

(2010) 10 KAR CK 0116

In the Karnataka High Court

Case No : Writ Petition No. 14133 of 2010

Pearlite Liners Employees and Ancillary Units House Building,
Co-operative Society Ltd.

APPELLANT

Vs

Smt. Jaya S. Rao and K.P.T.C.L.

RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 3, Order 2 Rule 3 (2), 104

Citation : (2010) 10 KAR CK 0116

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Ashwin S. Halady, for the Appellant; G. Lakshmeesh Rao, for R1 and N.K. Gupta, for R2, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—Respondent No. 1/plaintiff has filed a suit against Petitioner and Respondent No. 2/Defendants 1 & 2, seeking decree for recovery of damages of Rs. 25,827/-. Claim made against the Defendant No. 1 is for Rs. 15,427/- and the claim made against Defendant No. 2 is for Rs. 10,400/-. The Defendants have filed separate written statements, wherein it was contended that, the suit is bad for mis-joinder of parties and mis-joinder of causes of action and that the court has no jurisdiction to try the suit. Based on the pleadings, issues and additional issues were raised. Issue Nos. 2, 4 and 5 reads as follows:

Whether the court has no territorial jurisdiction to try the suit?

Whether the suit is bad for mis-joinder of cause of action?

Whether the suit is bad for mis-joinder of parties?

All the issues were answered in the affirmative. Finding that, the amount claimed is less than Rs. 25,000/-, it was held that, the suit should be filed in Court of Small Causes and hence, it was ordered for return of the plaint for presentation

before the jurisdictional court. It was also held that, suit is bad for mis-joinder of parties, and cause of action.

2. Aggrieved, the Plaintiff filed Misc. Appeal No. 07/2008 under Order 43 Rule 1 CPC Maintainability of appeal was questioned. The appellate court raised the following points for consideration:

1. Whether the appeal is maintainable?
2. Whether the order under appeal is erroneous and hence it calls for interference by this Court?
3. What order?

Upon consideration of the record and the rival contentions, it was held that, the appeal is maintainable and that, the order under challenge in the appeal is erroneous. It was observed that, the Plaintiff has right to file the suit seeking relief of several causes of action against the Defendants jointly and aggregate claim of the suit shall be taken into consideration to decide the jurisdiction of the court. The aggregate claim in the suit being more than Rs. 25,000/-, it was held that, Civil judge (Jr. Divn.) is having jurisdiction. The appeal was allowed, the order impugned was set-aside and it was ordered that, the Civil Judge (Jr. Divn.) is having jurisdiction to try the suit, the records were ordered to be sent back to the lower court with a direction to dispose off the matter in accordance with law. Aggrieved, Defendant No. 1 has filed this writ petition.

3. Sri Ashwin S. Halady, learned Counsel appearing for the Petitioner, firstly contended that, the suit instituted against the Petitioner and Respondent No. 2 is bad due to mis-joinder of cause of action and mis-joinder of parties since the Plaintiff has claimed two distinct and separate reliefs in the plaint and also pleaded that the cause of action for the reliefs had arisen on two different dates, which fact though was correctly appreciated by the trial court, was erroneously interfered with by the appellate court, by acting with material irregularity. Secondly, the order of the trial court was not appealable and in holding that the appeal is maintainable, the trial court has committed illegality. Reliance was placed on the decision in the case of Sri. S.R. Venkatareddy rep. by GPA Holder Sri. V. Babu Reddy Vs. Sri. K.S. Shariff and Others, .

