

(2014) 07 KAR CK 0034
In the Karnataka High Court
Case No : C.R.P. No. 235/2014

S.N. Prakash

APPELLANT

Vs

G.V. Krishna

RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151, 92, 92(1)

Citation : (2014) 4 KCCR 2789

Hon'ble Judges : H.G. Ramesh, J

Bench : Single Bench

Advocate : Jayakumar S. Patil, Sr. Counsel for Radha Y, Advocate for the Appellant; C.V. Sudhindra and C.S. Prasanna Kumar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Huluvadi G. Ramesh, J.—This Revision Petition is filed against the order passed by the learned Prl. City Civil & Sessions Judge, Bangalore, in Misc. No. 768/2013, dated 11.6.2014, granting leave to the respondents herein to institute accompanying/scheme suit.

Heard the learned counsel for respective parties.

2. The facts of the case are : Respondents 1 and 2 herein stating to be the devotees of Sri Vyasaraaja Mutt (Sosale) (hereinafter referred to as "Mutt" for short) filed C. Misc. No. 768/2013 seeking grant of leave to institute accompanying suit u/s 92 of CPC on 20th December 2013, making the petitioner herein as 6th defendant. It appears, in the meanwhile, interim applications were filed by respondents 1 and 2 herein i.e., I.A. 1 was filed u/s 151 of CPC praying to dispense with production of original documents Nos. 1 to 85, I.A. 2 was filed under Order XXXIX Rules 1 and 2 of CPC praying to grant ad interim exparte temporary injunction, restraining defendant Nos. 2 to 8 from interfering with the affairs or transferring, alienating or otherwise parting with the Peeta of defendant No. 1 in favour of third parties, except with the prior permission of the Court and

I.A. 7 was filed u/s 151 of CPC praying to consider the interlocutory applications ahead of the application for grant of leave to institute a suit. By the impugned order dated 11.6.2014, the trial Court allowed these applications, granting injunction and dispensing production of original documents Nos. 1 to 85, by considering I.A. 7. Being aggrieved by the order granting leave to institute suit, 6th defendant stating to be the Administrator appointed by Peethadhipathy, filed the present revision petition.

3. The main grounds raised by revision petitioner in this petition is that the trial Court has passed the impugned order hurriedly without application of mind and in gross violation of principles of natural justice and without providing an opportunity to the petitioner, allowed the miscellaneous case and other applications. The learned counsel for the petitioner submitted that revision is maintainable and in support of his contention, relied upon the decision of the Apex Court in the case of Vidyodaya Trust and Others Vs. Mr. Mohan Prasad R and Others, to contend that against the order passed by the District Judge on preliminary issue in a suit filed u/s 92 filed by the respondent was maintainable. He further relied upon the subsequent decision of the Apex Court in the very case of Vidyodaya Trust Vs. Mohan Prasad R. and Others, and contended that Section 92 of CPC applies when reliefs claimed u/s 92(1) are in representative capacity for vindication of public rights and not to express personal grievance. He further submits that, at Para-18 of the above said judgment, the Apex Court has observed that the object of Section 92 of CPC is to protect the public trust of a charitable and religious nature from being subjected to harassment by suits filed against them. Public trusts for charitable and religious purpose are run for the benefit of the public. No individual should take benefit from them. If the persons in management of the trusts are subjected to multiplicity of legal proceedings, funds which are to be used for charitable or religious purposes would be wasted on litigation. The harassment might dissuade respectable and honest people from becoming trustees of public trusts. Thus, there is no need for scrutiny. In Para-19 it is stated that, in the suit against public trusts, if on analysis of the averments contained in the plaint it transpires that the primary object behind the suit was the vindication of individual or personal rights of some persons, an action under the provision does not lie. The suit u/s 92 of CPC is a suit of special nature, which presupposes the existence of a public trust or religious or charitable character. However, it is stated therein that if plaintiffs do not sue to vindicate the right of the public but seek a declaration of their individual or personal rights or the individual or personal rights of any other persons or persons in whom they are interested, Section 92 has no application. Relying upon the said decisions of the Apex Court, the learned counsel for the petitioner has taken me through the order sheet of the trial Court and submitted that the trial Court hurriedly disposed of the applications without giving sufficient opportunity to the petitioner and even without a stage is being set up for arguments and also without there being no stage to hear on the applications filed by respondents 1 and 2 and the objections of the petitioner thereon, an order came to be passed. Hence, there is

