

(2004) 01 KAR CK 0017

In the Karnataka High Court

Case No : Civil Revision Petition No. 2685 of 2003

M.V. Rajashekhar

APPELLANT

Vs

Smt. M.V. Rajamma (deceased by L. Rs.) and Others

RESPONDENT

Date of Decision : 30-01-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 151

Citation : AIR 2004 Kar 280 : (2004) 3 CivCC 440 : (2004) 5 KarLJ 269 : (2004) 2 KCCR 1002

Hon'ble Judges : N.S. Veerabhadraiah, J

Bench : Single Bench

Advocate : Y.K. Narayana Sharma and N. Nanjudaswamy, for the Appellant; T.S. Mahantesh, for the Respondent

Final Decision : Allowed

Judgement

N.S. Veerabhadraiah, J.—This is the plaintiff's revision, being aggrieved of the Order passed in O. S. No. 292/1995 on the file of the I Addl. Civil Judge (Sr. Dn.) and CJM,, Mysore, dated 10-6-2003, staying further proceedings of the suit pending disposal of O. S. No. 13/2000, pending before the High Court of Madras.

2. The brief facts of the case are as follows :

The plaintiff M. V. Rajashekhar filed O. S. No. 292/1995 against defendant Nos. 1 to 6 and others for partition and separate possession of the suit schedule properties described in Schedule "A, B, C, D and E, situated at Mysore and Madras. The plaintiff's father late M. C. Veerappa had two wives viz., Smt. M. V. Rajamma and Smt. Meenakshamma. Defendant No. 1 Smt. M. V. Rajamma had no issues. Plaintiff and defendant Nos. 3 to 6 are the children of Smt. Meenakshamma through late M. C. Veerappa. After the death of Sri M. C. Veerappa, present suit O. S. No. 292/1995 was filed on 21-9-1995 for partition and separate possession of their respective shares.

Defendant No. 1-Smt. M. V. Rajamma having entered appearance filed the

written statement pleading that the entire suit schedule properties are of her self-acquired properties. It appears that defendant No. 1 Smt. M. V. Rajamma executed a Will dated 31-3-1997 in favour of respondent Nos. 1 (a) to (e) during the pendency of the suit and she died on 23-4-1999. After the death of Smt. M. V. Rajamma, the legatees who have been residing at Madras initiated probate proceedings in O. P. No. 862/1999 before the High Court of Madras. The plaintiff herein appeared before the High Court of Madras on service of notice and filed objections. Thereafter, the probate proceedings came to be converted into original suit and numbered as O. S. No. 13/2000. At that stage, the legatees having come on record as legal representatives of Smt. M. V. Rajamma for a limited purpose filed an application u/s 10 of C. P. C. to stay the further proceedings in O. S. No. 292/ 1995, pending disposal of O. S. No. 13/2000, pending before the High Court of Madras.

The learned I Addl. Civil Judge (Sr. Dn.) and C. J. M., after hearing both the learned counsel, by his Order dated 10-6-2003 passed the impugned Order by exercising inherent powers u/s 151 of CPC staying the further proceedings of O. S. No. 292/1995, pending disposal of O. S. No. 13/ 2000, pending before the High Court of Madras. It is this order, which is questioned in the present revision.

3. Learned Counsel Sri Y. K. Narayana Sharma contended that the suit of the plaintiff is for partition and separate possession against defendant Nos. 1 to 6. The suit properties are the properties of his father late M. C. Veerappa. It appears that during the pendency of the partition suit, defendant No. 1 Smt. M. V. Rajamma executed a Will dated 31-3-1997 in favour of respondent Nos. 1 (a) to (e) with an intent to defraud the plaintiff and other children of Smt. Meenakshama-2nd wife of late M. C. Veerappa. Learned counsel further contended that respondent Nos. 1 (a) to (e) claiming to be the legatees under the Will, initiated probate proceedings before the High Court of Madras in O. P. No. 862/1999 and the same came to be converted into O. S. No. 13/2000. Therefore, contended that when an application is filed u/s 10 of C. P. C., the learned I Addl. Civil Judge (Sr. Dn.) and CJM, has erred in exercising his inherent power u/s 151 of C. P. C. Section 10 of C. P. C. makes clear that it is the subsequent suit, which has to be stayed and not earlier suit. Also contended that this Court is entitled to exercise its inherent power u/s 151 of C. P. C. In the instant case, the very filing of the suit is for partition, wherein the proceedings before the High Court of Madras came to be initiated during 1999. Therefore, the learned I Addl. Civil Judge (Sr. Dn.) and CJM., has apparently erred in staying the further proceedings of O. S. No. 292/1995 by invoking Section 151 of C.P.C. Also contended that in case, if it is proved by the plaintiff that the schedule properties are the properties of his father late M. C. Veerappa, naturally entitled for his legitimate share. Therefore, staying of further proceedings of the suit on this ground is also not sustainable, nextly contended that in the probate proceedings, which has been converted into original suit, the title of the parties cannot be adjudicated. What has to be considered is whether the Will executed is in accordance with law or not. Therefore, the staying of further proceedings is

erroneous. Accordingly, prayed to allow the revision by setting aside the impugned order.

