

(2015) 12 KAR CK 0123

In the Karnataka High Court

Case No : Writ Petition No. 110962/2015 (GM-CPC)

Spurit and Others

APPELLANT

Vs

Shivanand Virupaxi Murakibhavi and Others

RESPONDENT

Date of Decision : 10-12-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 6, 151

Citation : (2015) 12 KAR CK 0123

Hon'ble Judges : R.S. Chauhan, J.

Bench : Single Bench

Advocate : Geetha K.M., Advocate, for the Appellant

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The petitioners are aggrieved by order dated 09.02.2015, passed by the II Addl. Senior Civil Judge, Belagavi, whereby the learned Senior Civil Judge has dismissed the petitioners' application under Order XVI Rule 6 read with Section 151 CPC, for summoning certain persons as witnesses and for production of certain documents, as prayed by the petitioners.

2. Shortly the facts of the case are, the petitioners had filed a civil suit for partition and permanent injunction against the respondents-defendants with regard to several properties, which were described in the plaint itself. The petitioners claimed that Smt. Sujata, the petitioner No. 2 (the plaintiff No. 2 before the Civil Court) was the legally wedded wife of late Santosh Murakibhavi, and the petitioner No. 1 (plaintiff No. 1 before the Civil Court), Kumari Pritvi, was their daughter. They further claimed that both of them were entitled to partition of the property belonging to Hindu Joint family. The averments made by the petitioners were denied by the defendants in the written statement. After the plaintiffs were examined, the petitioners filed an application under Order XVI Rule 6 CPC, seeking summoning of certain witnesses and for production of certain documents. However, the said application has been dismissed by the impugned order. Hence this petition before this Court.

3. Smt. Geetha K. M, the learned counsel for the petitioners, has strenuously submitted that the plaintiff-petitioner No. 2 had claimed that her late husband had certain bank accounts with different banks. Therefore, the documents relating to these bank accounts maintained at the Axis Bank, ICICI Bank and the State Bank of Mysore, were essential in order to prove the fact that certain properties were brought from the money earned by her husband through his business. Moreover, there were certain amount received under the scheme of insurance policy, which was kept as fixed deposit with the Union Bank of India. Moreover, the defendant No. 1 had encashed a particular cheque with the D.C.C. Bank. The documents relating to the particular cheque bearing No. 17461, dated 15.11.2011, was necessary to prove the fact that the petitioner had some cash with the bank. The petitioner further pleaded that as far as the Basveshwar Cooperative Bank was concerned, the defendant No. 1 had pledged certain gold ornaments belonging to the petitioner No. 2. Therefore, the Managers of these banks and the Mr. Mahesh M. Udadar, the Chartered Accountant of her late husband, should be summoned as witnesses, and they should be asked to produce the relevant documents in order to permit the petitioners to prove their case before the learned Civil Judge.

4. Secondly, in case these witnesses are not summoned and the documents are not submitted before the Civil Court, the petitioners would suffer a great loss and injustice would be done to them. Therefore, according to the learned counsel the impugned order rejecting the petitioners' application deserves to be set aside by this Court.

5. Heard the learned counsel for the petitioners and perused the impugned order.

6. A bare perusal of the impugned order, clearly reveals that the learned Civil Judge has given three reasons for rejecting the application filed by the petitioners: firstly, there was no pleading in the plaint itself that the late husband had any transactions with the Banks mentioned in the application. Secondly, even if these Bank Managers were summoned as witnesses, they would not be in a position to throw any light on the question, whether the property, sought to be partitioned, were ancestral or self-acquired in nature or not. At best, they could throw some light on the amount of money deposited with the bank. But depositing of the amount does not shed any light on the nature of the property involved. Thirdly, that even on an earlier occasion, an identical application had been filed, namely, I.A. No. VIII. The said application was dismissed by a detailed order on 14.11.2014. Therefore, the present application would be hit by the doctrine of res judicata.

7. The learned Civil Judge is certainly justified in claiming that, since there was no pleading with regard to the bank accounts operated by the late husband, new facts were being introduced by the petitioners. Moreover, the learned Civil Judge is justified in concluding that these witnesses and documents submitted by them would not be of any help to reveal the true nature of the property in dispute: whether the property is self-acquired, or the ancestral in nature. Thus, neither

the witnesses, nor the documents would help the learned trial Court in reaching the truth.

8. Most importantly, the learned Civil Judge has mentioned that through a detailed order dated 14.11.2014 he had rejected the earlier application filed under Order XVI Rule 6. By order dated 19.11.2015, this Court had directed the learned counsel for the petitioners to produce the order dated 14.11.2014. The said order has been produced before this Court. A bare perusal of the said order clearly reveals that even on an earlier occasion, an application under Order XVI Rule 6 read with Section 151 of CPC was filed for summoning the Managers of the Axis Bank, ICICI Bank, State Bank of Mysore, Union Bank of India, D.C.C Bank, Basveshwar Cooperative Bank Ltd., and the Chartered Accountant Mr. Mahesh M. Udadar. The said application was dismissed on similar reasoning as given by the learned Civil Judge in the present impugned order. Thus, the learned Civil Judge is certainly justified in concluding that the second application under Order XVI Rule 6 is hit by the doctrine of res judicata.

9. For the reasons stated above, this Court does not find any illegality or perversity in the impugned order. This petition, being devoid of any merit, is hereby dismissed.