

(2012) 10 KAR CK 0086

In the Karnataka High Court

Case No : Writ Petition No's. 80714-715 of 2012 (GM-CPC)

Ravindrakumar

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Representation of the Peoples Act, 1951 — Section 90

Citation : (2013) 3 AKR 268 : (2013) 3 KCCR 2527

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : R.V. Nadagouda, for the Appellant; Mallikarjuna Sahukar, HCGP for R1, Sri Manvendra Reddy, Advocate for R2, Sri P.S. Mali Patil, Advocate for R3, Sri Gourish S. Kashampur, Advocate for R4, for the Respondent

Judgement

Aravind Kumar, J.—Plaintiffs in O.S. 46/97 before Principal Civil Judge (Jr.Dn), Bidar have filed these writ petitions questioning the Order dated 21.11.2011 passed on I.A. No. XI, Annexure-E in so far as direction issued white allowing I.A. XI filed by the plaintiffs for amendment holding thereunder that said amendment shall not relate back to the date of filing of the suit but it will take effect from the date of filing of the application I.A. XI which was on 24.11.2011 and seeks for quashing of the said portion of the order and petitioner is also seeking for quashing of the Order dated 24.01.2012, Annexure-F directing the Sub-Registrar to furnish the market value of the suit property during 2011 to enable the Trial Court to pass orders on issue No. 4. Having heard the Learned Advocates appearing for the petitioners as well as respondents it was ordered to be listed for dictating on 28.09.2012. However, on the said date the matter did not reach and as such it has been listed today for dictating the orders.

2. The contention of Sri. R.V. Nadagouda, Learned Counsel appearing for petitioner is defendant/respondent No. 2 filed the written statement on 25.07.2011 denying the title of the plaintiff and this necessitated the plaintiff to seek amendment of the plaint and as such he contends that Trial Court

committed a error in applying the "doctrine of relation back" to the facts on hand and ordering for amendment to take effect from the date of filing of the application. He would further elaborate his submissions by contending that in the instant case petitioner-plaintiff instituted the suit O.S. 46/97 and on account of the defendants having filed the suit O.S. 18/97 which was earlier to the suit of the present petitioner/plaintiff i.e., 46/97, said suit came to be stayed u/s 10 of C.P.C and after dismissal of the suit on 14.07.2010, 2nd defendant in the present suit filed the written statement on 25.07.2011 and within three months from the said date application for amendment of plaint seeking declaration of title was filed in view of defendants denying the title of the plaintiff and contends that delay factor would not by itself be a ground to arrive at a conclusion that amendment would not relate back to the date of filing of the suit but from the date of filing of the application. He would also further contend that Trial Court erred in not holding Court Fees has to be paid as per the valuation of the property as on the date of the suit and there cannot be two dates in a suit for payment of Court Fees and as such the order of the Trial Court dated 24.01.2012 Annexure-F directing the Sub-Registrar to furnish the market value of the suit property as on 2011 is liable to be quashed and on these grounds he seeks for quashing of the impugned orders and allowing the writ petitions. In support of his submission he relies upon the following judgment:

1. Unreported judgment dated 03.01.2011

passed in W.P. 821/2009 (GM-CPC)

3. Per contra, Sri. Manvendra Reddy, Learned Counsel appearing for respondent No. 2 would support the order passed by the Trial Court and contends that there is no infirmity whatsoever in the impugned orders. He would also submit that there cannot be universal application of the doctrine of holding that amendment relates back to the date of filing of the suit and in appropriate cases the Courts would be empowered to fix the date of amendment to become effective and as such he prays for dismissal of the writ petitions. He would elaborate his submission by contending that principles of estoppel would apply to the facts on hand in as much as petitioner has accepted the order of the Trial Court by amending the plaint and as such he cannot question only a portion of the order particularly when the application has been allowed in part by the Trial Court and the said order having been accepted by petitioner/plaintiff by amending the plaint he cannot turn around and contend that said order is partially incorrect and having consciously accepted the order of the Trial Court, petitioner is estopped from challenging the same. In support of his submission he relies on the following judgments:

1. Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Regd.) Vs. Ramesh Chander and Others,

2. Sampath Kumar Vs. Ayyakannu and Another,

3. Cauvery Coffee Traders, Mangalore Vs. Hornor Resources (Intern.) Company

Ltd.,

4. Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others,

5. Vishwambhar and Others Vs. Laxminarayana (Dead) through L.Rs. and Another,

4. Having heard the Learned Advocates appearing for the parties and on perusal of the impugned order as also the authorities relied upon by the Learned Advocates I am of the considered view that following point would arise for consideration:

(i) Whether the Trial Court was justified and correct in applying the "doctrine of relation back" while allowing I.A. No. XI application for amendment of the plaint filed by the plaintiff and arrive at a conclusion that amendment allowed would take effect from the date of filing of the application i.e., on 24.10.2011?

(ii) Whether the principles of estoppel would apply to the facts on hand and as such petitioner is estopped from challenging the impugned orders?

(iii) Whether the order passed by Trial Court on 24.01.2012 directing the Sub-Registrar to furnish market value of the suit property during 2011 calls for interference?

5. The facts leading to filing of these writ petitions can be crystalised as under by referring to parties as per their rank in Trial Court: Plaintiff filed a suit O.S. 46/97 for perpetual injunction against respondents on 14.03.1997. Said suit came to be stayed on 17.06.1997 at the instance of defendants/respondents on the ground that between the same parties in respect of the same property there was a suit pending in O.S. 18/97 and said suit i.e., O.S. 18/1997 being suit filed prior to O.S. 46/97 same ought to be stayed and accordingly order came to be passed on 17.06.97 came to be stayed till the disposal of O.S. 18/1997. The said suit O.S. 18/97 is said to have been dismissed on 10.07.2010. Thereafter written statement came to be filed by second defendant on 25.07.2011 denying the title of the plaintiff in respect of suit schedule property. On account of such denial of title to the property plaintiff sought for amendment of the plaint namely for including the prayer for declaration of title to the suit properties, by filing I.A. No. XI on 24.10.2011, Annexure-C. Said application came to be resisted by the defendants contending that it is highly belated namely it was filed after 14 years after the institution of suit and as such sought for dismissal of the application. Trial Court having considered the rival contentions held that application has to be allowed and question of limitation has to be gone at the time of trial by framing a issue in this regard by relying upon the judgment of this Court in the case of Ramappa vs. Shivaputrappa Adivappa Navalgatti by L.Rs 2004 (4) KCCR 2905. Delay in filing the application was ordered to be compensated by imposing cost on the plaintiff. However Trial Court has specifically held that the amendment would not relate back to the date of filing of the suit but same would take effect from date of filing of the application by taking into consideration the fact that

defendants had contended that the title of the plaintiff had been disputed by the defendants way back in the year 1999 by applying the "doctrine of relation back". Consequent to the said order allowing the application Trial Court has directed the Sub-Registrar to furnish the market value of the property during 2011 and as such deferred answering issue No. 4 which related to payment of Court Fees.

Re: Point No. 1:

6. The parties to the present writ petitions do not dispute the fact of two suits having been filed namely plaintiff having filed O.S. 46/97 and defendants having filed suit O.S. 18/97. The parties are also at "ad idem" on the issue that suit O.S. 46/97 had been stayed vide Order dated 17.06.97 in view of the pendency of the suit O.S. 18/97, The said suit O.S. 18/97 was dismissed on 10.07.2010 and it is thereafter that is on 25.07.2011 second defendant (second respondent herein) filed the written statement. The suit O.S. 46/97 was filed on 14.03.97 and written statement by second defendant was filed on 25.07.2011 denying the title of plaintiff to suit schedule property. Plaintiff filed an application I.A. XI under Order VI Rule 17 CPC seeking amendment of the plaint namely to insert prayer for declaration and other consequential reliefs on the ground that second defendant had denied the title of the plaintiff in the written statement filed.