4. Learned counsel Sri. P. S. Mahantesh for respondent Nos. 1 (a) to (e) justifies the impugned Order contending that wherever there is abuse of the process of the Court, the Court can exercise its power u/s 151 of C. P. C. and grant the relief. In support of his contention, relied on the decision reported in Bhagat Singh Bugga Vs. Dewan Jagbir Sawhney, and contended that;

"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

Therefore, contended that the Order of stay of the proceedings in O. S. No. 292/1995 does not call for interference. Secondly contended that all the suit schedule properties are the self-acquired properties of defendant No. 1 Smt. M. V. Rajamma. Therefore, she had every right to deal with the property on her own. On this ground also prays to dismiss the revision.

5. In the light of the submissions, the point for consideration that arises;

Whether the impugned Order staying further proceedings in O. S. No. 292/1995 by invoking the provisions of Section 151 of C. P. C. is justified? If so, liable to be interfered with?

6. It is not in dispute that the suit is for partition and separate possession in respect of the suit schedule properties. The question that has to be considered in a suit for partition is whether the suit schedule properties are liable to be partitioned among the plaintiff and the defendants or not? This is purely a matter to be adjudicated after a full fledged trial. It is also not in dispute that it is alleged during the life time of defendant No. 1 Smt. M. V. Rajamma, it appears that she has executed the Will in favour of respondents No. 1 (a) to (e). It is on the basis of the Will executed, the legatees have initiated probate proceedings before the High Court of Madras and the same came to be converted into O. S. No. 13/2000. From the above facts it makes clear that earlier suit is O. S. No. 292/1995, whereas subsequent suit is O. S. No. 13/2000, which is pending before the High Court of Madras. Section 10 of C. P. C. reads thus :

"Stay of suit: No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court."

A plain reading of Section 10 of C. P. C. makes clear that where the subject matter of the suit is one and the same, the parties are also the same, under such circumstances, if there are two suits between the parties, it is subsequent suit

which has to be stayed and not the previous one. If Section 10 of C. P. C. were to be strictly applied to the facts of this case, the order of the learned I Addl. Civil Judge (Sr. Dn.) and CJM, has to be held not sustainable, because the learned I Addl. Civil Judge (Sr. Dn.) and CJM., has stayed the earlier suit O. S. No. 292/1995. In case, if the suit of the plaintiff were to be decreed, naturally is entitled for his share in the property and is purely a matter of evidence which cannot be disputed. In the alternative, if the legatees were to proceed with O. S. No. 13/2000, which is on the file of the Hon"ble High Court of Madras and were to be succeeded, again it leads to multiplicity of the proceedings as the title to the property cannot be gone, in the probate proceedings. Therefore, the impugned Order of staying the further proceedings in previous suit O. S. No. 292/1995 is erroneous and not sustainable. Now coming to the next point whether the learned I Addl. Civil Judge (Sr. Dn.) and CJM., is justified in exercising his inherent powers u/s 151 of C. P. C. Section 151 of C. P. C. reads thus;

"Saving of inherent powers of Court:

Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

A plain reading of the provision makes clear that the Court has abundant inherent powers to exercise whatever powers to prevent abuse of the process of the Court by any of the parties. Now, it has to be considered as to whether the plaintiff is misusing or abusing the process of the Court. In the plaint, it is specifically pleaded that the suit schedule properties are the properties of the plaintiff's father late M. C. Veerappa and sought for partition by filing the suit in a regular course before the competent Court, that too in the year 1995. Whereas, the probate proceedings came to be initiated subsequently in the year 2000. In view of the matter, it cannot be held that there is any abuse of the process of the Court by the plaintiff.

In the Law Lexicon, Second Edition (Reprint) 2001 by Sri P. Ramanatha Aiyer, at page 17, the words "abuse of process of Court" defines as follows ;

"Abuse of process of Court, is the malicious and improper use of some regular legal proceedings to obtain an unfair advantage over an opponent.

Nothing short of obvious fraud on the part of the a debtor would render him liable to have his petition for insolvency dismissed on the ground of "Abuse of process of Court". (Tin Va v. Subya 6 LBR 146 FB). The term is generally used in connection with action for using some process of the Court maliciously to the injury of another person. (Per Abdur Rahim J. in Thathunaik v. Condu Reddi (1909) 1 Ind Cas 221 : 5 Mad LT 248.

Abuse of process of Court generally applies to proceeding wanting in bona fides and is frivolous, vexatious or oppressive. Making use of the process of Court as a

devise to help the jurisdiction of a Civil Court is an abuse of the process of the Court. R. Narapa Reddy Vs. Jagarlamudi Chandramouli and Others, . (Contempt of Courts Act, (1952), Section 3)".

It is only in case where the proceedings are fraud, vexatious or want of bona-fide, malicious and improper, then it comes within the meaning of abuse of the process of the Court. No such facts or things are coming out in the case on hand. Therefore, the Court apparently erred in holding that there is abuse of the process of the Court. Thereby, it is clear that the trial Court has not exercised its proper jurisdiction. The very use of Section 151 of C. P. C. as an "instrument" to stay the further proceedings in O. S. No. 292/1995 is nothing but abuse of the process of the Court and thereby the impugned Order is not sustainable.

For the foregoing reasons, the revision is allowed by setting aside the impugned Order.

The parties shall bear their own costs.