

(1951) 08 KAR CK 0006

In the Karnataka High Court

Case No : Civil Revision Petition No. 202 of 1951-52

S. Kamesam

APPELLANT

Vs

S. Rangaraju Naidu

RESPONDENT

Date of Decision : 31-08-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 151

Citation : AIR 1953 Kar 90

Hon'ble Judges : Mallappa, J

Bench : Single Bench

Advocate : K. Nanjundayya, for the Appellant;

Judgement

1. This is a Revision Petition against the order in O. S. No. 27/49-50 on the file of the principal District Judge, Bangalore, on I. A. I, directing a stay of the suit pending decision of O. S. No. 8 of 1947, a suit filed in the Court of the Subordinate Judge, Salem. It will be noticed that a suit, was filed in the year 1947 by the plaintiff in Salem on the foot of a document, and another suit was filed in respect of the same cause of action and based on the same document, in O. S. No. 27 of 1949-50 on the file of the District Judge, Bangalore. The point that the two suits are based on the same cause of action is not denied, though much more than what is claimed in this suit has been claimed in the suit filed in the Sub-Court, Salem. The question whether a suit could be filed at Salem is under consideration and the defendant in this case has filed an application for stay of the present suit till that case is disposed of, under Sections 10 and 151, C. P. C.

2. It is contended that the order was passed when Section 10, Civil P. C. in Mysore was applicable, and according to that Section.

"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 whether such suit is pending in the same or any other Court in Mysore having jurisdiction to grant the relief claimed.

Before Section 10, Civil P. C. in Mysore could apply, it was necessary to show that the two suits were pending in the Courts in Mysore. In fact, the pendency of a suit in a foreign Court, according to the explanation, did not preclude the Courts in Mysore from trying a suit founded on the same cause of action. It is clear that at the time the order was passed the Court could not have passed an order u/s 10 staying the proceedings in the suit filed in that Court pending decision of a suit instituted at Salem. It was also contended that Section 151, C. P. C., is not applicable to such cases: but all that could be said in such matters is that Section 10, C. P. C., applies to a case where an application is filed for stay of a suit pending decision in another suit filed within Mysore State. When, however, an application was filed for stay of a suit filed in a Court in Mysore State pending decision of a Court outside Mysore, it cannot be said that the Court in Mysore State had no inherent power u/s 151, C. P. C., to stay the suit in the ends of justice or to prevent abuse of the process of the Court. The cases reported in -- "Dwarkanath Das v. Governor General of India in Council" AIR 1947 Lah. 28 (A) and -- "Laxmi Bank Ltd, Akola v. Harikisan" AIR 3943 Nag. 297 (B) clearly support the view, that Courts have power to stay suits u/s 151, C. P. C., in proper cases when Section 10 is not applicable. The lower Court rightly exercised its discretion under the powers it had u/s 151, C. P. C., to stay the proceedings in a case of this kind.

3. This Revision Petition, therefore, stands dismissed.

4. Revision dismissed.