7. As noted hereinabove the gist of the contention raised by Sri. R.V. Nadagouda, Learned Counsel appearing for petitioner is that immediately within three months from the date of filing of written statement by 2nd defendant application for amendment i.e., I.A. XI was filed seeking larger relief and as such Trial Court could not have applied theory of "doctrine of relation back" to the facts of the case and it could not have held that amendment allowed would relate back to the date of filing of the application i.e., 24.10.2011 and not to the date of filing of the suit. At this juncture it would be relevant to note the averments made by the plaintiff in the plaint which is produced at Annexure-A to the present writ petition and particularly in paragraph 7 it has been specifically contended by plaintiff as follows:-

7. That, the defendants xxx thereon. Even they have denied the title of the plaintiff over the suit property. They had come to the xxx to answer.

8. This specific averment in the plaint would go to show that plaintiff knew very well that defendants have denied the title to the property as on date of filing of the suit i.e., 14.03.1997. Be that as it may. In the instant case the suit filed by the plaintiff O.S. 46/97 had been stayed by the Trial Court by Order dated 17.06.97 and said order of stay was in force/operation till 10.07.2010 and it is thereafter i.e., on 25.07.2011 written statement came to be filed by the second defendant denying plaintiff's title to suit property. It has to be examined as to what would be the effect of stay granted in O.S. 46/97 namely whether the suit and all proceedings thereto would get stayed or the said Court would still have control over the suit and the proceedings thereto and whether an application for

amendment or any other interlocutory application could have been filed in the said suit which had been stayed. In order to answer this incidental question the language employed in Section 10 CPC requires to be perused and same reads as under:

Section 10. Stay of suit - No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in [India] having jurisdiction to grant the relief claimed, or in any Court beyond the limits of [India] established or continued by [the Central Government] and having like jurisdiction, or before [the Supreme Court]".

9. A perusal of the above provision would leave no doubt that the stay of suit as envisaged u/s 10 CPC relates to the trial and not the proceedings. The Court which has stayed the suit would not loose its control over the suit/proceedings and it continues to administer the said suit including the proceedings except to the extent of laying its hands for conducting the trial. In this regard the following judgments can be looked up to support this view.

1. Baburao Vithalrao Sulunke Vs. Kadarappa Prasappa Dabbannavar and Another
2. It seems to me that this order is clearly unsustainable. This Court in C.R.P. No. 2745 of 1972 decided on 22.02.1973, has laid down that a Court which is seized of a suit which has been stayed pursuant to the provisions of Section 10, C.P.C had nevertheless jurisdiction to make interlocutory orders, if relief in that behalf, is claimed by any of the parties Section 10 C.P.C also seems to refer to the stay of trial of a suit and not other proceedings of an interlocutory character".

2. Sujanbai Haribhau Kakde and Others Vs. Motiram Gopal Saraf and Another,

10. There cannot be any dispute that the provisions of Section 10 of the Code are mandatory. In Manoharlal's case (stated supra) the Supreme Court has categorically observed that provision of Section 10 of the Code is clear and mandatory. There is, therefore, no difficulty in holding that the Trial Court has to stay the trial of the suit which is governed by the provisions of that section. However, it may be noted that what is prohibited is proceeding with the trial of the suit. The word "trial" has not been defined in the Code and that word occurring in Section 10 will have to be construed in the light of scheme of the Code itself. As has been observed by the Supreme Court in Harish Chandra's case the word "trial" standing by itself is susceptible of both the narrow and wider senses i.e., it may be understood in the limited sense as meaning the final hearing of the matter consisting of examination of witnesses, filing documents and addressing arguments or it may be connote entire proceedings before the Tribunal from the lime that the matter is instituted until pronouncement of the decision. The case before the Supreme Court was under the Representation of People Act of 1951, and, there the Court was called upon to construe the word

