order which is called in question on various grounds as set out in the appeal memo.

2. The appellant and another chose to file a suit for the relief of declaration that the election conducted to the 1st respondent-Sangha on 29-9-2013 is vitiated because of serious mala fides, irregularities and illegalities, and consequently the relief of permanent injunction is also sought to restrain the newly elected members of the Sangha from functioning as members and taking important decisions relating to the management of the Sangha.

3. The said application was opposed by filing detailed objections. Ultimately the learned Judge has come to the conclusion that the elected members of the Sangha cannot be restrained from functioning as members so as to take suitable decisions for its management.

4. Learned Counsel for the appellant has vehemently argued that when the learned Judge has come to the conclusion about the existence of a clear prima facie case, it was incumbent upon the Court to have looked into other aspects namely existence of balance of convenience and irreparable hardship and inconvenience that would be caused in the event of non-grant of injunction. In this regard reliance is placed on a Single Bench decision of this Court in the case of Purna Investments Ltd. Vs. Southern Steelmet and Alloys Ltd. and Others, . In paragraph 10, it is specifically reiterated by this Court that: "when a clear prima facie case is made out, the Court is expected to look Limited and Others Purna Investments Ltd. Vs. Southern Steelmet and Alloys Ltd. and Others, . In paragraph 10, it is specifically reiterated by this Court that: "when a clear prima facie case is made out, the Court is expected to look into as to whether the plaintiff's case is frivolous, Vexatious and whether the balance of convenience lies in his favour".

5. In another decision reported in Sri Gowrishankara Swamigalu Vs. Sri Siddhaganga Mutt, , it is held that: "the moment prima facie case is made out, the Court is expected to look into existence of other points namely balance of convenience and irreparable hardship and inconvenience that would be caused". Reliance is placed on yet another decision of the House of Lords reported in ILR Vol. XXVI 426 to contend that: "what is most important is not the probability of success of the plaintiff, but the existence of a serious question to be decided".

6. Reliance is also placed on an unreported decision of this Court in the case of M. Krishnappa v. K.T. Srinivas and Others (M.F.A. No. 5663 of 2010, disposed of on 12-8-2014). What is reiterated is that: "the Court dealing with an application under Order 29, Rules 1 and 2 of CPC is expected to frame a specific point about balance of convenience and irreparable hardship that would be caused by not granting an order of injunction".

7. I have heard regarding admission and perused the records. The only point that arises for consideration in this appeal is:

Whether the order impugned needs to be interfered with under Order 43, Rule 1(r) of C.P.C.? What is mainly averred in the plaint is that serious illegalities and irregularities have taken place in the manner of conducting the election to the Sangha and several persons were fake voters and the same is substantiated by producing acceptable material. What is further argued is that when the learned Judge himself has come to a specific conclusion, as found in paragraph 12 at page 7, about existence of a prima facie case, it was incumbent upon the Court to have looked into about the existence of other points, balance of convenience and irreparable hardship that would be caused in the event of non-granting of injunction order.

8. What is held by this Court in the case of Gowrishankara Swamigalu is that mere existence of prima facie case will not be a frog-leap to hold that temporary injunction has to be granted. In the present case, on a perusal of paragraph 12

of the order, it is evident that the learned Judge has indirectly looked into the aspect of balance of convenience. What is held is that if the newly elected members are inhibited from participating in the meetings, of the 1st defendant-Sangha, it would be difficult to manage the day-to-day affairs including running of hostel. The learned Judge has come to the conclusion that to run the hostel, several decisions are required to be taken for its smooth working. One sentence is drawn out of context and blown out of proportion to contend that the learned Judge himself has held about the existence of prima facie case.

9. On going through the entire order, more particularly paragraph 12, a reasonable inference can be drawn that the learned Judge has not given any finding about the existence of a prima facie case. What he has referred to is about the allegation made by the plaintiffs which, according to the plaintiffs, is serious. What is observed is that such allegations need to be proved at the time of trial.

10. It is also submitted by the learned Counsel for the appellant that issues have been framed and the Court is seized of the matter and evidence has already commenced. Regular election is held and members have been elected and they are required to take important decisions not only regarding day-to-day affairs, but even in respect of running the hostel and other developmental works. Therefore it can be definitely said that the learned Judge has indirectly touched the aspects relating to prima facie case and irreparable hardship and inconvenience that would be caused in the event of granting of injunction as sought for.

11. Even if it is admitted that there are allegations relating to the manner in which elections are held, if the elected members are inhibited from participating in the managerial duties, it will create a void. It would not be in the interest of justice to prevent them from discharging the duties allotted to them. It is expected that they would act with utmost confidence so as to safeguard the interests of the Sangha. This Court does not find any reason to interfere with the order impugned. Accordingly the appeal is liable to be dismissed as unfit for admission. In the result, I pass the following order:

ORDER

The appeal is dismissed as unfit for admission. Notwithstanding dismissal of the appeal, the learned Judge is requested to expedite the matter since the suit is in respect of challenge to the elections held. This Court expects that the newly elected members will participate in a meaningful manner and take proper and apt decisions to manage the Sangha.

The Advocates and parties shall co-operate with the learned Judge in disposing the matter as expeditiously as possible without giving room for delay. Any observation made by the Trial Court or this Court is only for the limited purpose of disposing of the application under Order 39, Rules 1 and 2 of C.P.C. and the present appeal and this shall not influence the Judge dealing with the matter on

merits.