

(2010) 11 KAR CK 0111
In the Karnataka High Court
Case No : Writ Petition No. 34003 of 2010

Sri N.J. Nataraj

APPELLANT

Vs

Sri N. Jagannatham and Others

RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2010) 11 KAR CK 0111

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : G.B. Nandish Gowda, for R.B. Sadasivappa, for the Appellant;
A.Krishna Bhat and Associates for C/R and Shrinivas P. Dhondale, for the
Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—Petitioner has filed suit against Respondents seeking decree or partition and separate possession claiming half share in the plaint schedule properties and to declare the settlement deed dated 04.06.2007 executed by the Defendants 1 & 2 in favour of Defendants 3 to 5 as void and not binding on him and for consequential reliefs. Respondents 1 & 2 have filed written statement on 05.11.2007. They have made a counter claim seeking partition of movable assets. Issues have been framed and trial has taken place. Petitioner filed an application to permit him to amend the plaint i.e., incorporate the proposed pleading. The 4th Respondent filed statement of objections. The trial court by an order dated 02.09.2009 has dismissed the application.

2. Sri G.B. Nandish Gowda, learned Counsel appearing for the Petitioner contended that, the proposed pleading is only amplification of the earlier pleading and there being neither any change in the nature of the suit nor there being any new cause of action, the dismissal of the application is irrational and illegal. Learned Counsel contended that, the application has not been considered in the correct perspective by the trial court.

3. Sri Shrinivas P. Dhondale, learned Counsel appearing for the Respondent, on the other hand by referring to the statement of objections filed to the writ petition contended that, the trial of the suit having commenced and the Plaintiff having failed to show due diligence and the application being malafide to protract the proceedings of the suit, the order of dismissal passed by the trial court is justified.

4. I have perused the record.

5. The point for consideration is :

Whether the trial court is justified in dismissing the application seeking amendment of the plaint?

6. Indisputedly, the trial of the suit has commenced. The proviso to Rule 17 of Order 6 CPC lays down that, no application for amendment shall be allowed after the commencement of trial, unless the court comes to the conclusion that inspite of due diligence the party could not have raised the matter prior to commencement of trial. Whether a party has acted with due diligence or not, depends upon the facts and circumstances of each case. The proviso limits the scope of amendment of the pleadings, but vests power in the court to deal with the unforeseen situations whenever they arise i.e., the matter being examined keeping in view the diligence factor.

7. The suit was filed on 26.09.2007 and the written statement with counter claim was filed on 05.11.2007. Issues having been framed, Petitioner filed affidavit evidence on 09.02.2009 and the suit was posted for cross-examination on 26.02.2009. At that stage, the application seeking permission to amend the plaint was filed.

8. In the affidavit in support of the application, it has been stated that, the facts were within his knowledge. He did not state the material fact and hence, to amplify the pleadings, the amendment is necessary. It is clear that, the facts, which were within the knowledge of the Petitioner, was not pleaded and the amendment to amplify the pleading as stated, was not sought prior to commencement of trial of the suit. In the circumstances, it cannot be said that the Petitioner has acted diligently.

9. The Defendants 1 & 2 are senior citizens. They have filed the written statement immediately after service of summons and entering of appearance through their learned Counsel. It is stated that, substantial part of trial of the suit has taken place. If at this stage, the prayer for amendment of plaint is allowed, it is likely to cause prejudice of an irremediable character to the Respondents, since there has to be a further trial, which would delay the disposal of the suit, which has been directed to dispose off in time bound manner in the order dated 18.10.2010 passed in W.P. No. 31103/2010.

The trial court has considered the application in the correct perspective and the impugned order, which is within its discretionary jurisdiction, keeping in view the

facts and circumstances of the case, is sound and hence, no interference is called for.

In the result, the writ petition is devoid of merit and hence shall stand dismissed.

No costs.