

(2016) 01 KAR CK 0341

In the Karnataka High Court

Case No : Regular First Appeal No. 761/2003 (PAR)

M. Narayana and Others

APPELLANT

Vs

Ramakka and Others

RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 22 Rule 10, Order 22 Rule 3, Order 22 Rule 5, Section 151
Transfer of Property Act, 1882 — Section 52

Citation : (2016) AIR(Karnataka) 132 : (2017) 1 CivCC 317 : (2016) 3 CivILLJ 920 : (2016) 2 ICC 418 : (2016) ILRKarnataka 2979 : (2016) 2 KCCR 1300

Hon'ble Judges : S. Abdul Nazeer, J.

Bench : Single Bench

Advocate : Nalini Chidambaram, Sr. Adv. for S. Kalyan Basavaraj, Advocate, for the Appellant; G.L. Vishwanath, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

S. Abdul Nazeer, J.—1. First respondent/plaintiff filed the suit O.S. No. 4349/1986 against the appellants and respondent Nos. 2 to 4 on the file of 15th Additional City Civil Judge, Bangalore City, for partition and separate possession of the suit schedule properties. Respondent Nos. 2 to 4 are defendant Nos. 1, 4 and 5. The suit was decreed by the trial Court on 7.3.2003 by granting the first respondent/plaintiff 1/6th share in the suit schedule properties. The appellants/defendant Nos. 2 and 3 have challenged the said decree in this appeal.

2. This Court allowed the appeal in part on 21.7.2008 by holding that plaintiff/first respondent is entitled for 1/5th share in the suit schedule properties.

3. The appellants filed SLP (Civil) No. 21814/2008 before the Hon'ble Supreme Court challenging the said decree. Special leave was granted in the said case and the matter was registered as Civil Appeal No. 13686/2015. During the pendency of the appeal, respondent No. 1-Smt. Ramakka died. An application I.A. No. 2 filed by other parties to the suit to come on record as her L.Rs was allowed by

the Supreme Court. Kumari Thejeswani Shantha Kumar, the applicant in I.A. No. 4/2016 had also filed I.A. No. 3 in the appeal before the Supreme Court. The Civil appeal was allowed by setting aside the decree of this Court and the matter was remanded to this Court by the Hon"ble Supreme Court. I.A. No. 3 filed by the applicant in I.A. No. 4/2016 was pending when the matter was remanded to this Court.

4. The applicant in I.A. No. 4/2016 claims to be the adopted daughter of Smt. Ramakka. Therefore, she wants to come on record as the L.R. of deceased Ramakka. I.A. No. 2/2016 is filed for setting aside abatement and I.A. No. 3/2016 for condonation of delay.

5. I.A. No. 1/2016 is filed by Dr. M. Shantha Kumar for impleading himself as additional respondent on the ground that he had purchased the property from Ramakka.

6. These applications are opposed by the appellants on the ground that the alleged adoption of Kumari Thejaswani Shanta Kumar by Smt. Ramakka was during the lifetime of her husband. Therefore, the adoption is void. The applicant-Dr. M. Shantha Kumar in I.A. No. 1/2016 is a lis pendens purchaser of the property. Therefore, he cannot be impleaded as additional respondent in the appeal.

7. Smt. Pramila Nesargi, learned Senior Counsel appearing for the applicant in I.A. No. 1/2016 submits that the applicant is a lis pendens purchaser of the property. There is no bar under Section 52 of the Transfer of Property Act, 1882 (for short TP Act) for transfer of property during the pendency of the litigation. However, his title is subservient to the rights of his vendor and is also subject to the direction which may eventually be passed in the appeal. Therefore, he is a necessary party to this proceedings. She further submits that the application filed by Dr. M. Shantha Kumar to come on record in the final decree proceedings in FDP No. 38/2011 has already been allowed by the trial Court.

8. Sri G.L. Vishwanath, learned Counsel appearing for the applicant in I.A. No. 4/2016 submits that the applicant is an adopted daughter of Smt. Ramakka and she has succeeded to the estate of the deceased. Therefore, she is a necessary party to this appeal.