non-compliance of principles of natural justice that needs to be reconsidered and impugned order has to be set aside solely on the ground that petitioner has not been heard in the matter even with respect to maintainability and without examining whether such a suit could be entertained u/s 92 of CPC and also without hearing the grievance of the petitioner. He further submitted that Peethadhipati of the Mutt has got every right to deal with the property of the Mutt and also in this regard, he referred to the decision of the Apex Court in the case of *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt*, wherein it is held that as regards the property rights of a Mathadhipati, it may not be possible to say in view of the pronouncements of the Judicial Committee which have been accepted as good law in this country even since 1921, that a Mathadhipati holds the Math property as a life-tenant or that his position is similar to that of a Hindu widow in respect to her husband's estate or of an English Bishop holding a benefice and not a trustee. Further it is held that, a superior of a Math has not only duties to discharge in connection with the endowment, but he has a personal interest of a beneficial character which is sanctioned by custom and is much larger than that of a Shebait in the debutter property. Accordingly, the learned counsel for the petitioner contended that the impugned order passed by the trial Court needs interference by this Court and sought for setting aside the same.

4. On the other hand, the learned counsel for respondents submitted that even on going through the order sheet, after issuance of notice, several adjournments have taken place, even then, objections were not filed by the petitioner as he was fully aware of institution of the case. Referring to the decision of the Supreme Court in the case of *B.S. Adityan and Others Vs. B. Ramachandran Adityan and Others*, he submitted that, although as a rule of caution, Court should normally give notice to the defendants before granting leave u/s 92 to institute a suit, the Court is not bound to do so. If suit is instituted on the basis of such leave granted without notice to the defendants, the suit would not thereby be rendered bad in law or non-maintainable. But, grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law or even in the course of suit it may be established that the suit does not fall within the scope of Section 92 of CPC.

5. He also relied upon the decision of Apex Court in the case of *R.M. Narayana Chettiar and another Vs. N. Lakshmanan Chettiar and others*, wherein referring to Section 92 of CPC, it is held that Court is not bound to give such a notice although as a rule of caution, Court should normally give notice to the defendants before granting leave. The learned counsel for the respondent submitted that Section 92 of CPC does not contemplate issuance of prior notice. The petitioner representing the Mutt as an Administrator is misusing the properties of Mutt by way of transferring, alienating and by omission or commission of fraud and in this regard, a writ petition is also filed and steps have

been taken to safeguard the interest of the property of the Mutt. He further submitted that this revision petition is not maintainable as the rights of the parties are not decided by the trial Court. Accordingly, he tried to contend that there is no illegality in the order passed restraining defendants from committing any fraudulent activities, much less detrimental to the interest of the mutt as the devotees are interested to safeguard the interest of the mutt and properties thereunder from misusing and abusing the power either as a custodian or Mathadhipati.

6. When there is immediate threat of misuse and abuse of power, such an order came to be passed by the trial Court, much less even after issuance of notice before according permission u/s 92 of CPC. The trial Court at the threshold formed an opinion to issue notice and thereafter, steps have been taken to serve notice on the respondents and after five or six adjournments, since no progress was there and as there was threat of alienation which was detrimental to the interest of a particular community at large and respondents being devotees of Mutt, filed such applications and those applications are being entertained after five or six months. Hence, there was sufficient notice with regard to permission being sought u/s 92 of CPC. Even objections were not filed by the petitioner in spite of granting sufficient time. Hence, question of extending further time and also noncompliance of principles of natural justice does not arise.

