

(2007) 03 KAR CK 0032

In the Karnataka High Court

Case No : Writ Petition No. 1420 of 2006

Shankarappa (since deceased by his L.Rs. Sangamma and Others)

APPELLANT

Vs

Basawarajappa Gouda

RESPONDENT

Date of Decision : 07-03-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4, Order 22 Rule 4 (2), 151

Citation : (2007) ILR (Kar) 1578 : (2007) 2 KarLJ 125

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : Veeresh B. Patil, for the Appellant; S.R. Hegde Hudlamane, for the Respondent

Judgement

H.N. Nagamohan Das, J.—The respondent herein filed O.S.No. 66/90 against Sri Shankrappa, for decree of specific performance of an agreement of sale. The said Shankrappa entered appearance before the trial Court and filed written statement inter alia denying the execution of agreement of sale in favour of the respondent. The said O.S.No. 66/90 came to be decreed vide judgment dated 9.8.96. After passing of the decree in O.S.No. 66/90, the defendant Shankrappa died. The petitioners herein who are the legal representatives of the deceased Shankrappa filed an appeal in R.A.No. 172/88 and the same came to be allowed and the matter was remanded to the trial Court for fresh disposal in accordance with law. After remand, the respondent adduced evidence and when the matter was set down for arguments, the petitioners filed an application under Order 22 Rule 4 R/w Section 151 of CPC seeking permission of the Court to file additional written statement. The trial Court after hearing both the parties passed the impugned order rejecting the application filed by the petitioners. Hence, this writ petition.

2. Sri Veeresh B. Patil, learned Counsel appearing for the petitioners contend that as legal representatives of deceased Shankrappa the petitioners are bound by

the judgment and decree passed in O.S.No. 66/90. Therefore, the petitioners as legal representatives are entitled to file additional written statement. He further contends that the written statement filed by the legal representatives will not take away the admission made by their father Shankrappa which enure to the benefit of the respondent. The trial Court without considering this aspect of the matter committed an error in passing the impugned order rejecting the application filed by the petitioners.

3. Per contra, Sri S.R. Hegde, learned Counsel for the respondent contend that the petitioners are not entitled for taking an inconsistent plea than what has been taken by their father Shankrappa before the trial Court. The written statement filed by the petitioners discloses that they have pleaded independent right in the schedule property and as legal representatives they are not entitled to take such a plea. Reliance is placed on the following decisions:

ILR 1999 KAR 54

Vidyawati Vs. Man Mohan and others,

Bal Kishan Vs. Om Parkash and Another,

4. Heard arguments on both sides and perused the entire writ papers.

5. It is necessary at this stage to notice the relevant provision i.e., Order 22 Rule 4(2) of CPC and the same reads as under:

4. Procedure in case of death of one of several defendants or of sole defendant-

1) xxxxxx

2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

3) xxxxxx.

4) xxxxxx

5) xxxxxx

6. The Supreme Court while interpreting the scope of Sub-rule 4 of Order 22(2) CPC in the case of Vidyawati Vs. Man Mohan and others, held as under:

It is seen that the petitioners' claim of right, title and interest entirely rest on the Will said to have been executed by Champawati in favour of the first defendant and herself. It is now admitted across the Bar that the first defendant had life interest created under the Will executed by Champawati. Therefore, the said interest is conterminous with his demise. Whether the petitioner has independent right, title and interest dehors the claim of the first defendant is a matter to be gone into at a later proceedings. It is true that when the petitioner was impleaded as a party-defendant, all rights under Order 22, Rule 4(2) and defences available to the deceased defendant become available to her. In

addition, if the petitioner had any independent right title or interest in the property then she had to get herself impleaded in the suit as a party defendant in which event she could set up her own independent right, title and interest to resist the claim made by the plaintiff or challenge the decree that may be passed in the suit. This is the view the Court below has taken rightly.

In *Gajraj v. Sudha and Ors.* reported in ILR 1999 KAR 54, it is held that as legal representatives who stepped into the shoes of their predecessor they are entitled to take all defences available to the deceased. It is further held that the legal representatives cannot take up a defence arising out of their individual rights.

In *Bal Kishan Vs. Om Parkash and Another*, it is held that under Order 22 Rule 4(2) CPC authorises any person who is brought on record as the legal representative of a defendant may make any defence appropriate to his character as legal representative of the deceased defendant.

7. From the reading of the decisions referred to above and under Order 22 Rule 4(2) CPC, it is clear that the legal representatives of the deceased defendant are entitled to file additional written statement or objections before the trial Court. The legal representatives are entitled to take a defence which is available to their predecessor in title. The legal representatives are not entitled to take inconsistent or contradictory plea on the admitted facts made by the deceased. The legal representatives are not entitled to take any defence relating to their independent rights.

8. Keeping this principle in view, it is necessary to examine the fact situation in the instance case. It is not in dispute that the respondent filed O.S.No. 66/90 against the father of the petitioner Shankrappa for decree of specific performance of an agreement of sale. Further, it is not in dispute that the deceased Shankrappa at the first instance in his written statement had denial the execution of the agreement of sale. Now, the legal representatives in their written statement want to plead that their father Shankrappa had no right to alienate the schedule property in view of the judgment and decree in O.S.No. 25/87. It is further contended that the transaction between the deceased Shankrappa and the respondent is an outcome of fraud. This plea in the written statement by the petitioners will not take away the admission made by the deceased Shankrappa in his written statement. On the face of it, the pleading of the petitioners will not amount to inconsistent statement on admitted facts. Further, in the proposed amendment the petitioner are not pleading independent right. Therefore, the trial Court committed an error in rejecting the application filed by the petitioners on the ground that the petitioners are pleading their independent right against the respondent. The impugned order passed by the trial Court is not only contrary to the facts but also to the law. The impugned order is unsustainable for the reasons stated above.

9. For the reasons stated above, the following:

ORDER

i) The writ petition is allowed.

ii) The impugned order dated 13.1.2006 in O.S.No. 66/90 passed by the Civil Judge (Jr.Dn), Yadgiri, is hereby quashed. The application filed by the petitioners under Order 22 Rule 4 of CPC is hereby allowed permitting the petitioners to file the written statement.

iii) The trial Court is directed to accept the written statement already filed by the petitioner on record and proceed with the matter in accordance with law.

Ordered accordingly.