

(2003) 07 KAR CK 0062

In the Karnataka High Court

Case No : Civil Revision Petition No. 3511 of 2002

L. Puttaiah and Others

APPELLANT

Vs

Annaiappa (Deceased) by L.Rs and Others

RESPONDENT

Date of Decision : 23-07-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 115

Citation : (2003) 5 KarLJ 211

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : B. Rudragowda, for the Appellant; A.V. Gangadharappa, for Respondent No. 1(a) and G. Rajaeshwari, for the Respondent

Final Decision : Allowed

Judgement

H. Rangavittalachar, J.—The 1st respondent-Annaiappa (since deceased by legal representatives) had filed O.S. No. 99 of 1992 on the file of the Civil Judge (Junior Division), Gubbi, against one Udedakalappa and Kalappa for a declaration that they are the owners of the deity "Kalikanteswara" and also are the Archaks of the said temple and for permanent injunction. During the hearing of the said suit, the revision petitioners herein made an application under Order 1, Rule 10 of the CPC to be impleaded as defendants. They contended in the application that they and the plaintiffs in the suit were originally residents of Madhugiri and they jointly constructed the temple in question and installed the deity "Kalikanteswara" and the four branches of the plaintiffs and the applicants were worshipping by rotation. Therefore, they are the co-owners of the temple entitled to worship as owners along with the plaintiffs. The plaintiffs have no exclusive right either over the temple or as Archaks. The application came to be rejected by the Trial Court on the ground that they are not necessary parties and no document is produced to prove their right to temple; besides, the plaintiffs have a right to represent the entire branch including the applicants. This order is questioned.

2. Sri B. Rudragowda, learned Counsel appearing for the petitioners submitted that the applicants are necessary parties for complete adjudication of the claim made by the plaintiffs. The rejection of the application will only lead to multiplicity of the proceedings.

3. Per contra, Sri A.V. Gangadharappa, learned Counsel appearing for the respondent 1(a)/plaintiff 1(a) defended the order. Firstly, he submitted that having regard to the language of Section 115 of the CPC as amended, this civil revision petition is not maintainable, inasmuch as the order of the Trial Court will not have the effect of finally disposing of the matter. Secondly, he submitted that it is the plaintiffs choice to choose his adversaries. No person can force on the plaintiff to make him also an adversary. The learned Counsel relied on the decision of the Supreme Court in Anil Kumar Singh Vs. Shivnath Mishra alias Gadasa Guru, and also the decision of the Allahabad Court in Mohd. Farooq Vs. District Judge, Allahabad and others, and that of Banarsi Dass Durga Prashad Vs. Panna Lal Ram Richhpal Oswal and Others, .

4. In my view, the Trial Court has totally misdirected about the scope of Order 1, Rule 10 of the Code of Civil Procedure. What is required to be investigated when an application under Order 1, Rule 10 of the CPC is filed before the Court is "whether the presence of a person before it may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit". The Trial Court has not applied its mind to this aspect of the matter. It has proceeded to investigate the merits of the claim made by the impleading applicants. That stage will reach only when the applicants are impleaded and during the final hearing of the matter while adjudicating their rights.

5. Insofar as the objections raised by Sri A.V. Gangadharappa, learned Counsel, about the maintainability of the revision petition is concerned, Section 115 of the Code of Civil Procedure, as amended by Act 104 of 1976, reads as under:

"(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where-

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto".

6. The proviso which has been introduced by Act 104 of 1976 only means that, the order challenged in the revision should have the effect of disposing of the proceedings finally against the party filing the revision petition. When an application of the revision petitioners under Order 1, Rule 10 of the CPC has been rejected, insofar as they are concerned, this order will have the effect of non-suiting them from the proceedings and finally disposing of the proceedings. Therefore, the proviso is not a bar for entertaining the revision petition.

7. On other contention regarding the choice of the plaintiff, no doubt the plaintiff may have a choice to choose his own adversaries but, when the Court has to exercise its power under Order 1, Rule 10 of the Code of Civil Procedure, what has to be kept in mind by the Courts is other than the adversaries chosen by the plaintiff, are there any other person or persons whose presence may be required to effectually and completely adjudicate the suit. The exercise of that power does not depend upon the volition of the plaintiff, it is exclusively the Court's power. The decision referred to by Sri A.V. Gangadharappa, learned Counsel, instead of advancing his case, advances the contention of the impleading applicants. In Anil Kumar Singh's case, supra, the Supreme Court has held while interpreting Order 1, Rule 10 of the Code of Civil Procedure, as what is required to be noticed by the Court is that "the presence of the impleading applicant should be necessary to enable the Court to effectually and completely to adjudicate upon and settle all the questions involved in this suit". Similarly, also the Allahabad High Court has held in the case referred that one of the factors to be taken into consideration while deciding the application filed under Order 1, Rule 10 of the CPC is that "the impleadment is necessary to avoid multiplicity of proceedings".

8. The suit of the plaintiffs is for a declaration that they are the exclusive owners of the temple and have exclusive Archakship rights. On the other hand, the impleading applicant also claim right over the temple and Archakship. Under the circumstances, the presence of the impleading applicants is necessary to completely adjudicate the nature of the rights of the parties over temple and Archakship. If they are not ordered to be impleaded, they have to file another suit for declaration of their rights which would necessarily mean there would be multiplicity of proceedings. Hence, they are both necessary and proper parties to the suit. The second objection of Sri A.V. Gangadharappa, learned Counsel, is overruled.

9. Since the Trial Court has completely overlooked, what has been discussed above, the order is liable to be set aside and is set aside accordingly and the applications of the revision petitioners filed under Order 1, Rule 10 of the CPC is

allowed. The plaintiffs to amend the cause title on the next date of hearing of the case.

10. In the result, civil revision petition is allowed