"trial" occurring in Section 90 of that Act. Considering the scheme of the Act the Supreme Court held that the word there was used in a wider sense. It would, therefore, appear that the word "trial" cannot have only one meaning as urged by Mr. Kherdekar, namely all proceedings right from the institution of the plaint till disposal of the suit. As has been observed by the Supreme Court, it is also capable of narrower meaning namely the final hearing of the suit consisting of examination of witnesses, filing documents and addressing arguments. In my view it is in this narrow sense that the word "trial" has been used in Section 10 of the Code".

3. V.R. Balakrishnan Nadar Vs. R. Velayudhan Nadar and Others,

4. The same view has been taken in regard to passing interlocutory orders by the Mysore High Court in Baburao Vithalrao Sulunke Vs. Kadarappa Prasappa Dabbannavar and Another In the decision of the Lahore High Court in 109 Ind. Cas. 224 (Lahore) , it had been held that once a Court has made an order u/s 10 staying the proceedings in a suit it has no jurisdiction to fix further dates for the hearing of the suit unless moved to do so by either party. In that case in spite of the fact that the suit had been stayed the Civil Judge fixed a date for the hearing of the suit. On the date fixed the plaintiff failed to appear and the Learned Judge dismissed the suit. It was held by the Lahore High Court that the order was without jurisdiction. That decision is in no way helpful to the decision in this case. Certainly the correctness of that decision is beyond controversy".

4. Smt. Lakshmi Devi Vs. Rajendra Prasad Sao and Others,

5. Section 10 of Civil P.C. xxx From a bare perusal of the aforementioned provision, as also of the Order dated 03.02.1981, which has been produced before me, it is clear that the Court can stay merely the trial of the suit which was done and thus the Court had ample jurisdiction to appoint a receiver as contemplated under O. XL R. 1 of the Civil P.C. and the refusal to entertain the petition on the ground mentioned in the impugned order is patently illegal".

10. The principles enunciated in these judgments when read alongwith provision namely Section 10 of CPC it would clearly go to establish that stay of the suit would mean and include stay of the trial only and not other proceedings which would be to avoid conflict of decisions. In other words when the parties to the lis are directly and substantial in issue in both the suits the said course is required to be adopted namely to stay the trial of subsequent suit and it is this precise exercise which was undertaken in the instant case by Trial Court while passing Order dated 17.06.97 by staying subsequent suit i.e., O.S. No. 46/1997. In that view of the matter, plaintiff herein was not precluded from filing application for amendment particularly in the backdrop of defendant having admittedly denied the title of the plaintiff and there being no stay of the proceedings itself.

11. Now turning my attention to the issue of applying "doctrine of relation back" it can be noticed from the impugned order, Trial Court has relied upon the Judgment of Hon"ble Apex Court in the case of Sampath Kumar vs. Ayyakannu

(supra), whereunder it has been held as follows:

10. An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed. (See Siddalingamma and Another Vs. Mamtha Shenoy,

12. In the above case the Hon''ble Apex Court noticed that amendment of plaint was filed after lapse of eleven years and as such held that said doctrine would be applicable to the facts on hand. In the instant case the Trial Court has noticed that title of the plaintiff was disputed by the defendant way back in the year 1999 itself and came to a conclusion that relief of declaration being barred by limitation cannot be a ground to reject the application for amendment which is otherwise necessary for the final and proper adjudication of real controversies between the parties. It also held that when the defendant raises plea of limitation, it would be a fit case to order that amendment should take effect from the date of filing of the application. The said order passed by the Trial Court is in complete consonance with the dicta laid down by Hon''ble Apex Court in Sampath Kumar's case referred to supra. As discussed herein above the application for amendment having been filed after 14 years from the date of filing of the suit and the stay of the suit not being a bar to file such application, Trial Court has rightly applied the "doctrine of relation back" to the facts on hand. No infirmity can be found from the order of Trial Court on whatsoever ground. Accordingly, Point No.(i) is answered by holding that Trial Court was justified in applying "doctrine of relation back" to the facts on hand and said order does not call for any interference.

