

(1994) 12 KAR CK 0036
In the Karnataka High Court
Case No : C.R.P. No. 982 of 1994

Neeminath

APPELLANT

Vs

Corporation Bank

RESPONDENT

Date of Decision : 16-12-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 29

Citation : (1995) ILR (Kar) 1810 : (1994) 5 KarLJ 355

Hon'ble Judges : M.B. Vishwanath, J

Bench : Single Bench

Advocate : V.T. Rayareddy, for the Appellant; Udaya Holla, for R-1, for the Respondent

Judgement

Vishwanath, J.—Heard both the learned Counsel. The Civil Revision Petition is admitted.

2. The applicants who are not parties to the decree in O.S.No. 18 of 1974 before the learned Principal Civil Judge, Dharwar, are the Revision petitioners. They have challenged the order passed by the learned Principal Civil Judge rejecting the application (I.A.No. III) under, Order 21 Rules 29 and 58 C.P.C, The applicants' prayer in I.A.No. III was to stay further proceedings in Ex.C.No. 71 of 1983 in pursuance of the decree in O.S.No. 18 of 1974 till the disposal of the suit in O.S.No. 101 of 1985 filed by them before the learned Munsiff, Dharwar, which came to be transmitted to the Court of the Munsiff, Kalghatagi and renumbered as O.S.No. 201 of 1992.

3. One of the main ingredients of the application under Order 21 Rule 29 C.P.C. is that the suit between the same parties should be pending between the holder of the decree of such Court and the person against whom the decree was passed. In other words, the suit that should be stayed should be between the same parties. The applicants are not parties to suit in O.S.No. 18 of 1974, the decree in which is being executed in Ex.No. 71 of 1983. Clearly, Order 21 Rule 29 C.P.C., is not applicable. The finding of the learned Munsiff that Order 21 Rule 29 C.P.C.

is not applicable is unexceptionable.

4. In I.A.No. 3 the applicant mentioned both the provisions, viz., Order 21 Rule 29 C.P.C. and Order 21 Rule 58 C.P.C. Order 21 Rule 58 C.P.C. says that if any claim is preferred or any objection is made for the attachment of any property attached in execution of a decree on the ground that such property is not liable for such attachment, such claim or objection should be investigated by the Court. Taking this into consideration, I pass the following :

ORDER

5. It is made clear that since Order 21 Rule 29 C.P.C. is not applicable, further proceedings in Ex.C.No. 71 of 1983 cannot be stayed. It is further made clear that if the applicants had prayed that the property was not liable to attachment, the Court will consider whether it is liable to attachment or not, bearing in mind the application filed by the present applicants. If there is no such prayer in I.A.No. 3 the learned Munsiff shall not consider it. It is open to the applicants to pursue other remedies open under law. Revision Petition is disposed of accordingly.