7. So far as maintainability of the revision petition is concerned, there are decisions of this Court reported in Vidyodaya Trust and Others Vs. Mr. Mohan Prasad R and Others, and Vidyodaya Trust Vs. Mohan Prasad R. and Others, . But, the crux of the situation is, whenever there is threat to the public trust and public property or any such order being passed expressing private grievance, then revision of course is maintainable. But, the fact remains that, as is expressed by the respondents herein, the property is being dealt by Mathadhipati or through his agent, as the same is evident from the fact that appellants have sought for dispensation of production of original documents and only copies of the documents are made available. Having visualized the situation, respondents sought for interim order to prevent further damage being done to age old institution and in this regard several supporting documents of illegal activities of Mathadipathi are produced. As per Section 92 of CPC, if any illegal activity has been done with respect to trust, charitable or religious in nature, such a direction of the Court is necessary for the administration of trust and they can apply for leave of the Court to institute a suit in order to safeguard the property. In such a situation, even it may not be necessary to issue prior permission u/s 92 of CPC before passing an order of injunction.

8. In the case of hand, several documents were sought to be produced by way of abundant caution in respect of misuse and abuse of power before the trial Court. What was only sought to be dispensed from production of documents is the original documents. The trial Court having formed an opinion that there is a threat and abuse of power by fraudulent act by the concerned, considering the

apprehension expressed by several of the persons/devotees in the community who are interested in the Mutt, granted leave to institute scheme suit, that too after providing opportunity to the petitioner to file objections by fixing specific date. Of course, though stage was not set for hearing, but, objections was sought to be filed. When objections were not filed, based on the available material on record, the trial Court passed an order and it cannot be said that no opportunity was given. In this context it is to be noticed, as per the order sheet of the trial Court, notices were issued to respondents on 27.1.2014 and subsequently, when the matter was posted on 7.6.2014, respondents and their counsel were absent and matter was adjourned to 11.6.2014 for filing objections to interim applications. On 11.6.2014, it is noted in the order sheet that objections are not filed and as such, impugned order came to be passed. In this background, the question arises is as to whether trial Court committed any illegality or error in passing the impugned order.

9. It is seen that notice was ordered way back on 20th December 2013. After issuance of notice for completion of service of notice, six months have elapsed. At that time, to overcome the situation and to protect the property of Mutt, applications are filed and trial Court having formed an opinion, entertained those applications i.e., I.As. 1, 2 and 7 and an order came to be passed. But, it is not as if no opportunity was given to the petitioner, rather, petitioner has not availed such opportunity. When they were supposed to file objections, they did not do so.

10. However, the main contention of the petitioner herein is that they were not given opportunity before passing the impugned order and impugned order is passed even before according permission to file a suit u/s 92 of CPC. In answer to this, it is to be noted that, it is well settled in the decision reported in B.S. Adityan and Others Vs. B. Ramachandran Adityan and Others, , that although as a rule of caution, Court should normally give notice to the defendants before granting leave u/s 92 to institute a suit, the Court is not bound to do so. Even if suit is instituted on the basis of such leave granted without notice to the defendants, the suit would not thereby be rendered bad in law or non-maintainable. But, grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law or even in the course of suit it may be established that the suit does not fall within the scope of Section 92 of CPC.

11. Since matter is still open to be contested and decision is yet to be taken during the course of dealing with the suit, leave granted by Civil Court can be revoked depending upon the facts and circumstances of the case. As such, in the present case, even an opportunity to file objections was given to the petitioner, but he did not do so. After six months of filing of petition, the impugned order came to be passed which demonstrates that sufficient opportunity was given to the petitioner and therefore, he cannot take a contention that the impugned order came to be passed hurriedly.

Accordingly, petition is devoid of merits and the same is dismissed.