

(2015) 11 KAR CK 0330
In the Karnataka High Court
Case No : C.R.P. No. 158/2010

Nanjundaswamy and Others

APPELLANT

Vs

Vekataswamappa and Others

RESPONDENT

Date of Decision : 09-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2015) 11 KAR CK 0330

Hon'ble Judges : B.S. Patil, J.

Bench : Single Bench

Advocate : M.G. Kumar, Advocate, for the Appellant; Prithviraj and Gopalappa Advocates, for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil, J.—This revision petition is filed by defendants 4, 5 and 9 challenging the order dated 17.03.2010 passed by the learned City Civil Judge, Bengaluru City, dismissing the application filed by them under Order VII Rule 11 CPC seeking rejection of the plaint filed in O.S. No. 7355/2005.

2. Plaintiffs/respondents 9 to 14 herein have filed the suit seeking partition of the suit schedule properties and for allotment of 1/6th share to plaintiffs 1 to 4, 1/6th share each to plaintiffs 5 & 6 and for separate possession. Plaint averments disclose that plaintiffs 1 to 4 and defendants 1 to 3 are descendants of one late Munivenkata Bhovi and constituted Hindu undivided joint family. According to the plaintiffs though descendants of Munivenkata Bhovi were living and messing separately, they continued to enjoy the joint family properties together and it was defendants 1 to 3 who were managing the affairs of the joint family and thus plaintiffs and defendants 1 to 3 were in joint possession of the joint family properties. According to them, joint family properties include land measuring 3 acres 20 guntas in Sy. No. 76/1, re-numbered as Sy. No. 76/2 situated at Nagavara Village, Kasaba Hobli, Bengaluru North Taluk, which is described as "A" Schedule property to the plaint. The revision petitioners herein are concerned

with "A" schedule immovable property.

3. Plaintiffs contended that joint family of Munivenkata Bhovi was in the habit of raising finance by executing nominal sale deeds of the said property; he used to clear the same and get the property re-conveyed subsequently. This habit continued even after the death of Munivenkata Bhovi by his wives; the joint family used to get loans on the strength of said land, but the land always continued in possession of the joint family of the plaintiffs and defendants 1 to 3.

4. It is further contended by the plaintiffs that late Karibasappa S/o. Dairy Rudrappa and his family were the financiers who used to take mortgage deeds from late Munivenkata Bhovi in respect of joint family properties and advance loans to Munivenkata Bhovi and his family members; out of trust and faith many a time, Munivenkata Bhovi used to create deeds such as Mortgage or Sale Deeds in respect of joint family properties especially regarding Sy. No. 76/2 (Old No. 76/1) and used to get the same released or re-conveyed, after clearing the dues to the financiers.

5. It is also urged in the plaint that because of such transactions, revenue records of the land used to stand in the names of financiers though actual possession continued with the plaintiffs and defendants 1 to 3. It is urged that plaintiffs were informed by their father Krishna that their joint family had cleared loan. But, after his death, when defendants 1 to 3 started neglecting the interest of the plaintiffs, they made inquiries and learnt that RTC of the land in question was recorded in the name of Karibasappa and his family and after his death in the name of his heirs, when attempts were made by defendants 1 to 3 with the heirs of Karibasappa to sell the property, plaintiffs demanded for partition; when the demand was not met with positive response, they were constrained to file the suit.

6. Plaintiffs have further stated that as the presence of defendants 4 to 14 was necessary, they have been impleaded as parties to the suit because they have claimed interest in the suit schedule property stating that they were the descendants of late Karibasappa and had derived interest through him. In paragraph 8 of the plaint, they have pleaded regarding cause of action for the suit stating that it arose about four years ago and subsequently in the month of May, 2005.

7. Defendants 4, 5 & 9 have filed the application under Order VII Rule 11 CPC seeking rejection of the plaint. In support of the application filed seeking rejection of the plaint, the 4th defendant for himself and on behalf of defendants 5 to 10 has stated that the suit was frivolous and vexatious one and did not disclose any cause of action, nor any right to sue against the defendants. They have contended that documents produced namely, the Mortgage Deed dated 23.05.1904, Sale Deeds dated 05.07.1919, 29.10.1943 and 08.06.1944, RTC extracts from 1972 to 2005, by the plaintiffs apparently disclosed that the suit property bearing Sy. No. 76/2 (Old No. 76/1) was jointly sold by late

Munivenkata Bhovi's legal heirs i.e. to say, his first wife Thimmakka, her son Munishami and his second wife Smt. Muniyamma, her sons Venkata and Munishami; that Thimmakka and Muniyamma were widows of Munivenkata Bhovi; the plaintiffs, who did not have any interest in the property, which had been sold as back as in the year 1919, were falsely claiming right over the property by seeking a decree of partition in respect of the property which did not belong to Munivenkata Bhovi's family after 1919.

8. It has been urged by the defendants that plaintiffs had cleverly tried to camouflage the truth and in collusion with defendants 1 to 3 were trying to lay an untenable claim. It is further urged that even as per the plaintiffs, who had produced the RTC of the land, name of R. Karibasappa had been recorded and thereafter, name of his sons were recorded. It is specifically contended in paragraph 9 of the affidavit that as per Sale Deed dated 05.07.1919, Sy. No. 76/1 was sold to one Mariswamappa, who in turn sold it to Meer Kaleel Rahim Saab as per Sale Deed dated 29.10.1943. Thereafter, late R. Karibasappa, father of 4th defendant - K. Nanjundaswamy - deponent to the affidavit purchased the same under registered Sale Deed dated 08.06.1944, thus, it clearly disclosed that plaintiffs never had any interest or title to the suit schedule property.

