
(1997) 10 KAR CK 0006

In the Karnataka High Court

Case No : Regular Second Appeal No. 288 of 1992

Rangaraju

APPELLANT

Vs

The Chief Officer Town Municipal Council and Another

RESPONDENT

Date of Decision : 17-10-1997

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 274

Citation : (1998) ILR (Kar) 3281

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : K. Prabhakar, for the Appellant; J.G. Chandramohan, for R-1, for the Respondent

Judgement

M.F. Saldanha, J.—I have heard the appellant's learned Advocate and the learned Advocate who represents the first respondent - Town Municipal Council, Kolar. The 2nd respondent though served has not appeared.

2. The appellant is the original plaintiff and his learned Counsel points out to me that the suit was presented before the Trial Court praying for a composite relief against both the defendants. At the hearing, one of the issues that came up for consideration was the question as to whether the first defendant being the Town Municipal Council, the service of the statutory notice was a mandatory requirement. The Court upheld this contention and under normal circumstances ought to have rejected the plaint on this ground alone but instead of that, the Court proceeded to decide the entire case on merits and recorded findings under all the various issues. The Court dismissed the suit and this order came to be confirmed by the appeal Court. The appeal Court has also recorded a clear finding to the effect that the statutory notice u/s 274 was condition precedent and that in the absence of this notice, the suit was not maintainable as against defendant-1. The short question that has fallen for determination before this Court in the second appeal is the question as to whether, having regard to the undisputed position that the suit was not maintainable for want of the requisite

statutory notice, the Court was right in having proceeded with the decision of the case on merits. The law on the point has virtually been settled by the Division Bench decision of this Court reported in the case of K.P. Arvind Vs. Government of Karnataka, wherein the Division Bench of this Court has very clearly laid down that in situations such as this, the correct procedure is for the Trial Court is to reject the plaint and not to dismiss the suit on merits. The obvious reason for this decision arises from the fact that the non-service of notice is virtually a technical hurdle and in given instances if the cause of action persists, it would always be open to the plaintiff to overcome the defect or cure it by serving the requisite notice and re-instituting the proceedings. This however would not be permissible if there has been a decision on merits because the aspect of res judicata would arise.

3. The learned Advocate who represents the 1st respondent -Municipal Council has in the first instance pointed out to me that this was not the only issue decided against the plaintiff because in law the Court had also held that a suit of injunction simplicitor is not maintainable and that if the plaintiff desires the requisite relief, he ought to have also prayed for a declaration of title and in the absence thereof, that the plaint as presented was not maintainable. This was de hors the fact that the Court went into the factual aspect and decided against the plaintiff on facts. I do not propose to go into that last aspect of the matter in view of the order that is required to be passed but as far as what has been pointed out on behalf of R-1 is concerned, I need to only observe that this only reinforces the position in law that if the suit was not maintainable not only on one but two grounds, that the Trial Court should never have proceeded to examine the matter on merits in view of the fact that effectively the Court was hearing a suit that was not maintainable in law.

4. Learned Advocate who represents R-1 raised another interesting issue which I need to deal with. What he points out is that the statutory notice bar is something that would render the suit bad as against defendant-1 only and he submits that this legal hurdle would not come in the way of the maintainability of the suit as against the 2nd defendant and he therefore submits that even assuming the Court is inclined to pass appropriate orders with regard to the non-maintainability of the suit as against R-1, that the finding as against R-2 should not be disturbed. As far as this aspect of the matter is concerned, what one needs to examine is as to whether independent and correct reliefs were prayed for against the defendants and whether those reliefs were separable or severable. An examination of the plaint in this case would indicate that a common relief has been asked for against the two defendants and that the relief is not severable and consequently, if this Court were to uphold the submission canvassed on behalf of R-1, it would lead to very peculiar consequences. It would mean that the plaintiff would be entitled to re-institute the proceedings after curing the defect and sue R-1 and would not be able to re-institute the proceedings as against R-2 whereas the relief asked is a common one and this would lead to an incongruous situation in law. There is an additional reason for

this because even at the inception, the Trial Court acted correctly that the Court would have been required to reject the plaint in toto and not as against defendant-1 only because the same difficult position would have arisen. In the present case, that situation hardly arises because the allied finding with regard to the plaint being bad in law in so far as the relief asked for was for injunction simplicitor is something that affects the maintainability as against R-2 also. In this view of the matter, there is no option except to uphold the position as enunciated in the Division Bench judgment referred to by me, and the irresistible conclusion is that the rest of the findings that have been recorded by the Trial Court and confirmed by the appeal Court will all have to be set - aside on the ground that the Court lacks the requisite jurisdiction to go into these aspects of the case since the proceeding itself was not maintainable.

5. This second appeal succeeds on this short point alone. The findings recorded by the Trial Court and confirmed by the appeal Court on issue Nos. 1, 5 and 6 are set - aside and the findings as far as issue Nos. 2, 3 and 4 are concerned stand confirmed. The appeal succeeds to this extent and stands disposed of. In the circumstances of the case, there shall be no order as to costs.

6. As a necessary consequences of this order, the original plaint will have to be treated as having been rejected and the same will have to be returned to the plaintiff. The records that have been called for shall be re-transmitted to the Trial Court, forthwith.

7. Having regard to the point of law that has been canvassed by the two learned Advocates in this case with regard to the procedure that is required to be followed by the Trial Courts in situations of this type, it would be necessary to clarify that where the aspect of maintainability is raised as against the plaintiff, that the correct, procedure that the Trial Court must follow is to record a finding with regard to that aspect, be it on limited to jurisdiction, statutory notice or the like, and to reject the plaint at that stage itself if the finding is against the plaintiff. Not only would this obviate the need to go into the matter on merits and save the Court's time but it would also -ensure that precious judicial time is not spent on examination of issues of facts and law in a proceeding which is not maintainable. Mr. Prabhakar did point out that there may be situations in which reliefs asked for are separate as against different defendants and that if the plaint is bad as against the statutory body which is one of the defendants, whether the plaint should be rejected in its entirety or against that defendant alone. I have had occasion to point out that even in such situations, the partial rejection of the plaint as against the statutory authority alone would lead to an extremely incongruous situation because such rejection presupposes the fact that the party has a right to overcome the hurdle or the defect and reinstitute the proceeding and it would effectively lead to a situation whereby two suits would result in place of the earlier one. Undoubtedly, it may be open to a Court to hear the two suits together but such a procedure is not desirable in so far as if the plaint is liable to be rejected by the Court on the ground of maintainability as

against one of the defendants on the ground as has arisen in this proceeding, the correct procedure would be to reject it in its entirety in which case, it may always be open to the party to re-institute the proceedings after overcoming that hurdle.