

(2016) 06 KAR CK 0156

In the Karnataka High Court

Case No : Writ Petition Nos. 13805 and 13806 of 2016 (GM-CPC)

Smt. Narayanamma

APPELLANT

Vs

K. Nanjegowda

RESPONDENT

Date of Decision : 21-06-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 99

Citation : (2017) 169 AIC 306 : (2016) 6 KantLJ 152

Hon'ble Judges : P.S. Dinesh Kumar, J.

Bench : Single Bench

Advocate : Sri Kalyan R, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

P.S. Dinesh Kumar, J.—These writ petitions are directed against order dated 2-11-2015 on I.A. No. VIII filed under Order 21, Rules 97 and 99 of Civil Procedure Code, 1908 in Ex.P. No. 14 of 2012, by the Trial Court dismissing the said I.A. filed by the petitioner objecting execution proceedings.

2. Heard. Shri Kalyan R., learned Counsel for the petitioner submits that the decree-holder had filed a suit in O.S. No. 28 of 1999 against three persons namely, Smt. Muniyamma, Sri Muni Annyappa and Sri Narayanaswamy. Defendants 1 and 3 filed the written statement as per Annexure-C admitting all the averments in the plaint. On consideration of the material on record, the said suit was decreed by the Trial Court against all defendants vide judgment and decree dated 21-7-2001 directing all three defendants to execute an absolute sale deed in favour of the plaintiff therein. The decree-holder initiated execution proceedings. The petitioner herein filed the instant application under Order 21, Rules 97 and 99 of CPC to implead her as an objector to the proceedings. The said application was resisted by filing statement of objections by the decree-holder. On consideration of the material on record, the Court below has dismissed the said application.

3. Learned Counsel for the petitioner, though does not seriously challenge the impugned order, so far as Order 21, Rule 97 of CPC is concerned, makes the following submissions assailing the order so far as it pertains to Order 21, Rule 99 of CPC:

(a) that the dismissal of I.A. No. VIII filed under Order 21, Rule 97 of CPC is unsustainable in law because the said application is covered by a ruling of this Court in the case of *Jesaraj Ghasimal Betal v. Ahammad Hussein*, ILR 1986 Kar. 2647.

(b) that the impugned order suffers from legal infirmity as the objector herein is claiming an independent right;

(c) that the impugned order is unsustainable because, whenever an application is filed, an enquiry is compulsory under Rules 100 and 101 of CPC.

In support of his contention, learned Counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Sameer Singh v. Abdul Rab and Others*, AIR 2015 SC 591. Adverting to para 13 of the said judgment, he submits that the Court is obliged to consider an application whenever filed by an objector. On these grounds, he challenges the impugned order insofar as Order 21, Rule 99 of CPC is concerned.

4. I have given my careful consideration to the submission of the learned Counsel for the petitioner and perused the material papers and gone through the ruling relied upon by the learned Counsel for the petitioner.

5. The judgment in O.S. No. 28 of 1999, dated 21-7-2001 is produced at Annexure-D. The decree is against all three defendants namely, Smt. Muniyamma, Sri Muni Annyappa and Sri Narayanaswamy. The application under Order 21, Rules 97 and 99 of CPC along with a supporting affidavit is produced as per Annexure-F. In paragraph 4 of the affidavit filed in support of the said I.A., it is averred that the petitioner/applicant is a proper and necessary party. It is precisely stated thus in the said application:

"4.....Under these circumstances I am also a necessary and proper party to be impleaded in this case as the legal heirs of deceased Muniyamma and as such I inclined to file this application."

6. In the judgment of the Hon'ble Supreme Court in the case of *Sameer Singh* (supra), it is held as follows:

"13. To appreciate the submissions raised at the Bar, it is necessary to appreciate the whole gamut of provisions contained in Order 21, Rules 97 to 103 of CPC and the fundamental objects behind the same. Rule 97 deals with resistance or obstruction to possession by the holder of a decree for possession or the purchaser of any such property sold in execution of a decree. It empowers such a person to file an application to the Court complaining of such resistance or obstruction and requires the Court under sub-rule (2) to adjudicate upon the

application in accordance with the provisions provided therein. Rule 99 deals with dispossession by decree-holder or purchaser. It stipulates that where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession. The Court is obliged to adjudicate such an application. Thus this rule, as is manifest, includes any person other than the judgment-debtor. Rule 101 deals with the questions to be determined. It provides that all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application shall be determined by the Court dealing with an application and not by a separate suit and for the said purpose, the Executing Court has been conferred the jurisdiction to decide the same. Rule 100 deals with orders to be passed upon application complaining of dispossession. It is apt to reproduce the said rule:

"100. Order to be passed upon application complaining of dispossession. - Upon the determination of the questions referred in Rule 101, the Court shall, in accordance with such determination.-

(a) make an order allowing the application and directing that the applicant be put into possession of the property or dismissing the application; or

(b) pass such order as, in the circumstances of the case, it may deem fit."

(emphasis supplied)

A reading of the above shows that when an application under Order 21, Rule 99 of CPC is presented by any person other than a judgment-debtor who is dispossessed of an immovable property, he can maintain such application complaining of dispossession. Further, the Court is obliged to adjudicate such an application.

7. In the instant case, the decree is clearly against all the three defendants in the suit. The decree reads as follows:

"Suit for judgment and decree in favour of the plaintiff against the defendants are as follows:

(a) Direct the defendants to execute an absolute register sale deed in favour of plaintiff as per the terms and conditions stipulated in the agreement of sale dated 10-11-1998 by receiving balance consideration of Rs. 2,000/- from the plaintiff. Alternatively,

If the defendants fails to do so; it is request to execute an absolute register sale deed in favour of plaintiff; on behalf of defendant in accordance with law."

(emphasis supplied)

8. The petitioner has expressly stated that she is a proper and necessary party to be impleaded in the case as legal heir of first defendant. Therefore, the application by the petitioner cannot be construed as by some person "other than the judgment-debtor".

9. However, it is to be noted that the Court below while discussing the scope of application has held that an application under Rule 97 or 99 of CPC is maintainable only by a holder of the decree for possession and purchaser of property sold in execution of decree. In view of clear position of law, the said view expressed in the discussion portion is unsustainable.

10. In the result, there is no legal infirmity in the impugned order. The petitions fail and stand dismissed so far as dismissal of the application filed under Order 21, Rule 99 of CPC also. No costs.