Re: Point No. (ii):

13. Though Sri. Manvendra Reddy, Learned Counsel for respondent No. 2 has raised an objection with regard to the maintainability of the writ petition on the premise that plaintiff has accepted the order of Trial Court by amending the plaint and as such he cannot now question the said order by contending that "doctrine of estoppel" would preclude the plaintiff from challenging the said order. It does not detain this Court too long to brush aside the said argument in as much as in the instant case plaintiff is aggrieved to the extent of allowing the amendment partially namely restricting the amendment by holding that it would take effect from the date of application and not from the date of the suit, since the defendant had raised the issue of said prayer being belated and barred by limitation. By no stretch of imagination it can be construed that plaintiff is attempting to approbate or reprobate or "blow hot and cold". On the other hand the plaintiff has accepted the order of the Trial Court to the extent of allowing the amendment and is challenging that portion of the order holding said amendment

would not take effect from the date of suit but it would take effect from the date of application. Hence, it cannot be said that plaintiff is estopped from challenging the said order. In view of the same, contention of Learned Counsel for respondent No. 2 stands rejected and Point No. (ii) is answered against the respondent No. 2.

Re: Point No. (iii):

Sri. R.V. Nadagouda, Learned Counsel appearing for petitioner has relied upon the unreported judgment rendered in W.P. 821/2009 on 03.01.2011 to contend that in the said case it was held that Court Fee paid on the basis of the amendment which related back to the date of filing of the suit is just and proper and contends same has to be applied to the facts of the case. A perusal of the said judgment would clearly go to show that it is more in favour of defendants rather than the plaintiff. In the said case it can be noticed that an order on issue No. 2 holding that Court Fee paid on the plaint was sufficient came to be questioned before this Court, The suit was filed initially for permanent injunction and subsequently converted to declaration of ownership and for setting aside registered Sale Deed 06,04.84 and also for a declaration that the lease deed is not binding on the plaintiff. On amendment being permitted additional Court Fee for relief of declaration came to be paid and memo of calculation came to be objected by defendants therein contending that Court Fee on the market value of the suit property should be calculated as on the date of allowing the amendment of the plaint or on the date of the application of the plaintiff and accordingly Court Fee has to be paid. Said contention was negatived which was carried before this Court by defendants in W.P. 821/2009. While rejecting the writ petition this Court has made an observation that in the event of Trial Court itself had specified the date of amendment to take effect from a particular date, only in such circumstances, the Court Fee could be demanded from the plaintiff by determining the market value as on said date to be the effective date and not from the date of filing of the suit and not otherwise. In fact in the instant case, it is this precise exercise which has been undertaken by the Trial Court as can be seen from the impugned Order dated 24.01.2012 by holding that valuation paragraph was got amended in year 2011 and in view of the fact that amendment has been held to take effect from the date of application i.e., 24.10.2011 it has directed the Sub-Registrar to furnish the market value of the property during 2011, Said reasoning is neither erroneous nor contrary to provisions of Karnataka Court Fees and Suits Valuation Act (KCF & SV Act). As such I am of the considered view that said judgment would not come to rescue of petitioner but would support the contention of the respondents. Hence, Point No. (iii) deserves to be answered against the petitioner and in favour of respondents.

For the reasons aforesaid following order is passed:

ORDER

1. Writ Petitions are hereby dismissed.
 2. Order dated 21.11.2011, Annexure-F and Order dated 24.01.2012, Annexure-F passed by Principal Civil Judge, Bidar in O.S. No. 46/1997 are hereby affirmed.
 3. Costs made easy.
- Ordered accordingly.