

(2017) 05 KAR CK 0017
In the Karnataka High Court
Case No : 6346 of 2016

Madhukar G. Angur & ANR.

APPELLANT

Vs

Madhusudhan Mishra & Ors.

RESPONDENT

Date of Decision : 16-05-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 1 Rule 10](#), [Order 39 Rule 1](#), [Order 39 Rule 2](#) -
[Alliance University Act, 2010](#), <

Citation : (2017) 05 KAR CK 0017

Hon'ble Judges : Raghvendra S. Chauhan

Bench : SINGLE BENCH

Advocate : D.N. Nanjunda Reddy, Pratibhanu Singh Kharola, Shyam Sundar, Sajan Poovayya, Priyadarshi Banerjee, R. Manjunath, Arun Srikumar, K.G.Raghavan, V. Lakshminarayana, Shaik Ismail Zabiulla

Judgement

1. The appellants are aggrieved by the order dated 7-9-2016, passed by the IV Additional City Civil And Sessions Judge, Bengaluru (CCH-21), whereby the learned Civil has granted a temporary injunction in favour of Respondent No. 1, (henceforth to be referred to as "the Plaintiff", for short), and has debarred the appellants from interfering with the administration and management of the Alliance University, ("the University", for short), and the Alliance Business School ("the Sponsoring Body", for short), and from entering upon the three campuses owned and operated by the University.

2. Briefly the facts of the case are that Mr. Madhusudan Mishra, the plaintiff, claims to be the Deputy Registrar and In-Charge Registrar of the University. He further claims that he has been authorized to file the suit. According to him, Mr. Madhukar Angur, (the ousted Chancellor), the appellant No. 1, is needlessly interfering both with the University and with the Sponsoring Body. By such interference, Mr. Madhukar Angur is endangering the safety, the reputation, the welfare and the good will of the University.

3. Further according to the plaintiff, the Alliance Business School Pvt. Ltd was formed in Bangalore, on June 28, 2005, by Mrs. Shaila G. Chebbi and Mrs. Mala Gouda, both sisters of Mr. Madhukar Angur. In the year 2010, the Company secured Section 25 Status under the Companies Act. Moreover, considering the success of the Company, in 2010, the State Government enacted the Alliance University Act, 2010 ("the Act", for short). Thus, the University was established under the said Act.

4. According to the plaintiff, while Mr. Madhukar Angur was working at the University of Michigan, in USA, on 24/27-11-2008, he was inducted as a Director of the Company. Subsequently, he became the Managing Director of the Company. Since he was the Managing Director of the Company in 2010, he became the Chancellor of the University in accordance with the provisions of the Act. However, according to the plaintiff, Mr. Madhukar Angur played financial and administrative havoc both with the University and the Sponsoring Body. The plaintiff further claimed that in April 2010, Mr. Madhukar Angur had transferred 38% of his share to his sister, Mrs. Mala Gouda, and 5% to his brother-in-law, Mr. Srinivas Gowda. However, in March 2014 it was discovered that these shares were fraudulently transferred to Mrs. Priyanka, Mr. Madhukar Angur's wife. Confronted with this fraud played by Mr. Madhukar Angur, according to the plaintiff, Mr. Madhukar Angur promised to re-transfer the shares to the original shareholders, and to resign from the Company. Therefore, on 5-3-2015, while he transferred his shares to Mr. Abhay Chebbi, Mrs. Mala Gouda, Mrs. Priyanka transferred her shares to Mr. Prakash Siddapa, and Mr. Shivappa Mantur. Both of them also resigned from the Company.

5. However, subsequently, the appellants changed their minds, and claimed that they did not transfer the said shares to any other person. The appellants filed criminal cases against Mr. Sudhir Angur and other family members. The plaintiff further claimed that on 10-4-2015, the appellants were warned to mend their ways, or to face consequences. On 10-4-2015, the Board of Directors accepted the appellants' resignation. And on 13-4-2015, the latest position with regard to the Board of Directors was uploaded to the portal of the Registrar of Companies ("the ROC", for short). However, the appellants filed criminal cases against Mr. Sudhir Angur, and others for illegally using the digital signature of the appellants.

