
(2010) 11 KAR CK 0081
In the Karnataka High Court
Case No : Writ Petition No. 34496 of 2010

Mr. Girish Arora

APPELLANT

Vs

Smt. R. Lakshammamma and Others

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2010) 11 KAR CK 0081

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : M.D. Raghunath and Associates, for the Appellant; A.G. Shivanne, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—Petitioner has instituted the suit on 03.01.2001 for the relief of specific performance in respect of the plaint schedule property pursuant to an agreement of sale dated 17.02.2000 and the demand made vide notice dated 17.07.2000. The Defendants have filed written statement and have contested the relief prayed in the suit. Petitioner filed an interlocutory application on 05.10.2010 under Order 6 Rule 17 CPC to permit him to incorporate the proposed pleading in the plaint, to which the Defendants have filed statement of objections on 18.09.2010. Considering the rival contentions and the record, finding the application to be devoid of merit, the trial court has passed an order of rejection dated 20,10.2010. Feeling aggrieved, the Plaintiff has filed this writ petition.

2. Learned Counsel appearing for the Petitioner contended that, the Respondents have challenged the acquisition proceedings, which fact was not brought to the notice of the trial court and the same being a subsequent event, the Petitioner was obliged to bring the same to the notice of the court in order to have a proper adjudication of the proceedings. Learned Counsel contends that, without proper consideration, the learned trial judge has mechanically upheld the objections

raised by the Defendants. According to the learned Counsel, the impugned order being against the settled principles of law governing the principles with regard to amendment of pleadings, interference in the matter is called for.

3. Sri A.G. Shivanna, learned Counsel appearing for the Respondents, on the other hand contended that, the trial of the suit has commenced, that there is no due diligence on the part of the Plaintiff in filing the application after the closure of the trial of the suit and even otherwise, the Plaintiff has already adduced sufficient evidence and the proposed amendment is not required for adjudication of the rights of the parties to the suit property and hence, the trial court is justified in passing the impugned order. Learned Counsel made submissions in support of the findings and conclusion of the trial court in passing the impugned order.

4. Keeping in view the rival contentions, I have perused the writ petition record.

5. The point for consideration is:

Whether the trial court is justified in rejecting the I.A for amendment of the plaint?

6. The trial judge, based on the claim of Plaintiff and Defendants, having found merit in the statement of objections filed by the Defendants and has rejected the application by making the following observations:

These questions being the facts which are to be established by way of evidence by the Plaintiff who already led in sufficient evidence on his behalf to prove those facts. The proposed amendment is not at all required for adjudication of the rights of the parties conclusively in this suit. Without the proposed amendment the questions that are raised in the suit can be effectively adjudicated on the available pleadings and evidence, therefore the application filed by the Plaintiff seeking the amendment is devoid of merits, liable to be rejected.

7. Indisputedly, trial of the suit is complete and the suit is at the state of hearing of arguments. The proviso appended to Rule 17 of Order 6 CPC pursuant to the amending Act 22 of 2002, limits the power of amendment to a certain extent. The proviso lays down that, no application for amendment shall be allowed after the commencement of trial, unless the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial. Whether a party has acted with due diligence or not would depend upon the facts and circumstances of each case.

8. In the affidavit filed in support of the application, the Plaintiff has stated that, Defendant No. 1 has filed W.P. No. 30983/2004 challenging the acquisition proceedings and seeking de-notification and the same is pending adjudication. According to the Plaintiff, the Defendants are approbating and reprobating their actions. It has been stated that, the subsequent event, which is of paramount importance, which could not be pleaded earlier as he was not advised to do so by his previous advocate and now it is deemed necessary and expedient to

incorporate the proposed pleading, which goes to the root of his claim in the plaint.

9. Indisputedly, the said writ petition has been filed in the year 2004. The Petitioner has filed an application seeking impleading in the said writ petition and having been impleaded, is a party therein. The suit does not appear to be dependent upon the outcome of the said writ petition. If the suit property has been acquired and its challenge is negated, the Defendants cannot be compelled to perform the contract entered into earlier to the acquisition. The Petitioner having become a party to the said writ petition is bound by the order that may be passed therein. The Petitioner having come to know of the said writ petition has filed an application seeking impleading therein and was impleaded. Immediate steps have not been taken in the suit After considerable amount of delay i.e., after the closure of trial of the suit, the present application was filed. The same indicates that, there is lack of bona fides in the matter of filing the IA and even otherwise, the trial court has observed that, the facts which are to be established by way of evidence by the Plaintiff, the Plaintiff has placed evidence and the proposed amendment is not at all required for adjudication of the rights of the parties conclusively in the suit. It has further opined that, without the proposed amendment, the questions that are raised in the suit can be effectively adjudicated on the available pleadings. If, that be so, the trial court is justified in passing the impugned order, rejecting the I.A.

10. The suit is one for specific performance of the contract in terms of the agreement dated 17.02.2000. The suit has been instituted on 03.01.2001. Trial of the suit is complete. In view of the observations made by the trial court noticed supra that, it is unnecessary for the Plaintiff to seek incorporation of proposed amendment in the plaint, I do not find any ground for interference in the impugned order. There is neither procedural impropriety nor irrationality on the part of the trial court in passing the impugned order.

For the foregoing reasons, the writ petition fails and the same shall stand dismissed.

However, it is made clear that the observations and findings recorded herein, being limited for consideration of the challenge put to the impugned order rejecting the IA for amendment of the plaint, the trial court is directed to decide the suit on its merit uninfluenced by the observations made herein.

Contentions of both parties with regard to merit or otherwise of the suit is kept open for consideration by the trial court.