

(2016) 08 KAR CK 0005

In the Karnataka High Court

Case No : Civil Revision Petition No. 200001 of 2016.

Nagappa and Others - Petitioners @HASH Yallawwa and Others

Date of Decision : 01-08-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4, Order 22 Rule 9
Limitation Act, 1963 — Section 5

Citation : (2016) 4 ICC 336

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Sri Ashok S. Kinagi, Advocate, for the Petitioners; Notice, for the Respondents No. 2; Notice, for the Respondents No. 4 to 7; Are served unrepresented, for the Respondents No. 1, 3 and 8

Final Decision : Dismissed

Judgement

B. Veerappa, J. - This is a defendants' revision petition against the order dated 05.12.2015 on I.A. Nos. 17, 18 and 19 made in O.S. No. 200/2008, on the file of the 1 Additional Civil Judge, JMFC-I, Vijayapur, allowing the applications filed by the plaintiff under Order 22, Rule 4 of Civil Procedure Code, under Order 22, Rule 9 of Civil Procedure Code and application under Section 5 of the Limitation Act.

2. The plaintiff has filed the suit for partition and separate possession in respect of the suit schedule properties, contending that she is the wife of the deceased Malakari, who was the son of Irappa Jeerankalagi. Defendant Nos. 1 (A) to 1(E) are the wife and sons of the plaintiff's husband brother. Defendant Nos. 2 to 5 are the brother and sisters of the plaintiff's husband. The plaintiff's father-in-law - Irappa Jeerankalagi, who was the original owner of the suit land bearing Sy. Nos. 312/1, 312/3, 312/5, measuring 2 acres 23 guntas, 39 guntas, 1 acre 15 guntas, situated at Kannur village and also land bearing Sy. Nos. 312/2, 312/4, measuring 8 acres 11 guntas situated at Kannur village, were cultivated by the plaintiff's husband and defendants jointly. It is further case of the plaintiff that the original owner Irappa who was the plaintiff's husband's father has sold land bearing Sy. Nos. 312/1, 312/2 and 312/5 during his life time. The plaintiff has

got 7th share in the suit landed property bearing No.312/3 and 312/4 in the year 1987. After the death of plaintiff's father-in-law and plaintiff's husband, the name of the plaintiff has been entered in the suit property including the defendants. The plaintiff has requested 7th share to the defendants in the suit properties but the same has been denied. Therefore, the plaintiff has filed the suit in O.S. No. 200/2008.

3. The defendants have filed the written statement and denied the plaint averments and stated that they have spent huge amount for improvement of the suit land. Therefore, they prayed for dismissal of the suit with costs.

4. During the pendency of the suit, defendant No. 1(A) has died on 17.04.2011. Therefore, the plaintiff has filed I.A.17 under Order 22, Rule 4 of Civil Procedure Code, I.A.18 under Order 22, Rule 9 of Civil Procedure Code and I.A.19 under Section 5 of the Limitation Act, contending that defendant No. 1(A) was residing with defendant Nos.1 (B to E) at Garden land, located in Kannur village. The said distance is about 5 to 6 kilometers and defendant No. 1(E) had filed power of attorney to defendant No. 1(A). The plaintiff has converted to Brahma Kumari and hence, she went to Mount Abu in Rajasthan State for learning Rajyoga twice in the year 2011. Therefore, she is unable to file the applications within the time from the date of the death of defendant No. 1(A). As the suit was abated and there is a delay of 2 years 7 months 18 days in filing the applications, in view of the said reasons, she has filed three applications for bringing LR's., setting aside abatement and for condonation of delay. The said applications were opposed by defendant No. 1(G) by filing the objections to all the three applications, contending that the earlier applications filed by the plaintiff have been dismissed as not pressed, without assigning any reasons and the present applications have been filed only to harass the defendants. Hence, the applications are liable to be dismissed and there is no sufficient cause to condone the delay and to set aside the abatement.

5. On the basis of the pleadings of the parties, the Trial Court has framed the following points:

1. Whether the plaintiff has made out sufficient grounds to condone the delay of 2 years 7 months and 18 days to bring the LR's. of defendant No. 1(A)?
2. Whether abatement order is to be set aside?
3. Whether there are sufficient grounds to allow the application to bring the LR's. of deceased defendant No. 1(A)?
4. What order?
6. In order to substantiate the delay, setting aside the abatement and to bring the LR's., the matter was posted for evidence. The plaintiff has been examined as PW.1 and defendants examined as DWs.1 to 3 and Anganwadi Staff was examined as CW. 1. On behalf of the plaintiff, Ex.C. 1 was marked.

7. After considering the entire material on record, the Trial Court has recorded the finding that the plaintiff has made out sufficient cause to condone the delay of 2 years 7 months 18 days to bring the LRs. of the deceased defendant No. 1(A) and also made out a case to set aside the abatement. Accordingly, the learned Civil Judge by the impugned order dated 05.12.2015 has allowed the said applications. Against the said order, the present revision petition has been filed.

8. The contesting respondents 1, 3 and 8 are served, unrepresented.

9. I have heard Sri Ashok S. Kinagi, the learned counsel for the petitioners.

10. The learned counsel for the petitioners vehemently contended that the Trial Court has failed to consider the earlier applications filed by the plaintiff which were dismissed as not pressed without assigning any reason and subsequently, the similar applications cannot be filed. The Trial Court has committed an error in accepting the cause shown for setting aside the abatement and for condonation of delay. The reasons assigned by the Trial Court are contrary to the material on record. Therefore, the impugned order passed by the Trial Court has to be set aside.