6. Moreover, according to the plaintiff, during this tussle between Mr. Madhukar Angur and his party on the one hand, and Mr. Sudhir Angur and his party, on the other hand, Mr. Madhukar Angur was removed from the post of Chancellor by the Sponsoring Body. In turn, on 15-4-2016, Mr. Sudhir Angur, has been appointed as the Chancellor of the University. But notwithstanding the appointment of Mr. Sudhir Angur as the Chancellor, notwithstanding Mr. Madhukar Angur's resignation from the Company, Mr. Madhukar Angur continues to meddle in the affairs of the University and of the Company. Hence, the suit for declaration, mandatory and prohibitory injunction. Along with the suit, the plaintiff also filed an application for temporary injunction under Order XXXIX, Rules 1 and 2 CPC.

7. The appellants, as defendant Nos. 4 and 9, filed their written statements. They not only denied the averments made in the plaint, but most importantly challenged the locus standi of the plaintiff to file the suit. According to the appellants, the plaintiff was neither the Registrar of the University, nor was authorized to file the suit on behalf of the University. Thus, the suit was not even maintainable at his behest. They further challenged the stand taken by the plaintiff with regard to the removal of Mr. Madhukar Angur from the post of Chancellor. The appellants also filed their objections to the application for temporary injunction wherein they reiterated their stand with regard to the locus standi of the plaintiff, and with regard to the maintainability of the suit. However, by order dated 7-9-2016, the learned Civil Judge granted the temporary injunction in favour of the plaintiff in the aforementioned terms. Hence, the present appeal before this court.

8. Mr. K. G. Raghavan, the learned Senior Counsel for the appellants, has raised the following contentions before this court: firstly, according to Section 4 (6) of the Act, a suit can be filed by the University, but only through the Registrar. However, the present suit has been filed by the plaintiff, Mr. Madhusudan Mishra, and not by the University. Thus, he does not have the locus standi to file the suit. Secondly, Mr. Madhusudan Mishra keeps on changing his position vis-a-vis the University. On the one hand, in the cause title of the suit, he claims to be the "authorized Registrar of the University", yet both in the body of the plaint, and in his affidavit, he claims to be "the Deputy Registrar and In-charge of the post of Registrar". Thus, his position vis-a-vis the University is unclear.

Thirdly, the authorization letter produced by him, before the learned Trial Court, does not qualify as an authorization letter. For, the authorization is purported to be given by the Registrar, although the email containing the alleged authorization has not even been signed by anyone. Thus, the authenticity of the said authorization letter is doubtful. Moreover, the Registrar has no power to further delegate his power to file suit. Further, the said "authorization letter" is a conditional one. For, it merely requests Mr. Madhusudan Mishra "to take care of legal issues pertaining the University and sign any such documents with the permission and after the approval of the Chancellor." However, neither the permission, nor any approval of the Chancellor has been produced along with the plaint. Thus, as the condition for authorization has not been fulfilled, the authorization letter is not even worth the paper it is written on. Since Mr. Madhusudan Mishra lacks a proper and legal authorization, he could not have filed the civil suit against the appellants. Hence, Mr. Madhusudan Mishra does not have the locus standi to file the suit. Consequently, the suit is not even maintainable. Fourthly, although the issues of locus standi and nonmaintainability of the suit were raised before the learned Civil Judge, but he has ignored the said issues. Instead, he has hastily relied upon the doubtful documents presented by the plaintiff, and has passed the impugned order. However, as the said two issues go to the root of the suit, the learned Trial Court should have considered the two issues at the stage of interim application. But it has failed to do so. Thus, the

learned Civil Judge has committed a grave illegality and injustice.

Fifthly, Section 38 of the Specific Relief Act does not permit a plaintiff to file a suit for perpetual injunction until and unless the plaintiff pleads that there was an obligation imposed by law upon the defendant, and the defendant has breached the said obligation, therefore, the plaintiff is entitled to a perpetual injunction in his/ her favour. However, in the present civil suit, the plaintiff has not sought any relief qua himself; he has sought the reliefs in favour of the University and the Sponsoring Body. However, as he has not been authorized properly to file the suit on behalf of the University. As he has filed the suit on his own behalf, the relief prayed by the plaintiff in favour of the University and the Sponsoring Body cannot be granted. Relying on the case of Cotton Corporation of India Ltd. v United Industrial Bank Limited and Ors [(1983) 4 SCC 625], the learned Senior Counsel has argued that since the main relief cannot be granted in favour of the plaintiff, the temporary injunction could also not be granted by the learned Trial Court. Thus, the learned Civil Judge has erred in granting the temporary injunction in favour of the plaintiff.