9. In the objections filed to this application, 1st plaintiff has stated that no specific provision of law was invoked by the defendants for rejection of the plaint and that whether the property was sold as per the Sale Deed dated 05.07.1919 by the heirs of Munivenkata Bhovi was required to be examined at the stage of evidence after full fledged trial. In paragraph 7 of the objections, it is reiterated that the joint family of Munivenkata Bhovi was in the habit of raising finance on the strength of the land in question by executing nominal Sale Deeds and used to clear the loans and get necessary re-conveyance documents, once the loans were cleared.

10. Thus, what emerges from the plaint averments is that admittedly the ancestors of plaintiffs and defendants 1 to 3 have dealt with the suit schedule "A" property by mortgaging the same and also by executing Sale Deeds. The plaint averments conveniently do not refer to the Sale Deed dated 05.07.1919 under which the suit property was sold but it is the case of the plaintiffs that the suit property had been sold. In the objections filed to the application, this Sale Deed has not been denied. Though it is urged in the plaint that subsequently there has been re-conveyance effected in favour of the family of Munivenkata Bhovi of the land and despite the same, revenue entries had been continued in the name of Karibasappa the purchaser, and after his death in favour of his sons - applicants before the Trial Court, no particulars of such re-conveyance have been furnished. Once it is shown that by virtue of the registered Sale Deed executed as back as in the year 1919, the property was sold by the family members/ancestors of the plaintiffs and defendants 1 to 3 and that the entries in respect of the said property were recorded in the name of purchasers, unless the plaintiffs assail the said Sale Deed or seek any relief in respect of the said Sale

Deed, by filing a mere suit for partition in respect of the property that has gone out of the family of the plaintiffs and defendants 1 to 3 as back as in the year 1919, plaintiffs cannot claim to have any cause of action to maintain the suit for partition against defendants 4 to 14 who are strangers to the family of the plaintiffs and defendants 1 to 3. If the property had come back to the family of the plaintiffs by way of re-conveyance, then the plaintiffs ought to have given details of such re-conveyance deed. Even then, without claiming any relief against defendants 4 to 14 and without having any cause of action against them, plaintiffs could not maintain a suit for partition against them.

11. As rightly contended by the contesting defendants, the entire plaint averments with regard to the right of the family of plaintiffs and defendants 1 to 3 over suit schedule "A" property is vague. In order to maintain a suit for partition, the plaintiffs must specifically aver in the plaint that the property in question is available for partition to the family. As the property has been admittedly sold by the members of the family of the plaintiffs/their ancestors as back as in the year 1919 and as there is no material whatsoever spoken to in the plaint as to when and how the property came back to the family of the plaintiffs, it would be clear that there was no cause of action in respect of the said property to seek partition.

12. It is not the case of the plaintiffs that some of the family members or the kartha have illegally sold the property without any legal necessity, and therefore, the said sale did not bind them, and that defendants 4 to 14 being such purchasers had been impleaded because they were proper and necessary parties. Neither any such averment is found in the plaint, nor any relief is sought against such alienations. Whether at all plaintiffs could have sought such a relief against defendants 4 to 14 at such distance of time when the sale had been effected way back in the year 1919 is a moot question which need not be dealt with. Suffice to hold that there is no cause of action for the suit filed against defendants 4 to 14 in respect of suit schedule "A" property.

13. The plaintiffs have come up with false, vexatious and frivolous suit to avoid the sale transaction of the year 1919 by camouflaging the plaint averments without disclosing the true facts and by making vague and bare assertions that suit schedule "A" property continued as family property contrary to the documents produced by the plaintiffs in the form of Sale Deed of the year 1919 and the record of rights pertaining to the land. Therefore, the plaint is liable to be rejected.

14. The Trial Court has not at all applied its mind to any of the aforesaid aspects. It has simply proceeded to come to the conclusion that as the plaintiffs have contended that Mortgage Deeds and Sale Deeds had been executed nominally and that suit schedule "A" property formed part of the joint family properties, the matter required adjudicated by recording evidence and the plaint could not be thrown out at the threshold.

15. I am of the view that the order passed by the Trial Court is illegal and does not take note of the relevant factors to be borne in mind in terms of the provisions contained under Order VII Rule 11 CPC. As held by the Apex Court, such suits which are frivolous and vexatious and which do not disclose cause of action have to be nipped in the bud and the court should not hesitate to reject such claims. Useful reference can be made to the following judgments in this connection:

"1. Hanumappa and Others Vs. Chikkannaiah and Others,

2. T. Arivandandam Vs. T.V. Satyapal and Another, "

16. For the reasons stated above, this revision petition deserves to be and is allowed. Order under challenge is set aside. Application filed by defendants 4, 5 & 9 under Order VII Rule 11 CPC is allowed. Plaint in the suit O.S. No. 7355/2005 is rejected in so far as it pertains to plaint "A" schedule property. Insofar as plaint "B" schedule property is concerned, plaintiffs are entitled to proceed against defendants 1 to 3.