11. I have given my anxious consideration to the arguments advanced by the learned counsel for the petitioners and perused the entire material on record.

12. It is an admitted fact that the 1st respondent who is the plaintiff before the Trial Court has filed a suit for partition and separate possession in respect of immovable properties to an-larger extent. There is no dispute with regard to the relationship between the parties. The suit schedule properties are the joint family properties of the plaintiff and defendants. It is the specific contention of the plaintiff that defendant No. 1 (A) was residing in Garden land house in Kannur village along with other defendants. The plaintiff has converted to Brahma Kumari and she went to Mount Abu at Rajasthan State for learning Rajyoga twice in the year 2011. Hence, she has not got any information about the death of defendant No. 1(A). Defendant No. 1(B) has regularly attending the Court has not informed about the death of his mother to the plaintiff. Hence, there is a delay in filing the application for bringing the LRs. on record. The Trial Court has recorded a finding that defendant Nos.1 to 3 have been cross-examined by the plaintiff, it does not mean that if the plaintiff attended the funeral ceremony of defendant No. 1(A), she intentionally kept mum without intimating her counsel about the death of defendant No. 1 (A).

13. The Trial Court has recorded the finding that the provisions of Rule 22 of Civil Procedure Code are not in penal nature. It is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspects of law and the rules of procedure under Order 22 Civil Procedure Code are designed to advance justice and should be so interpreted as not to make them penal states for punishing erring parties. On sufficient cause, delay in bringing the legal representatives of the deceased party

on record should be condoned. Procedure is meant only to facilitate the administration of justice and not to defeat the same.

14. The Hon'ble Supreme Court while considering the provisions of Order 22 Rules 2 and 3 of Civil Procedure Code in the case of Sardar Amarjit Singh Kalra (dead) by L.Rs. v. Pramod Gupta reported in (2003) 3 SCC 272 : [2003 (2) ICC (S.C.) 32] has held as under:

26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 Civil Procedure Code as well as the subsequent amendments thereto would lend credit and support to the view" that they were devised to ensure their continuation and culmination in an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. The Provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as flexible tool of convenience in the administration of justice. The fact that the Khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in the jamabandi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even dehors the cause for the delay in filing the applications keeping in view the serious manner in which it would otherwise jeopardise an effective adjudication on merits, the rights of the other remaining appellants for no fault of theirs. Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttled the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside the abatement, condonation and bringing on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of the Court to do real, effective and substantial justice. Viewed in the light of the fact that each one of the appellants had an independent and distinct right of his own not interdependent upon one or the other of the appellants, the dismissal of the appeals by the High Court in their entirety does not constitute a sound, reasonable or just and proper exercise of its powers. Even if it has to be viewed that they had a common interest, then to pursue the appeals for the benefit of those others, who are not before the Court also and not stultify the proceedings as a whole and non-suit the others as well.

15. The Apex Court while considering the provisions of Rule XXII Rules 3, 4 and 9 and 11 of Civil Procedure Code in the case of Banwari Lal (Dead) by LRs. and Another v. Balbir Singh reported in (2016) 1 SCC 607 relying upon the judgment of its Court in the case of Sardar Amarjit Singh Kalra v. Pramod Gupta reported in (2003) 3 SCC 272 : [2003 (2) ICC (S.C.) 32] has held as under:

"9. Provisions of Order 22 Civil Procedure Code are not penal in nature. It is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspects of law. In Sardar Amarjit Singh Kalra v. Pramod Gupta, a five-judge Bench of this Court held as under : (SCC pp. 300-01, para 26)

"26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 Civil Procedure Code as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination in an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. The fact that the Khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in the jamabandi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even de hors the cause for the delay in filing the applications keeping in view the serious manner in which it would otherwise jeopardise an effective adjudication on merits, the rights of the other remaining appellants for no fault of theirs. Interest of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttled the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and bringing on record the legal representatives docs not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power in conformity with the avowed object of the Court to do real, effective and substantial justice."

(Emphasis supplied)

10. In Sital Prasad Saxena v. Union of India, it was observed that the rules of procedure under Order 22 Civil Procedure Code are designed to advance justice

and should be so interpreted as not to make them penal statutes for punishing erring parties. On sufficient cause, delay in bringing the legal representatives of the deceased party on record should be condoned. Procedure is meant only to facilitate the administration of justice and not to defeat the same. The dismissal of the second appeal by the High Court does not constitute a sound and reasonable exercise of its powers and the impugned order cannot be sustained."

16. In view of the aforesaid facts and circumstances of the case and the dictums of the Hon"ble Supreme Court stated supra, this Court is of the considered view" that if the applications are rejected merely on technical ground, it would cause great hardship and injustice to the plaintiff and also to the proposed LRs., as the suit is for partition and separate possession. The LRs. are necessary parties to the suit and in their absence, the suit cannot be maintained. Therefore, the applications have been allowed by the Trial Court. No interference called for in exercise of the revisional jurisdiction under Section 115 read with Order 44, Rule 1 of Civil Procedure Code and the impugned order passed by the Trial Court is just and proper.

17. Accordingly, the revision petition is dismissed.