Sixthly, since granting of injunction is an equitable jurisdiction, the learned Trial Court should have examined the conduct of the plaintiff. For the conduct of the parties is an essential factor for granting or refusing to grant the injunction. However, the learned Trial Court has failed to do so. If the learned Civil Judge had examined the plaint a little closer, the learned Civil Judge would have realised that the suit is being instituted on behalf of Mr. Sudhir Angur, the alleged current Chancellor of the University. For, in the plaint, the plaintiff seems to know both about the marital disputes which existed between Mr. Sudhir Angur and his wife and his in-laws, and about the internal affairs of the Sponsoring Body. The plaintiff is also well aware of other civil suits and other disputes between Mr. Madhukar Angur and others. Thus, his knowledge is more than the knowledge of a Deputy Registrar and In-Charge Registrar. The learned Civil Judge should have realised that there is something fishy in the state of Denmark. Yet, the learned Civil Judge has permitted the plaintiff to take the court out for a ride. But the conduct of the plaintiff cannot be ignored. In fact, it deserves to be deprecated by this Court too.

Lastly, the learned Senior Counsel has pleaded that since Mr. Madhukar Angur was appointed as the Chancellor for life, under Section 15 (2) of the Act, he could not be removed by the Sponsoring Body. However, notwithstanding the mandate of the Act, the learned Civil Judge has relied upon the order dated 7-4-2016, in order to conclude that Mr. Madhukar Angur was removed from Chancellorship of the University by the Sponsoring Body. Therefore, according to the learned Civil Judge, Mr. Madhukar Angur has no right to interfere with the affairs of either the University or the Sponsoring Body. But according to Mr. Raghvan, the learned Senior Counsel, such a conclusion is erroneous not only because it is against the tenor of the Act, but also as it is based on a document which is of doubtful authenticity.

9. On the other hand, Mr. Sajan Poovayya, the learned Senior Counsel for the plaintiff, has raised the following counter-arguments: firstly, the plaint may not have been drafted in Queen's English. But a plaint should be read as a whole. A holistic reading of the plaint would prove the fact that Mr. Madhusudan Mishra has filed the suit on behalf of the University. At the relevant time, he was in-charge of the post of Registrar. Therefore, he has rightly described himself as In-charge Registrar in the plaint. Moreover, since he was authorised by the then Registrar to institute the suit, Mr. Mishra has rightly claimed himself to be "the authorized Registrar" in the cause title of the suit. Secondly, at worst it is a case of mis-description of party. But even such a mis-description does not go to the root of the case. The same can be amended and modified during the course of the trial. Thus, it is not a case of nonjoinder of a necessary party. In order to support his plea, the learned Senior Counsel has relied upon the cases of Chief Conservator of Forests, Govt. of A. P. v Collector and Oths. [(2003) 3 SCC 472], and Kuldeep Kumar Dubey and Oths. v Ramesh Chandra Goyal (Dead) Through Legal Representatives [(2015) 3 SCC 525].

Thirdly, relying on the case of United Bank of India v. Naresh Kumar and Oths. [(1996) 6 SCC 660], the learned Senior Counsel has pleaded that even if Mr. Madhusudan Mishra is not authorized properly, the authorization can be rectified later by the University. Thus, at the threshold, the suit cannot be held to be nonmaintainable before the learned Trial Court.

Fourthly, although Mr. Madhukar Angur was appointed as the first Chancellor, and may be the appointment was for life, under Section 15 (2) of the Act, but even then, the Sponsoring Body has ample power under Section 11 (i) of the Act to remove the Chancellor. Moreover, the interpretation placed by Mr. Raghvan, the learned Senior Counsel, would lead to anomalous situations. Thus, any interpretation which would lead to absurdities should not be accepted by this Court.

