

(2010) 10 KAR CK 0078
In the Karnataka High Court
Case No : Writ Petition No. 27862 of 2010

Sri P. Gunasheelan

APPELLANT

Vs

Smt. R. Prema and Others

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151

Citation : (2011) 1 KCCR 842

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

Bench : Single Bench

Advocate : A.G. Sridhar, for the Appellant; N. Surendra Kumar, for Respondents 1, 2, 4 and 5, for the Respondent

Judgement

A.N. Venugopala Gowda, J.—Respondents 1 to 5/Plaintiffs have filed O.S No. 15949/2000 in the City Civil Court, Bangalore, against the Petitioner and Respondent Nos. 6 to 8(a) to (e)/Defendants. The suit is for declaring that the Plaintiffs" together are entitled to 1/6" share in the suit schedule property and to put them in possession of their shares by metes and bounds and to hold an enquiry with regard to mesne profits. The Plaintiffs had filed O.S. No. 11229/1994 for the relief of partition and separate possession of 1/5th share in the suit schedule "A", "B", "C" & "D" properties. The said suit was decreed in part on 31.01.2005 entitling the Plaintiffs for 1/5 share in the plaint "A" schedule property, The Defendants have contested the claim of the Plaintiffs in O.S. No. 15949/2000. Issues have been framed, PW-1 was examined and when the suit was for further evidence of the Plaintiffs, an application under Order 6, Rule 17 read with Section 151 CPC was filed seeking permission of the Court to amend the plaint, incorporate additional pleadings as para No. 16(a) and additional schedule as schedule "D" in the plaint. The Defendants filed statement of objections dated 29.06.2010 and opposed the prayer for amendment of the plaint. The Trial Court has allowed I.A. No. 10. Aggrieved, the 4th Defendant has filed this writ petition.

2. Sri A.G. Sridhar, learned advocate appearing for the Petitioner firstly contends that, the Impugned order is irrational, perverse and illegal. Trial of the suit having commenced and PW-1 having been examined, there being no due diligence shown by the Plaintiffs, in view of the proviso appended to Rule 17 of Order 6 Code of Civil Procedure, the application for amendment ought not to have been allowed. Secondly, the proceedings of OS No. 11229/1994 and the judgment & decree passed therein on 31.01.2005 has not been kept in view by the Trial Court. Thirdly, the fact that Sri K. Perumal held and enjoyed the "D" schedule property as his absolute property and the execution of the Will dated 15.06.2004 by him in favour of Defendants 2, 3 & 4 has also not been kept in view. Lastly, the fact that "D" schedule property has been sold by Defendants 2 to 4 under registered sale deed dated 28.02.2009 (Annexure-L), though was specifically pleaded in the statement of objections (pare 8) has not been kept in view. Learned Counsel submitted that, in the facts and circumstances of the case, the Impugned order is unsustainable.

3. Sri N. Surendra Kumar, learned advocate appearing for Respondents 1 to 5, on the other hand, by taking me through the impugned order submitted that, there is factual dispute, which is required to be adjudicated and hence, the Trial Court is justified in allowing the application by observing that the matter will be thrashed out during trial.

4. I have perused the writ petition record. The point for consideration is:

Whether the impugned order in the facts and circumstances of the case, is justified?

5. Indisputedly, Kanagammal pre-deceased Perumal. The original parties to the suit are the children of said Kanagammal and Perumal. The suit instituted is for partition and separate possession in respect of three items of properties shown in plaint schedule. The Plaintiffs have proposed to incorporate another item of property as "D" schedule in the plaint, contending that, they are entitled to a share in the said term of property also. In the statement of objections dated 29.06.2010 (Annexure-E) filed by the Defendants, It has been stated as follows:

The Defendants 2 to 4 having become the absolute owner of the said application schedule property:ought to be Included now, sold the same in favour of one Sri C. Segaran under a registered sale deed dated 28.02.2009. Copy of the sale deed is produced as document No. 16.

In view of the said statement and the copy of the sale deed produced, the Plaintiffs without seeking impleading of the purchaser of the property, which is sought to be incorporated in the plaint, could not have sought the permission to amend the plaint. The Trial Court has not taken into consideration the said act of the Defendants. The impugned order does not make any reference to the sale of the property by the Defendants in favour of the said Sri C. Segaran. The impugned order passed, without reference to the said event and in the absence of said person, is irrational and illegal. The impugned order in the aforesaid

premise, is not a considered order.

In the result, the writ petition stands allowed and the impugned order stands quashed. The Trial Court is directed to reconsider the application in the light of the observations made supra and in accordance with law.

Contentions of both the parties are kept open for consideration.

No costs.