

(2016) 06 KAR CK 0052

In the Karnataka High Court

Case No : Writ Petition No. 52331 of 2013 (GM-CPC)

R. Shantha Rao

APPELLANT

Vs

Smt. R. Hemavathi Bai

RESPONDENT

Date of Decision : 07-06-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151

Citation : (2016) 3 AirKarR 793 : (2016) 4 ICC 414

Hon'ble Judges : P.S. Dinesh Kumar, J.

Bench : Single Bench

Advocate : G.S. Venkat Subbarao, Advocate, for the Petitioner; G.S. Prasanna Kumar, Advocate, for the Respondent No. 2; Served, for the Respondent No. 1; Dispensed, for the Respondent No. 3

Final Decision : Allowed

Judgement

P.S. Dinesh Kumar, J.—Issue Rule.

2. This writ petition is filed challenging the order dated 16.8.2013 in O.S. No. 2026/2008 before the Trial Court partly allowing IA No. 3 filed under Order 6, Rule 17 read with Section 151, CPC.

3. Heard Sri. G.S. Venkat Subbarao, learned Counsel for the petitioner and Sri. G.S. Prasanna Kumar, learned Counsel for respondent No. 2.

4. Petitioner-plaintiff filed the instant suit on 10.3.2008. Thereafter, on 21.4.2009. he filed the instant application under Order 6, Rule 17 read with Section 151, CPC seeking to amend the plaint and to include paras 9(a) and 9(b), which read as follows:-

"I. To add para-9(A) after para-9 at para-7 of the plaint as under:-

"9(A). The land bearing Survey Number -77/62 situated at Sheshagirihalli village, Bidadi Hobli, Ramanagaram Taluk, measuring 3 acres was the land granted in favour of M. Raja Rao S/o Mannoji Rao who is none other than the

father of the plaintiff herein. It is accordingly the said M. Raja Rao acquired absolute right, title, interest and possession over the said property. The said property is more fully described as suit item No. 2 in the suit. The father of plaintiff namely M. Raja Rao died on 31.08.1994. After demise of said M. Raja Rao, the revenue records were changed in the name of the mother of plaintiff namely R. Shankara Bai. Smt. Shankara Bai by colluding with one Sri. Srinivasa Reddy claims to be the Managing Director of City Sites Bangalore Pvt. Ltd, No. 26, American Colony, North Park Road, Kumara Park East, Bangalore-1, manipulated a sale deed dated 01.09.1995 with respect to the 2nd item of the suit schedule property, by having an order of conversion converting the suit schedule property for non-agricultural purposes that too for residential purpose. All these act and omission on the part of the mother of plaintiff and defendants herein and the said Sri. Srinivasa Reddy are behind the back of the plaintiff. The plaintiff was not made known about the said fact. The plaintiff came to know about the said fact of above transaction taken place between them only during July 2008. Immediately the plaintiff obtained the certified copy of the sale deed and he is before this Hon"ble Court. The said sale transaction is not binding on the plaintiff and also that he is entitled for ?th share in the 2nd item of the suit schedule property also.

II. To insert para-9(B), after para-9(A) in the plaint, as under-

"9(B). The plaintiff further submits that father of the plaintiff namely M. Raja Rao had a Savings Bank Account bearing No. 4035 in State Bank of Mysore, Cunningham Road Branch, Bangalore - 52. In the said account father of the plaintiff namely Late M. Raja Rao has maintained a sum of Rs.45,000/- as on the date of his death. The Bank authorities though directed all the Legal Heirs to have a joint requisition and only on the said understanding the said amount lying in the said account could be permitted to be withdrawn. As there was no understanding between the plaintiff and defendants the said amount could not be drawn and the said amount is lying in the said S.B. Account wherein the plaintiff is also entitled for ?th share in the said amount, which is more fully and specifically set out in the 3rd item of the suit schedule property.

III. To incorporate the 2nd item of the suit schedule property alter the existing schedule, as under:-

"(2) Part and parcel of the land bearing Survey Number-77/62, measuring 3 acres situated at Sheshagirihalli village. Bidadi Hobli, Ramanagaram Taluk and District, bounded on the: -

East by

: Property belongs to Geetha Bai;

West by

: Government Halla;

North by

: Land of Thimmaiah;

South by

: Land of Jagadish.

IV. To incorporate the 3rd item of the suit schedule property after the 2nd item, as under: -

"(3) Amount of Rs.45,000/- with accrued interest lying in Savings Bank Account bearing No. 4035 at State Bank of Mysore, Cunningham Road Branch, Bangalore-52".

The said application was resisted by the second respondent herein. After hearing the parties, the Trial Court has allowed the said application in part and permitted the plaintiff to incorporate the averments made in para 9(b). Petitioner is aggrieved by that portion of the order whereby the Trial Court has not allowed para 9(a) of the application for amendment.

5. Learned Counsel for the petitioner assailing the correctness of the order submits that the immovable property sought to be included in the plaint was granted in favour of the father of the plaintiff and the respondents. It was clandestinely sold by his mother after his father's death on 31.8.1994. 1"his aspect was not known to the petitioner. No sooner it came to his knowledge, than he filed the instant application on 21.4.2009. At the material point of time, the suit was at the stage of framing of issues. He submits that the Trial Court erred in assuming the delay as 13 years by reckoning it from the date of it's sale i.e., on 1.9.1995. Therefore, he submits that the impugned order is unsustainable and prays for allowing this writ petition.

6. Per contra, learned Counsel for the respondent supporting the impugned order, submits that, admittedly the property was sold by the mother of parties herein in the year 1995. Therefore, there is an inordinate delay in filing the instant application and prays that this writ petition be rejected.

7. I have given my careful consideration to the submissions made by the learned Counsel for the parties and perused the material papers. It is not in dispute that the property in question was granted in favour of the father of the parties herein. The suit is one for partition and it was instituted on 10.3.2008. The application for amendment was filed on 21.4.2009. As on the date of filing of the said application, the suit was at the stage of framing of issues. The property in question which is sought to be included in the plaint having been granted in favour of the father, the sale of which by mother alone takes away substantial rights of the parties. Defeating their rights parties only on the ground of delay as has been done by the Trial Court is unsustainable in law. In the circumstances, this writ petition merits consideration and deserves to be allowed.

8. In the result, the following:-

ORDER