

(2015) 10 KAR CK 0228

In the Karnataka High Court

Case No : Writ Petition No. 27137 of 2014 (GM-CPC)

S.A. Babu Reddy

APPELLANT

Vs

Munireddy and Others

RESPONDENT

Date of Decision : 07-10-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 21 Rule 101, Order 21 Rule 106, Order 21 Rule 97

Citation : (2016) 1 AKR 147

Hon'ble Judges : L. Narayana Swamy, J

Bench : Single Bench

Advocate : S. Shekar Shetty, for the Appellant

Final Decision : Allowed

Judgement

L. Narayana Swamy, J—This writ petition is filed by the petitioner - decree holder challenging the order dated 22.04.2014 passed in Execution Petition No. 2903/2011 on the file of the City Civil Judge, Bangalore (CCH-8). By the impugned order, the executing court has allowed application filed under Order 21 Rule 97 and 101 of CPC.

2. The facts to be stated in brief are that the petitioner filed suit O.S No. 1748/2004 on the file of the City Civil Judge, Bangalore CCH-8 for the reliefs of specific performance against respondents 1 to 9 directing them to execute sale deed as per the agreement of sale dated 5.12.1993 in respect of the land bearing Sy. Nos. 15 & 68/1 measuring 2 acres 4 guntas and 34 guntas respectively situated at Parappana Agrahara Village, Begur Hobli, Bangalore South Taluk.

3. In the above suit, the impleading applicants (obstructers/applicants) filed application under Order 1 Rule 10 of Code of Civil Procedure to implead themselves as additional defendants. The petitioner filed objections to the said application. After contest the court below has rejected the applications by the

order dated 1.4.2010. The impleading applicants (obstructers) accepted the order rejecting their application for impleading and they have not agitated the said order any further.

4. The above suit came to be decreed in favour of the petitioner by the judgment and decree dated 1.10.2011. In pursuance thereof, the petitioner filed Execution Petition No. 2903/2011 against the respondents 1 to 9 to execute the sale deed in terms of the judgment and decree dated 1.10.2011 passed in O S No. 1748/2004. In the execution petition, the respondents 12 to 30 filed the application under Order 21 Rule 97 & 101 of the Code of Civil Procedure, which came to be allowed by the executing court by the impugned order. Hence the petitioner has filed the present writ petition.

5. I have heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the records.

6. The point that arises for consideration is, whether the impugned order suffers from infirmity calling for interference by this Court? My answer would be in favour of the petitioner for the following reasons:

7. Admitted facts are that the petitioner has filed the suit for the reliefs of specific performance and the said suit came to be decreed in favour of the petitioner. During pendency of the suit, the obstructers made impleading application on the ground that they have purchased residential sites formed in the suit schedule lands from the defendants and they are in occupation of the respective sites as absolute owners, they are the bona fide purchasers for valuable consideration under respective sale deeds. The plaintiff and defendants colluded with each other in order to defraud the impleading applicants, filed the suit. The applicants are proper and necessary parties to the suit. If the applications are not allowed, they would be put to greater hardship and irreparable loss and there will be multiplicity of proceedings.

8. The plaintiff - petitioner filed objections to the impleading application that the suit schedule property belonged to the defendants and it was their ancestral property. The plaintiff is the agreement holder executed by the defendants in respect of the suit schedule properties, they have paid substantial amount towards sale consideration, the properties alleged to have been purchased by the impleading applicants is the residential sites situate in gramthana and bear khata number and assessment number. The suit schedule property has not at all been converted for non agricultural purpose and it is not vested with the Village Panchayat. Hence it is contended that the impleading applicants are nothing to do with the suit schedule property. Therefore, it is contended that applicants are neither proper nor necessary parties to the suit.