10. Amplifying on the arguments of Mr. Sajan Poovayya, Mr. D. N. Nanjunda Reddy, the learned Senior Counsel for the other respondents, has raised the following pleas: firstly, under Order XXXIX, Rules 1 and 2 of CPC, the requirements of the temporary injunction is to be proved by "affidavits". Unless a contradictory evidence is produced by the defendant (s), the affidavit of the plaintiff should be accepted at its face value. Since the plaintiff claims in his affidavit that he is the Deputy Registrar and In-charge Registrar, the said statement should be accepted as the truth for the time being. Since the plaintiff was in-charge Registrar, he has rightly instituted the suit on behalf of the University. Therefore, at worst, the cause title suffers only from mis-description. But whether the description of the party amounts to a mis-description, or to a non-joinder of necessary party, is a matter to be decided during the course of trial. Therefore, it would have been too premature for the learned Trial Court to entertain the plea raised by the appellants. Secondly, relying on the case of Anand Prasad Agarawalla v Tarkeshwar Prasad and Others [(2001) 5 SCC 568],

the learned Senior Counsel has pleaded that the learned Trial Court is not required to hold a mini-trial at the stage of considering the application for temporary injunction. Therefore, the issue with regard to the locus standi and with regard to maintainability of the suit can be examined only during the trial.

11. In rejoinder, Mr. K. G. Raghvan, the learned Senior Counsel, submits that even in order to decide the issue whether the plaintiff has a prima facie case in his favour, the learned Trial Court has to examine the issues of locus standi, and maintainability of the suit. If the plaintiff does not have the locus standi to institute the suit, and the suit is found to be non-maintainable, even on prima facie basis, then the learned Trial Court would be justified in rejecting the application for temporary injunction. But, at the threshold the learned Trial Court could not turn a blind eye to these essential issues. Secondly, relying on the case of Chief Conservator of Forests (supra), the learned Senior Counsel, submits that a distinction has to be made between a mis-description and mis-joinder of a necessary party. In the said case, the Apex Court had concluded that it was not a case of misdescription, but was a case of mis-joinder of necessary party.

Similar is the factual situation in the present case.

Therefore, since the necessary party, namely the University, has not approached the learned Trial Court, the temporary injunction could not have been granted to the plaintiff.

12. Heard the learned Senior Counsel for the parties, perused the impugned order, and considered the case law cited at the Bar.

13. In the case of Lakshminarasimhiah and Others v. Yalakki Gowda [AIR 1965 Mys 310] it was observed as under: The extraordinary character of the Injunctive remedy and the danger that its use in improper cases may result in serious loss or inconvenience to an innocent party require that the power to issue it should not be lightly indulged in, but should be exercised sparingly and cautiously only after thoughtful deliberation, and with a full conviction on the part of the court of its urgent necessity. In other words, the relief should be awarded only in clear cases, reasonably free from doubt, and, when necessary, to prevent great and irreparable injury. The Court should therefore, be guided by the fact that the burden of proof rests upon the complainant to establish the material allegations entitling him to relief.

14. While dealing with the role of the trial court, in the case of Maria Margarida Sequeira Fernandes and Others v. Erasmko Jack De Sequeira (Dead) through LR's. [(2012) 5 SCC 370] the Apex Court has opined as under: A Judge in the Indian system has to be regarded as failing to exercise its jurisdiction and thereby discharging its judicial duty, if in the guise of remaining neutral, he opts to remain passive to the proceedings before him. He has to always keep in mind that "every trial is a voyage of discovery in which truth is the quest". In order to bring on record the relevant fact, he has to play an active role; no doubt within the bounds of the statutorily defined procedural law. The Hon"ble Supreme Court

further held as follows: In a suit for mandatory injunction, then it is the bounden duty and obligation of the court to critically examine the pleadings and documents and pass an order of injunction while taking pragmatic realities?in (sic) consideration. The Court's primary concern has to be to do substantial justice. (Emphasis added).

15. It is, indeed, trite to state that while dealing with an application under Order XXXIX, Rules 1 and 2 CPC, the learned Trial Court has to examine the existence of three factors, namely the existence of a prima facie case, the balance of convenience of the parties, and if an irreparable loss would be caused to the plaintiff in case the temporary injunction were refused by the court. Moreover, it is a settled position of law, that while considering the existence of a prima facie case, the learned Trial Court has to examine the locus standi of the plaintiff, the maintainability of the suit, the cause of action pleaded by the plaintiff, and if there is a triable case or not. Although it is true that at the time of dealing with the temporary injunction application, the learned Trial Court is not required to hold a mini-trial, but none the less, it cannot turn a Nelson eye to these essential and fundamental factors for grant of temporary injunction. Since the appellants have challenged the locus-standi of the plaintiff, and maintainability of the suit, at the time of consideration of the application for temporary injunction, the learned trial court was required to deal with both these issues, even on a prima facie basis. The learned trial court could not have ignored these two issues as these two issues go to the root of the case. Despite the fact that the said pleas were raised, the learned trial court has failed to consider the same.

