(1992) 07 KAR CK 0036

In the Karnataka High Court

Case No : Regular First Appeal No. 648 of 1987

P.S. Pillaswamy APPELLANT

Vs

Karnataka Silk Marketing Board Limited RESPONDENT

Date of Decision : 16-07-1992

Acts Referred:

Citation : (1992) 07 KAR CK 0036

Hon'ble Judges : M.M. Mirdhe, J

Bench : Single Bench

Advocate : Y.K. Narayan Sharma, for the Appellant; Kaleemulla Shariff, for the Respondent

Final Decision : Allowed

Judgement

M.M. Mirdhe, J.—This regular first appeal is filed by the Appellant who was the Plaintiff in the trial Court u/s 96 read with Order 41 Rules 1 and 2 CPC against the order and decree dated 29.1.1987 passed by the 16th Additional City Civil Judge, Bangalore City, in O.S. No. 316 of 1985 dismissing the suit of the Plaintiff - Appellant as not maintainable.

2. I have heard the learned Counsel for the Appellant and the learned Counsel for the Respondent and perused the records of the case fully.

3. The Appellant filed a suit against the Respondent praying for a permanent injunction restraining the Respondent from interfering with the enjoyment and peaceful possession of the Appellant''s power-looms and accessories, The Respondent resisted the suit. Among other contentions taken by him, took up a contention to the effect that the suit was not maintainable as the statutory notice as required u/s 80, Code of Civil Procedure, was not given and in view of Section 61 of the Karnataka Land Revenue Act, the Civil Court has no jurisdiction. The trial Court framed the issues and these contentions form the subject-matter of Issue Nos. 2 and 3 framed by the trial Court. The said issues are as follows:

(2) Whether the suit is not maintainable for want of notice u/s 80, Code of Civil

Procedure?

(3) Whether the suit is not maintainable in view of the Section 61 of the Karnataka Land Revenue Act, 1964?

The trial Court tried these issues as preliminary issues and answered them in affirmative and dismissed the suit of the Appellant as not maintainable.

4. The trial Court has held that the Appellant ought to have given a notice u/s 80, CPC which he has not done and, therefore, the suit was not maintainable. The Respondent is M/s. Karnataka Silk Marketing Board Limited which is a Government of Karnataka undertaking. It is not a State so as to attract the provisions of Section 80, CPC It is a Government Company but not a Government. The learned trial Judge failed to note this distinction. He proceeded on. the assumption that the Government Company is a State Government so as to attract the provisions of Section 80, CPC In view of the fact that the State Government or Central Government is not a party but it is only a Government Company which is a party, no notice is necessary u/s 80, CPC The trial Court erred on this point.

5 The next contention that has been taken by the Respondent and upheld by the trial Court is that the suit is not maintainable u/s 61 of the Karnataka Land Revenue Act, 1964. The suit is filed by the Appellant for a permanent injunction restraining the Defendant from interfering with its possession of the power-looms and accessories. The case of the Appellant is that he is a silk weaver by profession and he is dealing with the Respondent and the Respondent supplied raw silk on credit basis and he made certain payments towards the amount due to the Respondent. There was dispute between the parties regarding the actual amount due from the Plaintiff and there were some talks between the Appellant and the Respondent officials. But, the Respondent has not furnished the correct statement of accounts along with the break up figures in spite of repeated requests and demands from the Appellant/Hence, the suit.

6. The recovery is to be made by the Respondent under the Karnataka Public Moneys (Recovery of Dues) Act, 1979 (which hereinafter be referred to as "the act"). The procedure is when any person is liable to pay any amount, the Managing Director of the Company is required to send a certificate to the Deputy Commissioner mentioning the sum due from such person and the Deputy Commissioner on receiving that certificate to proceed to recover the amounts stated therein as arrears of land revenue. Section 61 of the Karnataka Land Revenue Act, 1964 (which will hereinafter be referred to as "the Land Revenue Act) bars the jurisdiction of Civil Courts. It lays down that except as otherwise provided in the Act, no Civil Court shall have jurisdiction to decide any of the matters enumerated therein. Sub-clause (c) of Sub-section (2) Section 61 lays down as follows:

61(2)(c).- Claims connected with or arising out of any proceedings for the realisation of land revenue or other demands recoverable as arrears of land revenue under this Act, or any other law for the time being in force.

It is clear from the provisions of the Act that the amount Appellant is to be recovered as arrears of land revenue. Section 61(2)(c) of the Land Revenue Act makes it clear that the claims connected with or arising out of any proceedings for the realisation of land revenue of other demands recoverable as arrears of land revenue not only under the Land Revenue Act but even any other law for the time being in force are excluded from the jurisdiction of the Civil Court. The phrase "any other law for the time being in force" covers the Act also. Therefore, the Civil Courts will be barred from entertaining any claims arising out of the recovery of the arrears as arrears of land revenue under the Act. This Court in AIR 1983 Kar 22 has held that the Civil Courts could be competent to try a suit where the Special Tribunal has acted arbitrarily and without jurisdiction. The contention of the Appellant is that the certificate or the notice issued by the Tahsildar is issued without giving any opportunity by the Managing Director to the Appellant to put forth his contentions regarding the arrears due from him. In Writ Petition No. 38475 of 1982 and other connected writ petitions, this Court by its judgment dated 15-3-1983 has held that before resorting or recover any amount by following the procedure prescribed under the Act, the authority or the Body concerned must, in the first instance, determine the exact amount due, after notice to the party and that it is only after determining the amount due in conformity with the rules of natural justice the recovery proceedings could be resorted to for the amount, if remained unpaid. The point to be considered now is whether the Respondent has followed the procedure under the Act before sending the certificate to the Deputy Commissioner for recovery of the dues as arrears of land revenue. If the Respondent has followed the correct procedure after giving an opportunity to the Appellant to put forth his contentions regarding the arrears of the amount due, then it will be a valid order and Section 61 (2)(c) will bar the jurisdiction of the Court to try a suit connected with such a claim. But, if the Respondent has not followed that procedure and has issued the certificate without giving an opportunity to the Appellant to put forth his say in the matter then, the order passed by him may be a void order giving jurisdiction to the Civil Court to interfere in the matter. The trial Court has not given its attention to this aspect of the case. Therefore, I am of the opinion that the matter is required to be remitted back to the trial Court to decide issue No. 3 after giving both sides an opportunity to put forth their contentions on the point whether the order or the certificate issued by the Deputy Commissioner in this regard in void so as to give jurisdiction to the Civil Court to interfere in the matter.

7. For the reasons discussed above, I proceed to pass the following order: The appeal is allowed. The judgment and decree of the trial Court are set aside and the case is remitted back to the trial Court to dispose of the suit in accordance with law. No order as to costs.