
(1976) 12 KAR CK 0005
In the Karnataka High Court

Rachasetty

APPELLANT

Vs

Sambaling Setty

RESPONDENT

Date of Decision : 09-12-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 10, Order 16 Rule 10 (2)

Citation : AIR 1977 Kar 154

Hon'ble Judges : K. Jagannatha Shetty, J

Bench : Single Bench

Advocate : H.V. Ramachandra Rao, for the Appellant; V. Tarakaram, for the Respondent

Judgement

1. This is a revision petition by defendant 1. Against him, the suit O. S. No. 147 of 1973 based on a promissory note is pending before the Court of the Munsiff, Kollegal. The promissory note was executed by defendant 1 in favour of defendant 2 who in turn assigned the same to the plaintiff, who is none other than her brother.

*(Against order of Munsiff, Kollegal, D/-26-8-1975).

2. Defendant 1 has denied the consideration under the promissory note. He has stated that he executed the promissory note as a collateral security. To prove that there was no consideration there under, he is anxious to examine defendant 2. But defendant 2 has been evading to attend the Court. So, defendant 1 took summons to her. But that summons could not be served. Probably she avoided the process server. He then asked the Court to issue a warrant to secure her presence. That warrant also could not be executed. Thereafter, he asked the Court to issue a proclamation. But the Court refused to issue Proclamation on the ground that defendant 1 has no right to examine defendant 2 who is an opposite party in the suit.

The correctness of the order of the trial Court is challenged by defendant 1 in this revision petition.

3. The reason given by the learned Munsiff to reject the request to issue proclamation is not sound and also not supported very rightly by Sri Tarakaram, learned counsel for the plaintiff. The principle that a party in a suit has no right to examine his opposite party has no application to the -present case. Mr. Tarakaram, however, sought to support the order of the trial Court on a different ground. He submitted that the Court has no jurisdiction to issue Proclamation after the warrant was issued. The validity of that contention is the only question debated before me.

4. In order to appreciate the contention, it is necessary to set out O. XVI, R. 10 of the Civil P. C. It reads:

"10. Procedure where witness fails to comply with summons.-(1) Where a person to whom a summons has been issued either to attend to give evidence or to produce document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving-officer has not been certified by affidavit, and, may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching the service or non-service of the summons.

(2) Where the Court sees reasons to believe that such evidence or production is material and that such person has, with out lawful excuse failed to attend or to produce the document in compliance with such summons or has intentionally avoided service it may issue a proclamation requiring him to attend to give evidence or to -produce the document at a time and place to be named therein, and a copy of such Proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time after wards. The court may, in its discretion, issue a warrant either with or without bail, for the arrest of such Person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under R. 12:

Provided that no Court of Small Causes, shall make an order for the attachment of immovable property."

The Purpose of this rule is to enable the Court to help the Parties to compel the attendance of recalcitrant witnesses. The Court shall issue summons for the attendance of a -person to Rive evidence or to produce a document. If the summons is not served or where a person fails to attend even though served, the Court may take the next step, that is, issue a proclamation under O, XVI, R. 10 (2). For that, the Court must have reason to believe that the evidence or production of any document is material and that the person against whom the summons hag been issued, without lawful excuse, failed to attend or to produce the document or has intentionally avoided service. Even after the proclamation, if the person does not come before the Court, then, it could think of issuing a warrant to secure his Presence. The warrant cannot be issued at any time the

Court pleases. It is an extreme step, which the Court must take strictly in accordance with the provisions of O. XVI, R. 10 (3). The warrant may be issued either in- lieu of the proclamation if the Court thinks that the proclamation would not serve any purpose, or simultaneously at the time of issuing such proclamation if the Court thinks that it would better serve the -purpose, or at any time after the proclamation is issued. Order XVI, R. 10 (3) does not empower the Court to issue a warrant first and later to issue a proclamation. In other words, after issuing a warrant, the Court cannot think of issuing a Proclamation at a later -age although it COUICI nave is used Do without Lawful excuse failed to attend or simultaneously. My view finds Support to Produce the document in compliance from the decision of the Madras High with such summons or has intentionally Court in RanRaswami Reddy v. Konda avoided service, it may issue a Proclaim Reddy AIR 1920 Mad 1014 (2), wherein Seshagiri Iyer, J. observed at P. 1017:

"After issuing a warrant, the Subordinate Judge has certainly no right at a later stage to issue a proclamation. The proclamation is the first step and the warrant or the attachments are either concurrent or succeeding steps. There is no provision, which would enable a Court, which had issued a warrant. to issue at a later stages a proclamation against the witness."

The above statement of law could also be supported on another principle that when a mode of procedure is laid down by the Legislature in a particular manner, it implies that another and different method is not intended to be followed. It, therefore, follows that the Court has no Jurisdiction to issue a proclamation after the warrant is issued. On this ground, I may affirm the order of the trial Court.

5. Before parting with the case, I may however observe that it is open to the trial Court to re-issue the warrant since defendant 2 is deliberately evading the process of the Court.

6. With the above observations, this petition is dismissed.

7. No costs

8. Petition dismissed.