

(2000) 01 KAR CK 0013

In the Karnataka High Court

Case No : Civil Revision Petition No. 3421 of 1999

Sri. Ramachandra Laxman Doddamani and Another	APPELLANT
Vs	
Sri. Tilakaraj Bhaktavarmal Mahajanshet and Others	RESPONDENT

Date of Decision : 17-01-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 7 Rule 4

Citation : (2000) 2 KCCR 892

Hon'ble Judges : Chandrashekaraiyah, J

Bench : Single Bench

Advocate : S.P. Kulkarni, for the Appellant; R.V. Jayaprakash, for the Respondent

Final Decision : Allowed

Judgement

Chandrashekaraiyah, J.—The Petitioners who are the Plaintiffs in O.S. 434 of 1995 on the file of the Principal Civil Judge (Junior Division) Dharwad, have filed the suit for a decree for an injunction as against the Defendant. The prayer in the suit reads as follows:

that the Defendants or any other persons on their behalf, restrained permanently from erecting any permanent structure in the suit property, as the suit property is already acquired by the Corporation and is left for public purpose.

By reading of the above prayer, it is clear that the suit has been instituted by the Petitioners in the representative capacity for the benefit of the general public. The person who files the suit in the representative capacity requires permission of the Court before instituting the suit as required under Order 1, Rule 8 of the CPC (CPC) read with Order 7, Rule 4 of CPC (CPC). In the case on hand, the Plaintiff/Petitioner had not obtained the permission of the Court before instituting the suit as provided under Order 1, Rule 8 read with Order 7, Rule 4 CPC (CPC). During the pendency of the suit, the Petitioners/Plaintiffs having realised the mistake made an application under Order 1, Rule 8 read with Order 7, Rule 4 of CPC (CPC) for permission to treat the suit as a suit instituted in a representative

capacity. The said application has been rejected by the Trial Court, on the ground that the plaint does not disclose that the suit has been instituted in a representative capacity and no application was filed along with the plaint for permission as required under Order 1, Rule 8 CPC (CPC)

2. No doubt, the person who files a suit in a representative capacity is required to obtain the permission under Order 1, Rule 8 CPC (CPC) But, at the same time, if no permission is obtained, it cannot be said that it is not open for the Court to entertain an application if filed during the pendency of the suit, if there are averments in the plaint that the suit has been instituted for the benefit of the general public. From the prayer in the plaint, it is seen that the suit is for an injunction on the ground that the suit schedule property has already been acquired by the Corporation and it is left for public purpose.

3. In case of Mookka Pillai alias Sudalaimuthu Pillai Vs. Valavanda Pillai and Others, has held as follows:

An amendment can be made at any stage so long as it does not alter the nature or the character of the suit or the cause of action and there is nothing which prevents a Court, so far as I am able to see from permitting persons suing in their individual capacity to sue as representatives of a larger group, even during the stage of appeal.

The High Court of Bombay (at Nagpur) in case of Jainarayan Mandlal Vs. Agarwal Panch Mandal, Khamgaon, has held as follows:

When a suit was filed by two persons on behalf of a community and not based on personal cause of action, allowing the Plaintiff's to amend plaint to add averments to the effect that they were suing in the representative capacity under Order 1, Rule 8 is by way of explanation and it does not change the nature of the suit.

The same view has also been taken by the Calcutta High Court in case reported in AIR 1983 NOC 74. In another decision reported in Mukaremdas Mannudas and Others Vs. Chhagan Kisan Bhawasar and Others, it is held that the permission under Order 1, Rule 8 can be granted even at the appellate stage. It is further held that there need not be a formal order on record for permission to sue in a representative capacity under Order 1, Rule 8. The permission can be inferred where the Plaintiffs prayer that they should be allowed to sue in a representative capacity under Order 1, Rule 8.

4. By reading the above said decisions, it is clear that the permission to institute the suit in a representative capacity can be granted at any stage of the suit. I am in full agreement with the decisions referred to above. Therefore, the Trial Court was not right in rejecting the application IA v. for permission to treat the suit as a suit in a representative capacity. In the result, I pass the following order:

5. Petition is allowed. The impugned order of the Trial Court is set-aside. The application IA v. filed by the Petitioner for permission to treat the suit as a suit in

a representative capacity is allowed.