9. On the other hand, Smt. Nalini Chidambaram, learned Senior Counsel appearing for the appellants has opposed the applications. It is her submission that lis pendens purchaser has no right to get himself impleaded in the proceedings having regard to Section 52 of the TP Act. In this connection, she has relied on the decision of the Supreme Court in SARVINDER SINGH v. DILIP SINGH AND OTHERS - , (1996) 5 SCC 539. It is further argued that it is not permissible in law for making an adoption by the wife without the consent of her husband during his lifetime. The alleged adoption of the applicant in I.A. No. 4/2016 by Smt. Ramakka during the lifetime of her husband is not valid in law. Therefore, the applicant in I.A. No. 4/2016 cannot be permitted to come on

record. The natural heirs of Smt. Ramakka have already been brought on record during the pendency of SLP before the Supreme Court.

10. Let me first consider the application I.A. No. 1/2016 filed by the subsequent purchaser for his impleadment. While considering this application made under Order 1 Rule 10(2) of the CPC, the other provisions such as Order 22 Rule 10 of the CPC and Section 52 of the TP Act should also be kept in mind.

11. The general rule in regard to impleadment of parties under Order 1 Rule 10(2) of the CPC is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure. This provision makes it clear that a Court may, at any stage of the proceedings either upon or even without application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party; (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the Court may be necessary in order to enable the Court to effectively and completely adjudicate upon and settle the questions involved in the suit. Thus the Court is given the discretion to add as a party any person who is found to be a necessary party or proper party.

12. A necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a necessary party is not impleaded, the suit itself is liable to be dismissed. A proper party is a party who though not a necessary party is a person whose presence would enable the Court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the Court has no jurisdiction to implead him against the wishes of the plaintiff.

13. It is equally settled that the power of a Court to add a party to a proceeding cannot depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will include necessarily an enforceable legal right.

14. Under Order 22 Rule 10, an alienee pendente lite may be joined as party unless permitting impleadment and recognizing the alienation/assignment would amount to defeating the ends of justice and the prevalent public policy. The plaintiff is not bound to make him a party and the alienee has no absolute right to be joined as a party. But the Court has a discretion in the matter which must be judicially exercised and an alienee will ordinarily be joined as a party to enable him to protect his interest. When an assignee pendente lite is joined as a

party, the suit is not a new suit, but the same suit continues by or against him and if he is made a party in an appeal, he cannot raise any defence which his assignor could not have put forward. He further cannot take a stand contrary to the one taken by his predecessor in interest.

15. Section 52 of the Transfer of Property Act, 1882 (TP Act" for short) speaks of doctrine of lis pendens. Doctrine of lis pendens is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a Court in a suit should be binding not only on the litigating parties but on those who derive title pendente lite. This provision does not indeed annul the conveyance or the transfer otherwise, but to render it subservient to the rights of the parties to a litigation.

16. In KHEMCHAND SHANKAR CHOUDHARI v. VISHNU HARI PATIL - , AIR 1983 SC 124, the Supreme Court has held that a transferee pendente lite of an interest in an immovable property which is the subject matter of suit is a representative in interest of the party from whom he has acquired that interest and has a right to be impleaded as a party to the proceedings. In this case, the Court has taken into consideration the provisions of Section 52 of the TP Act as well as Order 22 Rule 10 of the CPC. It was further held as under:

".....It may be that if he does not apply to the impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard he has got to be so impleaded and heard....."

17. In RAMESH HIRACHAND KUNDANMAL v. MUNICIPAL CORPORATION OF GREATER BOMBAY - , (1992) 2 SCC 524, the Supreme Court has held that though the plaintiff is a "dominus litis" and not bound to sue every possible adverse claimant in the same suit, the Court may at any stage of the suit direct addition of parties and generally it is a matter of judicial discretion which is to be exercised in view of the facts and circumstances of a particular case.

18. In SAVITRI DEVI v. DISTRICT JUDGE, GORAKHPUR AND OTHERS - , AIR 1999 SC 976, the Hon"ble Supreme Court was considering the impleadment of lis pendens purchaser. In the said case, the appellant filed a suit against her sons for a decree of maintenance and for creation of a charge over the ancestral property of the family. She applied for an interim order of injunction restraining the respondents from alienating the suit property. However, the property was sold by one of the respondents. Reliance was placed on the ruling of the Supreme Court in SURJIT SINGH v. HARBANS SINGH - , (1995) 6 SCC 50, wherein it was held that if a person who purchases the property during the pendency of the suit is allowed to get impleaded in the suit, there will be no end to such impleadment as the parties will indulge in further transfers of the suit property and the plaintiff as dominus litus cannot be made to fight against such persons indefinitely and endlessly. After considering the rival contentions of the parties, Section 52 of the TP Ac as well as Order 22 Rule 10 of the CPC and Order

1 Rule 10(2) of the CPC, the Court has allowed the impleadment of the subsequent purchasers by holding that they are necessary parties to the suit and their impleadment is necessary to decide the questions involved in the suit and in order to avoid multiplicity of proceedings.