4. Sri G. Lakshmeesh Rao, learned advocate appearing for the Respondent No 1/ Plaintiff, on the other hand firstly contended that, Rule 3 of Order 2 CPC provides for the Plaintiff to unite in the same suit several causes of action against the same Defendant, or the same Defendants jointly and the jurisdiction of the court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of institution of the suit. Secondly, the suit is one for recovery of damages of more than Rs. 25,000/- and it is the Civil Court which has jurisdiction to try the suit and not the Court of Small Causes as had been erroneously held by the trial court. Thirdly, the cause of action for the suit arose against the Defendant No. 1 on 16.12.1989 when the Defendant No. 1 made an

illegal claim and the Plaintiff paid a sum of Rs. 14,554/- under protest on 25.09.1999 and against the Defendant No. 2 on 16.07.1999 when it demanded for NOC from the Defendant No. 1 for giving power sanction and since the claim against the two Defendants are joint and several-, the suit was instituted. Fourthly, since the plaint was erroneously ordered to be returned in exercise of the power under Order 7 Rule 10 Code of Civil Procedure, the appeal as provided was instituted and the appellate court having examined the record has correctly decided the appeal.

5. I have perused the writ papers.

6. The Petitioner and the 2nd respondent, are the Defendants in the suit. According to the plaint averments, the 1st Defendant held auction on 14.03.1993 in respect of corner sites in its layout, in which, site No. 32 was auctioned in favour of the Plaintiff. Pursuant thereto, the consideration amount was paid and the sale deed was executed on 25.05.1993. The Plaintiff having undertaken construction work and when the house construction was nearing completion, approached the 2nd Defendant for power sanction. The 2nd Defendant issued endorsement dated 16.07.1999 to produce no objection certificate of the 1st Defendant, as otherwise it will not provide power sanction. The Plaintiff contends that, the demand made by the 2nd Defendant is without any authority of law and he is not concerned with the dispute between the two Defendants. He paid Rs. 14,554/- to the 1st Defendant under protest on 25.09.1999 and obtained no objection certificate for the power connection and alleges that, on account of the instigation of the 1st respondent, the 2nd Respondent did not give power connection and insisted for production of no objection certificate of the 1st Defendant. According to the plaint averments, the loss caused to him is on account of the actions, either joint or several of the Defendants and hence, the suit was filed for refund of Rs. 14,554/- paid to the first Defendant on 25.09.1999 and interest of Rs. 873/-, amounting to Rs. 15,427/-, by both the Defendants.

7. Keeping in view the averments made in the plaint, the written statement and the provisions contained under Order 2 Rule 3 Code of Civil Procedure, prima facie the suit is not bad for mis-joinder of parties or mis-joinder of causes of action. Even otherwise, the mis-joinder of parties or mis-joinder of causes of action, are triable issues. Unless trial takes place, the issues concerning the said aspects cannot be decided.

8. The trial court had not noticed the provisions under Rule 3(2) under Order 2 CPC. It has also not noticed that, the claim made against the Defendants is joint and several. Since causes of action can be united, the claim made against the Defendants being inter-linked and the claim made also being the loss sought to be recovered as damages, can be tried by the Civil Court and not by a Small Causes Court. Noticing the said factor, the court below has rightly interfered with the matter, since the trial court had misdirected itself, by merely looking at the amount claimed in the plaint, without noticing that the claim is with regard to

recovery of money being the loss/damages. The trial court had directed the return of the plaint for presentation before the proper court i.e., in exercise of its power under Rule 10 of Order 7 Code of Civil Procedure.

9. Section 104 of CPC provides for appeal from orders. The procedure in respect of such appeals is the one provided under Order 43 Rule 1 CPC Clause (a) under Rule 1 of Order 43 CPC provides for an appeal being filed against an order passed under Rule 10 of Order 7 returning a plaint to be presented to the proper court. In the circumstances, the appeal filed in the court below against the order passed by the trial court was maintainable and the court below rightly in exercise of the jurisdiction vested in it has passed the impugned order. The impugned order is neither irrational nor illegal for being interfered with.

In the result, the writ petition is devoid of merit and shall stand dismissed. However, it is made clear that, the trial court shall raise the issues with regard to mis-joinder of parties and mis-joinder of causes of action, try the same along with other issues and decide the suit in accordance with law, uninfluenced by the findings recorded by the court below in the impugned judgment herein.

No costs.