

(2012) 08 KAR CK 0358

In the Karnataka High Court

Case No : Writ Petition No. 26834 of 2012 (GM-CPC)

Sri R. Ramakrishnan and Sri T. Maruthi Rao

APPELLANT

Vs

Sri C.L. Ravichandran, Represented by His Gpa Holder Sri K.
Mohan

RESPONDENT

Date of Decision : 10-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1, Order 9 Rule 13, 24

Citation : (2012) 08 KAR CK 0358

Hon'ble Judges : Ravi Malimath, J

Bench : Single Bench

Advocate : Lex Plexus and C.M. Poonacha, for the Appellant; Kamal and Smt. Bhanu, for the Respondent

Judgement

Ravi Malimath

1. The petitioners filed Misc. Petition No. 648/09 under Order IX Rule 13 of CPC read with Section 151 of CPC seeking to set aside the exparte judgment and decree dated 12.12.2008 passed in O.S. No. 4086/07; to recall the order dated 1.3.2007 placing them as exparte in the said suit; to permit them to contest the said suit and for consequential reliefs. Subsequently, they filed O.S. No. 25345/11 under Order VII Rule 1 of CPC seeking to declare the judgment and decree obtained by the defendants in O.S. No. 4086/07 dated 12.12.2008 a fraudulent and as such, null arid void and nonest in the eye of law; to declare that the second plaintiff is the absolute owner of the suit schedule "B" property; to declare that the deed of cancellation dated 15.7.2005 as null and void and not binding on the plaintiffs and consequential reliefs. The respondent herein filed Misc. No. 367112 u/s 24 of CPC seeking to withdraw O.S. No. 25345/1i and transfer it to the Court which is hearing Misc.No.648/09 and to club the same or vice versa record common evidence and dispose off the same by a common judgment. By the impugned order the same was allowed. Misc.No.648/09 was ordered to be withdrawn and transferred to the Court hearing O.S. No.

25345/11. The said Court was directed to dispose off the same by considering the respondents"-petitioners" relief in Misc.No.648/09 along with O.S. No. 25345/ 11. Aggrieved by the same, the present petition is filed. The learned counsel for the petitioners contends that the impugned order is bad in law and liable to be set aside. The learned counsel contends that even though the same Court could hear the miscellaneous petition and the suit, it cannot be heard simultaneously by leading common evidence or otherwise. That miscellaneous petition and the suit should be heard independently. The learned counsel further submits that the suit is set down for judgment on 14.8.2012 and that the miscellaneous petition is at the stage of cross-examination of the respondent. Hence, to direct the trial Court to hear both the cases together would be in appropriate.

2. On hearing the learned counsels, I'm of the considered view that appropriate relief requires to be granted.

3. Misc. Petition has been filed under Order 9 Rule 13 of CPC ostensibly on the ground of lack of service of notice. O.S. No. 25435/ 11 has been filed for declaration that the judgment and decree obtained in O.S. No. 4086/07 is as a result of fraud. The grounds, contentions and pleadings would necessarily be different. The trial of both these issues would not be conducive for a just and fair disposal of either of the two cases. However, it is pleaded that the suit is presently at the stage of pronouncement of judgment and hence, it would be inappropriate to restrain passing of the judgment. On considering the same, I'm of the considered view that the Misc. petition requires to be considered by the trial Court before pronouncing orders on the suit. The order likely to be passed in the suit would necessarily be as the consequence of any order that is likely to be passed in the Misc. Petition. However, in view of the fact that the Misc. Petition is set down for cross-examination of the respondents therein, it will be just and appropriate to direct the trial Court to hear and dispose off the Misc. Petition at the earliest point of time. Both the counsel submit that they would not seek any adjournment on any account in the early disposal of the Misc. Petition. They submit that the Misc. Petition is now listed for cross-examination on 14.8.2012. Hence the trial Court is directed to hear the Misc. Petition on 14.8.2012 and thereafter consider the same on a day to day basis and dispose off the same by the end of week. Until orders are passed on the Misc. Petition, all further proceedings in O.S. No. 25345/11 shall stand stayed. The judgment sought to be rendered on 14.8.2012 shall be pronounced after the disposal of the Misc. Petition by necessarily taking into account the result of the Misc. Petition.

Accordingly, the writ petition is disposed off.