19. In *AMIT KUMAR SHAW AND ANOTHER v. FARIDA KHATOON AND ANOTHER* - , AIR 2005 SC 2209, the Supreme Court has held that a transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, whether the transfer is of the entire interest of the defendant, the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party under Order 22 Rule 10 an alienee pendente lite may be joined as party. The Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The transferee pendente lite of an interest in immovable property is a representative in interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where the transferee pendente lite is made a party to the litigation, he is entitled to be heard in the matter on the merits of the case.

20. In *THOMSON PRESS (INDIA) LTD. v. NANAK BUILDERS AND INVESTORS P. LTD. AND OTHERS* - , AIR 2013 SC 2389, the Supreme Court has held that the a transfer pendente lite is not illegal ipso jure but remains subservient to the pending litigation. Section 52 of the TP Act does not render transfers affected during the pendency of the suit void but only render such transfers subservient to the rights as may be eventually determined by the Court. The Supreme Court after considering Order 1 Rule 10 of the CPC, Order 22 Rule 10 of the CPC and Section 52 of the TP Act, has held that the position of a person on whom any interest has devolved on account of a transfer during the pendency of a suit or a proceeding is some what similar to the position of an heir or a legatee of a party, who dies during the pendency of a suit or a proceeding. Any such heir, legatee or transferee cannot be turned away when she applies for being added as a party to the suit. The Court has concluded as under:

"58. To sum up:

(1) The appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the plaintiffs and the owner defendants in the suit.

(2) The transfer in favour of the appellant pendente lite is effective in transferring title to the appellant but such title shall remain subservient to the rights of the plaintiff in the suit and subject to any direction which the Court may eventually pass therein.

(3) Since the appellant has purchased the entire estate that forms the subject matter of the suit, the appellant is entitled to be added as a party defendant to the suit.

(4) The appellant shall as a result of his addition raise and pursue only such defenses as were available and taken by the original defendants and none other."

21. In SARVINDER SINGH's case (supra) relied on by the learned Counsel for the appellants, a two Judge Bench of the Supreme Court has held that alienation having been made during the pendency of the suit, it was hit by the doctrine of lis pendens under Section 52 of the TP Act. Hence, the subsequent purchasers are neither necessary nor proper parties and hence, not entitled to be brought on record. In this case, the effect of Order 22 Rule 10 of the CPC has not been considered. In SURJIT SINGH's case (supra), a two Judge Bench of the Supreme Court had taken a similar view. In SAVITRIDEVI's case (supra), consisting of three Hon'ble Judges, after noticing SURJIT SINGH's case (supra), and after taking into consideration Order 1 Rule 10(2) of the CPC, Order 22 Rule 10 of the CPC and Section 52 of the TP Act, has allowed the impleadment of the subsequent purchasers. The decision of the larger Bench is binding on this Court.

22. In the instant case, it is true that the application for impleadment has been made under Order 1 Rule 10 read with Section 151 of the CPC. However, under Order 22 Rule 10, in cases of assignment or creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court be continued by or against the person to or upon whom such interest has come or devolved. Though the application has been made under Order 1 Rule 10, the enabling provision of Order 22 Rule 10 CPC could always be invoked if the fact situation so demanded.

23. In the present case, I am of the view that the applicant being a lis pendens purchaser is a necessary party to this appeal. His application to come on record in the FDP has already been allowed by the trial Court. Therefore, his application I.A. No. 1/2016 requires to be allowed subject to the terms and conditions contained in paragraph 58 of the decision of the Apex Court in THOMSON PRESS (INDIA) LTD.'s case (supra).

