

(2014) 08 KAR CK 0083

In the Karnataka High Court

Case No : Writ Petition No. 32053/2014 (GM-CPC)

Nanjamma

APPELLANT

Vs

Venkatamma

RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Citation : (2014) 08 KAR CK 0083

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : S.R. Hegde Hudlamane, Advocate for the Appellant; R.P. Somashekharaiiah, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Anand Byrareddy, J.—I.A.I./2014 is filed to bring the legal representatives of the deceased 4th respondent on record.

2. Notice is not ordered on the said application. It is open for the petitioner to bring the legal representatives of deceased 4th respondent on record before the trial Court.

3. For the purpose of disposal of this petition, it is sufficient that respondents 1 to 3 have entered caveat through counsel and that he is heard.

4. Accordingly, the petition is considered for final disposal.

5. The petitioner is said to be the defendant in a suit for partition and separate possession. It transpires that the pleadings having been completed, issues having been framed, PW1 was in the process of being cross-examined by the petitioner at which stage it is stated, though strongly refuted by the learned counsel for respondents 1 to 3, that it suddenly dawned on the petitioner herein that during the cross examination of PW1, there being other properties available to partition, not included in suit schedule, he is said to have made an application seeking to amend the written statement to add the pleading that there are

certain properties available to the family which are not included in the suit schedule and sought to furnish the particulars of the same. The Court below had rejected the application on the footing that it would un-necessarily delay the proceedings and the application for amendment cannot be filed by the defendant after the trial had commenced and has also held that the defendant would have been well aware of such additional properties being available to the joint family at the time of filing the suit and the manner in which the said lands are said to have been acquired, are of some vintage and therefore, the lapse of memory on the part of the defendant cannot be accepted and has rejected the application. It is that which is sought to be challenged in the present proceedings.

6. In a suit for partition, it is well established that the contest is not adversarial but is to address the rights of the parties and their entitlement to shares. That being so, having regard to the stage of the suit, the petitioner having been shut out from adding to the pleadings especially with regard to some other additional properties being available to the joint family, he could not have been shut out.

7. Counsel for the respondent would point out that the said item of property which is sought to be included had been granted to an individual member of the family a long time ago and has been subsequently sold and if the amendment is now allowed, it would lead to further complications in the suit which would require the Court below to consider the issues which are extraneous to the lis between the parties and therefore, would submit that the opinion of the Court in disallowing amendment on the ground that it would delay the proceedings cannot be faulted and seeks that the petition be dismissed.

8. As rightly pointed out by the petitioner's counsel, the suit being one for partition, the strict rules as to the amendment of pleadings should not be applied as if it were an adversarial suit where the Court would not permit the defendant to improve his or her case in stages.

9. Secondly, it is to be noticed that insofar as the rules as to the amendment of pleadings, it is always necessary to ensure that by permitting parties to amend their pleadings, right which is accrued to other side is not taken away by such amendment or any faux or admission made in the suit are not to be covered up or improved upon. It is in those circumstances, that the Court would prevent any such amendment being brought about. However, in the present case on hand, the contention that the purpose of amendment relating to the property which was individually granted to one of the members of the family and that it has been sold, would be a good defence that could be established without much difficulty. Therefore, the contention that it would lead to enlarging the scope of the suit and requiring extensive issues being decided, is not acceptable.

10. Nextly, the learned counsel for the respondents would point out that then petitioner does not deserve any such lenience as by his conduct he has shown that continuous adjournments was sought by him on one or the other pretext and even after the cross examination of PW1 had commenced, he has taken

innumerable adjournments on the footing that he seeks amendment of his written statement and there is no guarantee that the present petitioner would not delay proceedings further.

11. Except for the amendment now being allowed which may require certain additional steps to be taken, the fact whether the defendant is in a position to protract the matters, is well within the domain of the trial Court which is in a vantageous position to control the proceedings in accordance with the Case Flow Management Rules, 2005. The Court would strongly follow the same and there is no difficulty in putting the defendant in his place if he seeks to procrastinate the matters and further seeks PW1 would be put to some difficulty in being recalled and further, by virtue of any such amendment and additional issues being framed, it is appropriate that the petitioner be paid costs in a sum of Rs. 3000/- to PW1 at the next date of hearing.

With the above said observations, the petition stands disposed of.