16. According to Section 4 (4) of the Act, the University is a body corporate. According to Section 4 (6) of the Act, a suit by or against the University has to be filed through the Registrar of the University. Section 4 (6) of the Act is as under: In all suits and other legal proceedings by or against the University, the pleading shall be signed and verified by, and all processes in such suits and proceedings shall be issued to and be served on the Registrar.

17. A bare perusal of the plaint clearly reveals that all the reliefs prayed for are with relation to the University. Not a single relief has been prayed for Mr. Madhusudhan Mishra, the plaintiff. Since the reliefs relate to the University, obviously, the suit is for the University. Yet the suit has not been presented by the University.

18. Of course, Mr. Madhusudhan Mishra claims to be authorised by the University for instituting the suit, thus, it is imperative to consider the authorisation letter granted to him by the University for instituting the suit on its behalf. The plaintiff has filed an e-mail dated 27th April 2016, issued by the Registrar to him. The e-mail is as under: Dear Sir,

I am busy with various activities such as recruitment and statutory meetings related, hence I request to you to take care of legal issues pertaining to the University and sign any such documents with the permission and after the

approval of the Chancellor.

Regards,

Registrar

19. A bare perusal of the e-mail, the authorisation letter, clearly reveals that Mr. Madhusudhan Mishra is being authorised to sign documents dealing with legal issues pertaining to University, but with the permission and approval of the Chancellor. There is not an iota of evidence submitted by the plaintiff even indicating that he has the permission and the approval of the Chancellor for instituting the suit against the appellants. Thus, it is crystal clear that Mr. Madhusudhan Mishra has no authority to institute the suit on behalf of the University. Surprisingly, the learned Civil Judge has not considered the aforementioned e-mail which is alleged to be the authorisation letter. In case, the said document were considered by the learned Trial Court, the learned Civil Judge would have realized that Mr. Madhusudhan Mishra has not been authorised to file the suit. Hence, the suit is being filed by a person who pretends to be "the Authorised Registrar".

20. Moreover, a bare perusal of Section 4 (6) of the Act, clearly reveals that it does not authorise the Registrar to delegate his power to file a suit on behalf of, or to contest the case on behalf of the University, to any other person. Therefore, the said power could not be delegated by the Registrar of the University to Mr. Madhusudhan Mishra.

21. Furthermore, although the plaintiff claims to be in-charge of the post of Registrar, he has not produced any documentary evidence to establish the fact that he has been appointed as an Officiating Registrar of the University. In the absence of the relevant evidence, the affidavit filed by the plaintiff cannot be taken as the gospel truth. After all, even an affidavit has to be corroborated by documentary evidence. However, in the present case, the relevant documentary evidence is conspicuously missing. Moreover, as discussed above, the purported authorisation letter does not even qualify as an authorisation letter for filing the civil suit. Therefore, Mr. Madhusudhan Mishra, having no authority from the University to file the suit, prima-facie could not have filed the suit on behalf of the University. Thus, prima-facie he does not have locus standi to file the suit. Thus, on a prima-facie basis, the suit is not maintainable.

22. In the case of Chief Conservator of Forests (supra) the Hon"ble Supreme Court observed as under :- 12. It needs to be noted here that a legal entity - a natural person or an artificial person - can sue or be sued in his/its own name in a court of law or a tribunal. It is not merely a procedural formality but is essentially a matter of substance and considerable significance. That is why there are special provisions in the Constitution and the Code of Civil Procedure as to how the Central Government or the Government of a State may sue or be sued. So also there are special provisions in regard to other juristic persons specifying as to how they can sue or be sued. In giving description of a party it will be