9. The court below while passing the order rejecting the impleading application has held that the impleading applicants are claiming their sites said to have situated in gramatana, whereas the suit schedule lands are still agricultural lands and not converted for non agricultural purposes. Thus the suit schedule lands are

distinct from that of the properties said to have been purchased by the impleading applicants from the defendants. Apart from that the impleading applicants are claiming independent title and possession over the sites which they alleged to have purchased from their vendors and that being the case, they can very well protect their properties on the basis of the title deeds and also on the basis of the necessary municipal documents. So, the judgment and decree in case if it is passed in favour of the plaintiff in the suit, it does not in any manner affect the right and title of the impleading applicants in respect of their respective properties. Thus relying upon the decision reported in ILR 2005 KAR 2475 to the effect that for specific performance of contract, the person having independent title and possession over contracted property is neither necessary nor proper party and therefore, not entitled to join as party defendant in suit, court below held that the impleading applicants (Obstructors) are neither necessary nor proper parties and accordingly rejected the impleading application.

10. The obstructers accepted the above order passed by the court below and did not agitate the above order any further, but however filed the present application seeking to reject the execution petition.

11. It is seen from the records that the obstructers already filed suits on the basis of sale deeds and obtained decree in their favour, namely O S No. 2396/2004, 2397/2004, 2398/2004, 1719/2004, O S No. 3286/2004, O S No. 8966/2012 and O S No. 15846/2004 and now the matters are seized in R F A No. 497 to 499/2008 before this Court. Therefore, the obstructers who are basing their title on the basis of individual sale deeds have to protect their right on the basis of individual title deeds and are not entitled to have a resolution of their dispute in the execution petition filed by the petitioner.

12. The court below while passing the impugned order has failed to note that on the same set of facts, the obstructers moved the impleading application and failed in their attempt. They have accepted the said order and therefore they are not entitled to obstruct the decree in the execution petition and seek for rejection of the execution petition.

13. The learned counsel for the petitioner placed reliance on the decision in Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and another, (1998) 3 AD 249 : AIR 1998 SC 1754 : (1998) 3 JT 1 : (1998) 119 PLR 519 : (1998) 2 SCALE 550 : (1998) 3 SCC 723 : (1998) 2 SCR 587 : (1998) 1 UJ 521 : (1998) AIRSCW 1544 : (1998) 3 Supreme 555 to the effect that resistance or obstructions made even by a third party to the execution of decree can be gone into under O. 21 Rule 97, Rules 97 to 106 in Order 21 are subsumed under the caption "resistance to delivery of possession to decree-holder or purchaser." A third party to the decree who offers resistance would thus fall within the ambit of R. 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. The court is not obliged to determine a question merely because the resistor raised it. The words "all questions arising between the parties to a proceeding on an application under R. 97" would

envelop only such questions as would legally arise for determination between those parties.

14. The learned counsel for the respondents placed reliance on decision in Ashan Devi and Another Vs. Phulwasi Devi and Others, (2004) 1 CTC 55 : (2003) 9 SCALE 783 : (2003) 12 SCC 219 : (2003) 5 SCR 820 Supp : (2003) AIRSCW 6458 : (2003) 8 Supreme 285 and in Sri Venkatarayappa Vs. Sri G. Muniyappa and Others, AIR 2008 Kar 163 : (2008) ILR (Kar) 3553 : (2008) 3 KCCR 1551 . The facts of the said cases are different from the facts involved in the present case. In those two decisions, the court was concerned with threat of dispossession of the obstructers and knowledge of the decree holder about title of the obstructers and not impleading them in the suit and obtaining a decree. But here is a case where the obstructers made impleading applications which came to be dismissed by the trial court and the impleading applicants did not assail that order and accepted with the same. Further the obstructers who are claiming title based on the individual title deeds and as the petitioner claims that the properties claimed by the obstructers are different and distinct, they are entitled to agitate their rights in respect of their respective sites. Some of the obstructers' rights are resolved in the individual suits filed by them and therefore one more resolution of their dispute in the present execution does not arise.

15. In the circumstances, I am of the view that the court below has committed an error in passing the impugned order. Accordingly, the writ petition is allowed. Impugned order is hereby quashed.