

(2015) 06 KAR CK 0007
In the Karnataka High Court
Case No : C.R.P. No. 1133/2012

Laxman

APPELLANT

Vs

P.G. Gouri and Others

RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, 115, 151

Citation : (2015) 06 KAR CK 0007

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Arun L. Neelopant, Advocate, for the Appellant; Ramakrishna Hegde, for the Respondent

Final Decision : Disposed Off

Judgement

B. Veerappa, J.—The present petitioner who is the defendant-1 in O.S. No. 1049/2008 filed the above revision petition against the order dated 6.1.2012 on I.A. 4 under Order 14 Rule 2 read with Section 151 of Code of Civil Procedure, rejecting the application is before this Court.

2. The respondent/plaintiff filed the suit for declaration that the marriage between the plaintiff and defendant-1 is just and proper thereby the plaintiff is legally wedded wife of the defendant-1 and sought for further declaration that the alleged marriage between defendants 1 and 2 dated 2.6.1993 alleged to have been registered before the Sub-Registrar, Dharwad during the subsistence of marriage of the plaintiff with defendant-1 is null and void and not binding on the marital status of the plaintiff and defendant-1 and all other rights and liabilities to be accrued to defendant-1, contending that plaintiff is the legally wedded wife of defendant-1 and their marriage took place on 2.6.1984 at "Shiva Temple, near Rakkasa Koppa Dam, District Belgaum" and out of their wedlock two children were born and thereafter the plaintiff came to know about the matrimonial proceedings initiated between defendant-1 and Smt. Leela Mullatti for dissolution of marriage between them and defendant No. 1 has taken divorce

with the said Leela Mullatti in the year 1990.

3. In the meantime, taking advantage of the innocence and sacrificing nature of the plaintiff when the defendant 1 had contacts with one Vinuta Bhat who was student of defendant-1 in Karnataka University, then the dispute between the plaintiff and defendant No. 1 started. The defendant-1 initiated proceedings by filing O.S. No. 17/1994 and O.S. 109/1995. Both the suits were filed for injunction in respect of immovable properties. It is also contended in the plaint that she came to know about the illegal marriage with Vinuta Bhat by suppressing the material facts and the existed marital tie of defendant No. 1 has succeeded to get the registered documents of marriage with Vinuta Bhat on 2.6.1993 without the knowledge or consent of the plaintiff Therefore, she alleges that the alleged marriage between defendants 1 and 2 has no legal sanctity and not binding on plaintiff, etc.

4. Defendant-1 filed written statement and additional written statement and denied the entire plaint averments and admitted the fact of divorce with Leela Mullahatti, which had taken place in 1990. Also contended that the plaintiff proved herself to be a woman of undesirable and violent character. From her conduct it transpired that the main aim was to grab the property of defendant-1 by hook or crook which led the defendant to file civil and criminal cases against plaintiff in courts at Dharwad. Thus the defendant-1 being disgusted with the behavior of the plaintiff and when he was convinced that he would not get any comfort or happiness as he had expected from the plaintiff, he got married with one Smt. Vinuta on 2.6.1993 and same was consummated on the same day and thereafter the said marriage with Vinuta was got registered in accordance with law. It is also contended that defendant No. 1 after the marriage with Smt. Vinuta started living with her in the ground floor of the building "Arati" and plaintiff continued her stay in the first floor of the building and also contended that suit is hopeless barred by limitation, etc.

5. Defendant-2 also filed written statement and denied the entire plaint averments and contended that her marriage with defendant-1 took place on 2.6.1993 at Rameshwar Temple at Ramateerth (Kanabargi), near Belgaum, in the presence of relatives. It was a traditional marriage in accordance with customs of Lingayat Community, in as much as defendant No. 1 is a Lingayat by religion. All the ceremonies of Lingayat community were observed and performed during the marriage. The marriage was subsequently registered on 22.9.1993 at Belgaum. Since then, defendants 1 and 2 have been leading marital life as husband and wife. Out of the said wedlock a male child is born whose name is Mahesh, etc. Therefore, she sought for dismissal of the suit.

6. When the matter was posted for evidence, the present application I.A. IV is filed by defendant-1 under Order 14 Rule 2 of Code of Civil Procedure requesting the Court to treat the additional issues as preliminary issues and decide the case on preliminary issues. The same was resisted by plaintiff by filing objections. After considering the application and objections filed by plaintiff, the learned

Family Court by its order dated 06.01.2012 has rejected the application. Hence, the present revision petition is filed.