24. That brings me to the next question as to whether application I.A. No. 4/2016 filed by the applicant under Order 22 Rule 3 of the CPC to come on record as the L.R. of the deceased first respondent requires to be allowed?

25. The applicant in I.A. No. 4/2016 contends that she is the adopted daughter of the deceased first respondent. It is further contended that she is a necessary party to this proceedings. The appellants have opposed the application. They deny that the applicant is an adopted daughter of the deceased first respondent. They contend that they are the natural heirs of the deceased first respondent as the application I.A. No. 2 filed by them has been allowed by the Supreme Court on 3.5.2010. The deceased first respondent, who had a living husband cannot take the applicant in adoption on her own. The adoption deed itself does not confer any right in favour of the applicant. Thus, there is serious dispute as to whether the applicant in I.A. No. 4/2016 is an adopted daughter of the deceased first respondent or not.

26. In SURESH KUMAR BANSAL v. KRISHNA BANSAL AND ANOTHER - , AIR 2010 SC 344, the Supreme Court was considering the application for impleading as a L.R. on the basis of the Will executed by the plaintiff in his favour. The natural heirs were already impleaded as L.Rs. of the plaintiff. The applicant's application to implead was rejected by the High Court on the ground that the execution of the Will was suspicious. The Supreme Court observed that if the applicant is not permitted to be impleaded and in the event an order of eviction is passed ultimately against the tenant/respondent, the tenants will be evicted by the natural heirs and legal representatives of the deceased plaintiff who thereby shall take possession of the suit premises, but if ultimately the probate of the alleged Will of the deceased plaintiff is granted by the competent court of law, the suit property would devolve on the appellant but not on the natural heirs and legal representative of the deceased. Therefore, in the event of grant of probate in favour of the appellant, he has to take legal proceeding against the natural heirs and legal representatives of the deceased plaintiff for recovery of possession of the suit premises from them which would involve not only huge expenses but also considerable time would be spent to get the suit premises recovered from the natural heirs and legal representatives of the deceased plaintiff. The Supreme Court has allowed the application by holding thus:

"In order to shorten the litigation and to consider the rival claims of the parties, in our view, the proper course to follow is to bring all the heirs and legal representatives of the deceased plaintiff on record including the legal representatives who are claiming on the basis of the Will of the deceased plaintiff so that all the legal representatives namely, the appellant and the natural heirs and legal representatives of the deceased plaintiff can represent the estate of the deceased for the ultimate benefit of the real legal representatives. If this process is followed, this would also avoid delay in disposal of the suit. In view of our discussions made hereinabove, we are, therefore, of the view that the High Court as well as the trial Court were not at all justified in rejecting the application for impleadment filed at the instance of the appellant based on the alleged Will of the deceased plaintiff at this stage of the proceedings."

27. The Code of Civil Procedure enjoins various provisions only for the purpose of avoiding multiplicity of proceedings and for adjudication of related disputes in the same proceedings and to avoid multiplicity of proceedings in different Courts. Such a course of action will result in conflicting judgments and instead of resolving disputes, they would end up in creation of confusion and conflict. It is settled that determination of question as to who is the legal representative of the deceased plaintiff and defendant under Order 22 Rule 5 of the CPC is only for the purpose of bringing the L.Rs. on record for conducting those proceedings only and does not operate as res-judicata. The inter se dispute between the rival legal representatives has to be independently tried and decided in the appeal. This legal position has been clarified in SURESH KUMAR BANSAL's case (supra). Therefore, whether the applicant in I.A. No. 4/2016 is the adopted daughter of the deceased first respondent or not has to be decided at a later stage. She has

to be brought on record at this stage for conducting the proceedings and with a view to avoid multiplicity of proceedings. The delay in filing the application has been satisfactorily explained.

28. In the light of the above discussion, I pass the following:

ORDER

(i) I.A. Nos. 2/2016 to 4/2016 are allowed. The delay in filing the L.R. application is condoned and the abatement is set aside. The appellants are directed to implead applicant in I.A. No. 4/2016 as respondent No. 5 subject to the observations made in paragraph 27 of this order.

(ii) I.A. No. 1/2016 is also allowed. The appellants are directed to implead the applicant in this application as respondent No. 6 subject to the observations made in paragraph 58 of the decision of the Apex Court in THOMSON PRESS (INDIA) LTD.'s case (supra).

(iii) No costs."