

(2013) 12 KAR CK 0206

In the Karnataka High Court

Case No : Writ Petition No's. 39207-208 of 2013 (GM-CPC)

Sri Chandraprakash and Others

APPELLANT

Vs

Chowdeshwari Thogajaveera Kshatriya Sangha (Regd.) and
Others

RESPONDENT

Date of Decision : 20-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0206

Hon'ble Judges : B.V. Pinto, J

Bench : Single Bench

Advocate : V. Javahar Babu, for the Appellant; R.K. Sridhara Murthy, for R1 and Sri K. Shivashankar, for R2-R5), for the Respondent

Final Decision : Dismissed

Judgement

B.V. Pinto, J.—These petitions are filed by the applicants in IA No. 6 in Ex. No. 1083/2010 on the file of XII Addl. City Civil and Sessions Judge, Bangalore, challenging the order dated 28.08.2013 dismissing the application filed by the applicants under Order XXI Rule 97 read with Section 151 of CPC. A suit came to be filed in O.S. No. 8275/2007 by the plaintiff for ejectment of the defendant from the schedule premises and also for seeking rent at the rate of Rs. 5/- per square feet from the date of suit till the date of delivery of vacant possession of the suit schedule property. The said suit came to be decreed on 10.2.2010 directing the defendants to quit, vacate and deliver vacant possession of the suit schedule premises to the plaintiff within two months from the date of the said order. The plaintiff thereafter filed an application for execution, which is numbered as Ex. No. 1083/2010. The petitioners herein filed an application as objectors under Order XXI Rule 97 read with Section 151 of CPC requesting the Court to hold the applicants/objectors as true owners of the petition schedule property and to dismiss the Execution Petition filed by the decree holder in the said petition. In support of the said application, the affidavit of petitioner No. 11-Chowdappa s/o Ramaiah is filed. It is stated by him in the affidavit that the

objectors are the original owners of the property bearing premises Old No. 27 (Kavadigara Revanna Pete), New No. 88, situated at Cubbonpet Main Road, Bangalore-560 002, totally measuring to an extent of East to West 45 feet and North to South 80 feet and that they are deriving their title from the original owner by name one Papanna @ Papaiah. The petitioners have explained the derivation of title to the suit schedule property through the Partition Deed dated 7.12.1892 registered as Document No. 2180/1892-93. It is averred in the affidavit that after the said deed of partition executed in the year 1892, there is no other transfer or alienation of the suit schedule property and the property has devolved on them by succession. Respondent No. 1 who is the decree-holder has resisted the said application by filing a statement of objections contending inter alia that proceedings under Order XXI Rule 97 of CPC does not permit for fresh enquiry regarding the title of the property and hence, requested for the dismissal of the said application. The trial Court after considering the rival contentions has held that the decree holder-Sangha being represented by its Secretary has filed proceedings in HRC No. 566/1991 and 491/1992 against the father of Judgment Debtor by name C. Narayanappa in respect of two tenements. After the death of said C. Narayanappa, his sons are brought on record as L.Rs., of the deceased respondent. It is further observed that the said HRC proceedings were concluded directing the respondents therein to surrender vacant possession of the suit schedule properties. The respondents herein thereafter approached this Court. This Court directed the decree holder to approach the jurisdictional Court. The decree holder again filed two suits against the sons of deceased C. Narayanappa by name N. Eshwar and N. Nagaraj in S.C. Nos. 1/2004 and 3/2004. The said suits were contested by filing written statement by the respondents. Ultimately, the said suits were decreed. The decree in the said suits is also challenged before this Court. This Court directed to present the suits before the City Civil Court, Bangalore, due to change in law. The said suits were thereafter numbered as O.S. No. 8275/2007. The defendant therein died during the pendency of the suit and his legal heirs were brought on record in the original suit. They were the wife and children of Late Narayanappa-original defendant. However, the said defendants did not contest the suit and thereafter suit came to be decreed. Thereafter, the defendant filed RFA before this Court but the same was dismissed. The decree holder thereafter filed Ex. No. 1083/2010. Legal Representatives of the Judgment Debtor resisted the said Execution Petition. One of the sons of deceased Judgment Debtor filed a petition under Order XXI Rule 97 of CPC in the execution case, but the same was dismissed on costs of Rs. 2,000/- by order dated 5.6.2012. Thereafter, the present applicants No. 1 to 19 filed the similar application on 2.11.2012. The trial Court has held that though the petitioners herein had personal knowledge about the litigation between the parties to the proceedings since the past 20 years, they have kept quiet for a long time. When they came to know that the son of defendant had filed an application under Order XXI Rule 97 of CPC, the present applicants claimed themselves to be legally entitled to the ownership of the schedule property under the alleged propositior namely., Papanna @ Papaiah, who has died prior to 1892.