7. I have heard the learned Counsel for the parties to the lis.

8. Sri. Arun L. Neelopant, learned Counsel for the petitioner has contended that the impugned order passed by the Family Court is contrary to the provisions of Code of Civil Procedure and the law declared by the Hon"ble Supreme Court time and again and also contended that the trial court exceeded its jurisdiction while passing the impugned order and has discussed the merits of the case, without confining its order only to the extent of hearing additional issues 4 and 5 as preliminary issues. The trial court has committed error in rejecting the application. Hence, he sought to allow the writ petition.

9. Per contra Sri. Ramakrishna Hegde, learned Counsel for 1st respondent sought to justify the impugned order.

10. I have given my anxious consideration to the arguments advanced by the learned Counsel appearing for the parties.

11. It is an admitted fact that the plaintiff filed suit in O.S. No. 1049/2008 for declaration that the marriage between the plaintiff and defendant-1 is proper and the alleged marriage between defendants 1 and 2 on 02.06.1993 during the existence of marriage between plaintiff and defendant-1 is null and void. The said contention was resisted by defendant by filing detailed written statement. Based on the pleadings the trial court framed the issues and additional issues:

"Issues:

- i) Whether the plaintiff proves that she is legally wedded wife of defendant No. 1?
- ii) Whether the plaintiff proves that during existence of marriage with defendant No. 1 has married defendant No. 2 on 2.6.1993?
- iii) Whether the defendant No. 1 proves that defendant No. 2 is his legally wedded wife?
- iv) Whether the plaintiff is entitled for the relief sought for?
- v) What decree or order?

Addl. Issues:

- i) Whether the Defendant No. 2 prove that she is legally wedded wife of Defendant No. 1?
- ii) Whether the defendant No. 2 is entitled for the compensatory cost of Rs. 50,000/-?
- iii) Whether the defendant No. 1 is entitled for the compensatory cost of Rs. 3000/-?"

12. It is seen from the issues framed by the trial court that the initial burden is on the plaintiff to prove that plaintiff is the legally wedded wife of defendant-1 and during the existence of her marriage with plaintiff, the defendant-1 got married with defendant-2 on 2.6.1993. If the initial burden is not proved by the plaintiff there is no need to go to other issues framed against defendants.

The Trial Court while passing the impugned order has recorded a finding as follows:

"6. Additional issue Nos. 4 and 5 framed by this Court on 19.8.2011 are relating to matter of res judicata and territorial jurisdiction of the Court to entertain the suit. The Counsel for the plaintiff contended that the decision in O.S. 17/1994 is not binding on the plaintiff regarding marital status. He further contended that the said suit was one for injunction in respect of possession of the landed properties, but not in respect of declaration of marital tie between the present plaintiff and defendant-1. Therefore, according to the Counsel for the plaintiff, the observations made in the suit which are unconcerned to the issue cannot be counted for the purpose of present matter in issue. There is a sufficient force in the contention of Counsel for the plaintiff in this regard.

7. The Hon"ble Supreme Court in the case of State of Karnataka Vs. David Razario and Another, has held that the decision in a suit for injunction not binding on the question of title. Even though issue of title was framed in the said suit the decision on that issue will not bind on question of title. Therefore, the decision in O.S. No. 17/1994 prima facie does not bind the marital status of the plaintiff in the present case."

The Trial Court also recorded a finding that, so far as regarding additional issue No. 5 regarding territorial jurisdiction, the said question is mixed question of law and facts and it can be counted only after trial and accordingly, rejected the application.

13. The said finding recorded by the Trial Court is in accordance with law. The petitioner has not made out any ground to entertain this revision petition in exercise of the revisional powers under Section 115 of Code of Civil Procedure.

Accordingly, the revision petition is dismissed. However, it is made clear that the trial court shall decide the suit based on the pleadings of the parties, oral and documentary evidence, and without being influenced by any of the observations made during the course of the order on I.A. IV filed under Order 14 Rule 2 read with Section 151 of the Code of Civil Procedure.

With these observations petition is disposed of.

In the peculiar facts and circumstances of the present case, it is appropriate to direct the trial court to dispose of the suit as expeditiously as possible.