

(1978) 09 KAR CK 0013
In the Karnataka High Court
Case No : RSA. 135 of 1973

Rudrappa P.

APPELLANT

Vs

Mukesh Textiles Mills (P) Ltd.

RESPONDENT

Date of Decision : 21-09-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1

Citation : (1979) 1 KarLJ 16

Hon'ble Judges : Sabhahit, J

Judgement

1. This is second defendant's second appeal against the judgment and decree d/ 29-8-1972 passed by the Addl. Civil Judge, Shimoga in RA.145 of 1969 on his file confirming the judgment and decree d/ 18-10-66 passed by the Munsiff, Shimoga in OS.757 of 1966 on his file decreeing the suit of the plaintiff as prayed for. Plaintiff instituted the suit for recovery of Rs.745-27 from the defendants. Plaintiff affirmed in para-2 of the plaint that it is an incorporated Company registered under the Companies Act. The defendants challenged the assertion and put the plaintiff to strict proof that it was a registered Company. The learned Munsiff, however, did not seriously consider this aspect at all and decreed the suit of the plaintiff as prayed for. Aggrieved by the said judgment and decree the defendant concerned went up in appeal before the learned Civil Judge who dismissed the appeal confirming the judgment and decree of the trial Court. Aggrieved by that judgment and decree the defendant has come up in second appeal before this Court.

2. The learned Advocate appearing for the defendant-appellant vehemently contended that defendant denied specifically that the plaintiff was an incorporated Company registered under the Companies Act; both the Courts below did not take the issue seriously even when there was no evidence to show that the plaintiff-Company was registered under the Indian Companies Act.

As against that, the learned Advocate appearing for respondent submitted that the "power of attorney" produced by the witness examined in the trial Court

clearly mentions that plaintiff was a Company. The sole point therefore, that arises for my consideration in this appeal is whether the suit filed by an alleged Company or on behalf of the Company could be decreed when the very status of the Company was challenged by the defendant; and no evidence was placed to show that the Company was registered under the Companies Act.

3. It is obvious that a suit can be brought by a person either natural or legal. A Company becomes a legal person or a juristic person when it is incorporated and registered under the Indian Companies Act, that is what the plaintiff asserted in para 2 of the plaint. He stated, "the plaintiff is a Company incorporated under the Indian Companies Act having its registered office at Harige, Shimoga." This assertion was, traversed by the defendant in his written statement wherein at para-1 he has asserted, "defendants are not aware that the plaintiff is a Company incorporated under the Indian Companies Act and having its registered office at Harige, Shimoga and that Sri. K.G. Hathi is the manager and the power-of-attorney holder and has authority to file this suit. The defendant puts the plaintiff to strict proof of the same." If the defendant had merely stated that, he was not aware whether the Company was incorporated it may not be termed as a specific denial. But the defendant has gone further and has stated that the plaintiff is put to strict proof that the Company is a registered Company. That being so, the parties were at issue on the point, whether the Company was incorporated by being registered under the Companies Act. On this aspect as rightly pointed out by the learned Counsel appearing for the appellant, the best evidence should have been the certificate of registration of the Company. That could have been conclusive evidence that the Company was registered and incorporated and the same is not produced in this case. The learned Civil Judge, however, has not taken the matter seriously. He has simply brushed aside the point by observing in para-13 of his judgment thus:

"It was further submitted by Sri R.K. Jayathirthachar that no evidence has been adduced to show that the plaintiff is a company registered under the Indian Companies Act. It is true that no evidence has been adduced in this behalf. Sri R.K. Jayathirthachar has not shown any authority to show that a suit filed by an unregistered company is not maintainable. Therefore, I am unable to uphold the submission of the learned Counsel for the appellants-defendants that the suit is not maintainable."

Thus it is obvious that matter was agitated both before the trial Court and before the first Appellate Court. The first appellate Court has in so many words admitted that no evidence has been adduced to show that the plaintiff-company is a registered company. But still taking the view that no authority was placed by the learned Counsel to show that a suit by an unregistered Company cannot be maintained, he has disallowed the contention so raised which is obviously wrong. Ignorance of law is no excuse. The only enabling provision made in the Civil Procedure Code is under Order 30 which enables a firm registered under the Indian Partnership Act to institute the suit in the name of the firm. Order 29

speaks of suit by or against corporations, which are legal entities. In the case of a Company it gets a right to sue or be sued on the obvious ground that once, it is registered it becomes incorporated and becomes a legal person. It can sue or be sued. Therefore it is manifest that in the absence of such incorporation by registering a Company under the Companies Act, body or association of persons would not convert them selves into a legal person and they have no Locus-standi to sue in the name of the Company. The authorities are to be found in the cases of Board of Directors v. YMCA, Allahabad, AIR. 1957 All. 219 and Mahabir v. Anjuman Wazifatul Muslimin, AIR. 1955 All. 872.

4. In the result, therefore it is obvious that the suit is liable to be dismissed as it is not established by the plaintiff that the plaintiff is a company registered under the Companies Act; and as such is incorporated as a legal entity. The appeal in that view is allowed. The Judgments and decrees of the Courts below are set aside and the suit is dismissed. On the peculiar facts of this case I make no order as to costs throughout this proceeding.