The trial Court has further found that the applicants have filed another suit in O.S. No. 2766/2012 against one Eshwar, who is the earlier objector for, partition and separate possession of their 3/5th share only in respect of petition schedule property. It is observed by the trial Court that though the genealogical tree furnished by the plaintiff in that suit shows their relationship with the alleged propositor-Papanna @ Papaiah, the names of the Judgment Debtors/defendants in O.S. No. 8275/2007 is not shown in the said genealogical tree. The trial Court after holding that the judgment debtor who has been trying to somehow procrastinate the surrender of vacant possession of the suit schedule property right from the year 1999 has set up the applicants to file the present application under Order XXI Rule 97 of CPC and after finding that the similar application filed by one Eshwar has been rejected, has now declined the prayer of the petitioners herein.

2. The trial Court has held that only a party, who claims an independent right can file an application under Order XXI Rule 97 of CPC and he cannot agitate his right either under Judgment Debtors or under decree holder. Hence, the trial Court has found that there is no substance in the interim application filed by the applicants/objectors.

3. Heard Sri. Javahar Babu, learned counsel for the petitioners and Sri. R.S. Umesh learned counsel appearing on behalf of Sri. R.K. Sridhara Murthy, learned advocate for the respondent No. 1.

4. Learned counsel for the petitioner submits that the petitioners are the legal heirs of the propositor Papanna and that leaving behind the petitioners away from the suit schedule property, the collusive suits have been filed by the respondent No. 1 and fraudulent decrees have been obtained. He further submits that the petitioners being the persons entitled for possession of the suit schedule property they may be permitted to prove their title before the Execution Court. He has also relied upon rulings of the Hon"ble Supreme Court reported in Maria Margarida Sequeria Fernandes and Others Vs. Erasmo Jack de Sequeria (Dead) through L. Rs., and also another ruling reported in Union of India (UOI) and Others Vs. Ramesh Gandhi, in support of his contention.

5. It is his further submission that a decree obtained by fraud is Non est and void and hence he submits that an opportunity may be given to the petitioners to prove their titles before the execution court and the impugned order may be set aside

6. Learned counsel for the respondent No. 1 on the other hand submits that the petitioners have filed a suit in O.S. No. 2766/2012 in which the same relief is sought in respect of the suit schedule property. Pending disposal of the said suit, the petitioners have now filed the application only to harass the respondent No. 1 who is the owner of the property. He also submitted that no courts of law have declared that the decrees obtained by the respondent No. 1 in respect of eviction of their tenants are fraudulent and therefore the submission made by the learned

counsel for the petitioners is erroneous. He has cited a ruling of this court reported in A.M. Subbamma Vs. A.V. Kushalappa and Others, , wherein this court has held that once a suit is filed seeking a relief, an application filed under Order 21 Rule 97 of CPC for the same relief cannot be maintained by the same party. Hence he submits that the trial court has rightly dismissed the application filed by the petitioners.

7. I have gone through the impugned order passed by the execution court and carefully scrutinized the materials placed on record. It is seen that the petitioners have filed O.S. No. 2766/2012 seeking for a partition and separate possession of the very same property, which is claimed in the application under Order 21 Rule 97 of CPC. The decree holder herein is defendant No. 11 in the said suit. The said suit is pending before the City Civil Court, Bangalore. Further the execution court has held that since Papanna died more than 120 years ago, it is highly impossible to trace the alleged propositior Papanna either by applicants or by the judgment debtors. The execution court has also not believed the genealogical tree which has also been signed by Sri. Eshwar, who is the judgment debtor and the application filed by Sri. Eshwar as an objector has been dismissed with costs by order dated 05.06.2012. Hence the execution court has come to the conclusion that the said judgment debtor has set up the present petitioners to lay a frivolous claim over the schedule property and dismissed the application by imposing cost of Rs. 20,000/-. This court in a writ petition has to see as to whether the order passed by the lower court is perverse, or against the settled principles of law or illegal. From a careful consideration of the reasoning given by the execution court I find that the reasons assigned by it are fully in accordance with the settled principles of law. The order is neither perverse nor against materials on record. Hence I do not find any good reason to interfere with the well considered order of the execution court.

Hence these writ petitions are dismissed.