

(2015) 06 KAR CK 0237

In the Karnataka High Court

Case No : Writ Petition Nos. 54242 and 54241/2014 (GM-CPC)

R. Vijayakumar

APPELLANT

Vs

Muniyammanni and Others

RESPONDENT

Date of Decision : 16-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 1, 151
Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 65

Citation : (2015) 06 KAR CK 0237

Hon'ble Judges : A.V. Chandrashekara, J

Bench : Single Bench

Advocate : Rajagopala Naidu, Advocate for Rajagopala Naidu and K.R. Pradeep Assts, for the Appellant; P. Venkataramana, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.V. Chandrashekara, J.—Heard the learned counsel for the petitioners.

2. The present petitions are filed under Article 227 of Constitution of India challenging the order dated 14.11.2014 passed on I.As. filed under Section 151 of CPC and under Order 16 Rule 1 read with Section 151 of CPC by the Court of the XIII Addl. City Civil and Sessions Judge, Bangalore O.S. No. 15590/2000.

3. The suit is filed by the respondents 1 to 3 herein for relief of declaration of title and permanent injunction. Suit has been contested by defendants 1 and 2 by filing separate detailed written statement. After framing issues, both the parties have adduced oral and documentary evidence on their behalf. When the matter was posted for arguments, at that time defendant No. 2/petitioner herein chose to file an application under Order 16 Rule 1 of CPC read with 151 of CPC to summon the witnesses and another application filed under Section 151 of CPC to permit the defendant No. 2 to examine one witness in regard to irrevocable general power of attorney executed by plaintiff No. 1 in favour of defendant No1. The said applications were contested and ultimately the applications came to be

rejected on 14.11.2014. It is this order, which is called in question in this present petition.

4. What is argued before this Court by the learned counsel for respondent Nos. 1 to 3 is that similar application had been filed and those applications came to be dismissed after contest and therefore these applications filed by defendant No. 2 were not maintainable and court has rightly rejected the same. It is further argued that original irrevocable power of attorney stated to be executed by plaintiff No. 1 in favour of defendant No. 1 has not seen the light of the day and document so produced is the xerox copy which is impermissible in law as evidence. Therefore, he requested the court to dismiss the writ petitions.

5. As could be seen from the records, it is not as though for the first time defendant No. 2 has taken up the contention in regard to oral and documentary evidence to be adduced in regard to the proof of general power of attorney executed by plaintiff No. 1 in favour of defendant No. 1. Defendant No. 2 has already taken up a specific stand in his written statement that on 9.10.1991 a general power of attorney was executed by plaintiff No. 1 in favour of defendant No. 1, about its irrevocable nature and the same being handed over along with other documents to him and those documents being misplaced. Therefore a complaint had been given to police on 9.3.2005, and a public notice had been got issued in Vijaya Times" a daily newspaper.

6. Learned Judge has not considered the applications so filed in the light of specific stand taken in paragraph 6 of the written statement. Whether examining one witness in respect of alleged power of attorney would be a valid evidence, is a matter to be appreciated after hearing arguments on merits. It is not advisable to shut out the evidence to be adduced on behalf of defendant No. 2, more particularly regarding proof of general power of attorney whether the evidence that would be adduced would come under purview of Section 65 of Evidence Act will be within the realm of appreciation of evidence.

7. Suffice to state that the approach adopted by the trial court is incorrect and improper. In spite of rejecting the application, liberty should have been given to defendant No. 2 to examine one witness in respect of the alleged general power of attorney stated to have been executed by plaintiff No. 1 in favour of defendant No. 1.

8. The learned counsel for the petitioner has argued that learned judge has virtually decided about the authenticity of alleged general power of attorney.

9. There is lot of force in the said submission. Principles enunciated by the Hon'ble Apex Court in the case of Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another, (2011) 10 AD 365 : AIR 2012 SC 206 : (2012) 169 CompCas 133 : (2011) 6 CTC 90 : (2012) 340 ITR 1 : (2011) 4 RCR(Civil) 669 : (2011) 11 SCALE 438 : (2012) 1 SCC 656 : (2011) 11 SCR 848 : (2011) 202 TAXMAN 607 has to be considered after entire evidence is concluded. Plaintiff can make use of the same after documents are produced and evidence is adduced to

that effect.

10. In this view of the matter, jurisdiction of Article 227 of Constitution of India will have to be exercised to correct the apparent error committed by the trial court.

11. Accordingly, petitions are allowed. Impugned order is set aside. Defendant No. 2 is permitted to examine one witness on his behalf in regard to the execution of general power of attorney stated to have been executed by plaintiff No. 1 in favour of defendant No. 1. All the contentions are kept open to be urged while submitting the arguments on merits record principles enunciated in the case of Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another, (2011) 10 AD 365 : AIR 2012 SC 206 : (2012) 169 CompCas 133 : (2011) 6 CTC 90 : (2012) 340 ITR 1 : (2011) 4 RCR(Civil) 669 : (2011) 11 SCALE 438 : (2012) 1 SCC 656 : (2011) 11 SCR 848 : (2011) 202 TAXMAN 607 , could be considered while disposing off the case as merits.

12. Since the matter is of the year 2006, the learned Judge to dispose of the matter at the earliest and parties to cooperate with the learned Judge for early disposal of the suit.

Registry to send a copy of this order to the trial court.