useful to remember the distinction between misdescription or misnomer of a party and misjoinder or nonjoinder of a party suing or being sued. In the case of misdescription of a party, the court may at any stage of the suit/proceedings permit correction of the cause-title so that the party before the court is correctly described; however, a misdescription of a party will not be fatal to the maintainability of the suit/proceedings. Though Rule 9 Order 1 CPC, mandates that no suit shall be defeated by reason of the misjoinder or nonjoinder of parties, it is important to notice that the proviso thereto clarifies that nothing in that Rule shall apply to non-joinder of a necessary party. Therefore, care must be taken to ensure that the necessary party is before the court, be it a plaintiff or defendant, otherwise, the suit or the proceedings will have to fail. Rule 10 or Order 1 CPC provides remedy when a suit is filed in the name of the wrong plaintiff and empowers the court to strike out any party improperly joined or to implead a necessary party at any stage of the proceedings. The Supreme Court further opined as under :- In a lis dealing with the property of a State, there can be no dispute that the State is the necessary party and should be impleaded as provided in Article 300 of the Constitution and Section 79 CPC viz., in the name of the State/Union of India, as the case may be, lest the suit will be bad for non-joinder of the necessary party. Every post in the hierarchy of the posts in the government set-up, from the lowest to the highest, is not recognised as a juristic person nor can the State be treated as represented when a suit/proceeding is in the name of such offices/posts or the officers holding such posts, therefore, in the absence of the State in the array of parties, the cause will be defeated for nonjoinder of a necessary party to the lis, in any court or tribunal. We make it clear that this principle does not apply to a case where an official of the Government acts as a statutory authority and sues or pursues further proceeding in its name because in that event, it will not be a suit or proceeding for or on behalf of a State/Union of India, but by the statutory authority as such.

23. In the present case, since the University is a body corporate, the suit should have been filed by the University through its Registrar as required under Section 4 (6) of the Act. However, the suit has not been filed by the University through its Registrar. Moreover, as discussed above, the University has not authorised Mr. Madhusudhan Mishra for instituting the suit on its behalf. Therefore, it is not a case of mis-description of a party. But, it is clearly a case of misjoinder of necessary party. Although under Order 1 Rule 10 CPC, the learned trial court has power to strike out any party improperly joined, or to implead a necessary party, but so far no application under Order 1 Rule 10 CPC, has been filed by the plaintiff. Therefore, the learned trial court should have realized that neither Mr. Madhusudhan Mishra has the locus standi to file the suit, nor the suit is maintainable against the appellants.

24. Mr. Sajan Poovayya has relied on the case of United Bank of India (supra) to plead that the University could rectify the mistake during the pendency of the suit. But, while considering the application for temporary injunction, the trial court is not concerned with the future course adopted by the parties, but is

concerned only with the status of the party on the date when the application is to be decided. As on the date of the impugned order, the University had not rectified the action of Mr. Madhusudhan Mishra. At the relevant time, Mr. Madhusudhan Mishra was pretending to be the authorised Registrar, although he did not possess any authorisation letter in his favour.

25. It is, indeed, trite to state that grant of an injunction is not merely a formality to be performed, but is a serious step to be taken during the course of the trial. Thus, the learned trial court should be careful and cautious while dealing with an application for temporary injunction. For, instances are not wanting when a trial court can be taken out for a ride by an unscrupulous litigant. Therefore, the learned trial court should not be overwhelmed by the documents produced by the plaintiff. It must examine the issues of locus standi, of maintainability of the suit, of the cause of action in favour of the plaintiff, and if the plaintiff has brought a triable dispute to the court or not. In case, there is lack of locus standi, or in case there is a doubt about the maintainability of the suit, obviously, the plaintiff has failed to establish the prima-facie case in his/her favour. Therefore, in such a circumstance the learned trial court is not justified in granting a temporary injunction in favour of the plaintiff.

26. Since this court is of prima-facie view that the plaintiff does not have a prima-facie case in his favour, the learned trial court is not justified in concluding that the plaintiff has the balance of convenience in his favour. Moreover, once neither of these two factors are in favour of the plaintiff, the question of irreparable loss caused to the plaintiff would not even arise.

27. Moreover, since this court of the opinion that prima-facie the suit is not maintainable, this court need not consider the issue whether Mr. Madhukar Angur could be removed from the post of Chancellorship of the University by the Sponsoring Body or not?

28. For the reasons stated above, this appeal is hereby allowed. The impugned order dated 07.09.2016, is hereby set aside.