
(2013) 04 KAR CK 0091

In the Karnataka High Court

Case No : Writ Petition Nos. 16275 and 17740/2012 (GM-CPC)

Sri. T.G. Chandru

APPELLANT

Vs

Sri. B. Vijaykumar and Sri. Syed Mujahid

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Citation : (2013) 04 KAR CK 0091

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

Bench : Single Bench

Judgement

A.N. Venugopala Gowda, J.—The petitioner is the plaintiff and respondents are the defendants in O.S. No. 117/2006 on the file of the Principal Civil Judge (Sr. Dn.) and CJM at Hassan. Suit has been instituted to pass a judgment and decree for specific performance in pursuance of an agreement of sale dated 13.08.2005 in respect of the properties shown in the schedule of the plaint. The 2nd defendant is a purchaser of the suit properties from the 1st defendant. Both the defendants have filed the written statement and have contested the suit. Issues having been raised based on the pleadings of the parties, plaintiff deposed as PW. 1 on 02.08.2011, Ex. P1 to P13 were marked and case was adjourned for cross-examination of PW. 1. On 06.09.2011 the defendant No. 1 and his learned advocate were absent and hence, the cross-examination of PW. 1 was taken as nil and the case was adjourned to 20.9.2011 for cross-examination of PW. 1 subject to payment of cost by defendant No. 2. Since PW. 1 was present, prayer for an adjournment was rejected on 20.09.2011 and cross-examination of PW. 1 was taken as nil and the suit was adjourned. Plaintiff filed I.A. 7, under Order 16 Rule 1 of CPC. On 03.11.2011 I.A. 8 was filed under Order 18 Rule 17 of CPC and I.A. 9 was filed under S. 151 of CPC and the same were allowed. Further evidence of PW. 1 was recorded and Ex. P14 to P17 were marked. PWs. 2 and 3 were also examined and the case was adjourned for cross-examination of PWs. 1, 2 and 3. On 12.12.2011 the defendants and their learned advocates remained absent. PWs. 1 to 3 were present. Since the witnesses were not cross-examined, the cross-examination was taken as nil and the plaintiff closed his case. Case

was adjourned to 03.01.2012 for defendants' evidence and the defendants and their advocate remained absent and for defendant No. 2 an adjournment was prayed, the matter was adjourned finally. Again an adjournment having been prayed, finding no justification, evidence of defendant No. 2 was taken as nil and defendants' case was closed and the suit was adjourned to 20.01.2012 for hearing of arguments. On 13.03.2012 plaintiff filed I.A. 10 under S. 151 of CPC, I.A. 11 under Order 18 Rule 17 of CPC and there was no representation for the defendants and I.As. 10 and 11 were allowed and Ex. P. 19 was marked through PW. 1 and PW. 4 was examined. There being no representation by the defendants, cross-examination of PWs. 1 and 4 was taken as nil. Arguments of the advocate for plaintiff was heard on 17.03.2012 and the case was adjourned to 21.03.2012 for hearing arguments of advocates for the defendants. There was no representation for the defendants and their arguments was taken as nil and the suit was posted for judgment by 27.03.2012. On 26.03.2012 the defendant No. 2 filed an application for advancement and filed I.A. 13 under Order 18 Rule 17 r/w 151 of CPC and I.A. 14 under S. 151 of CPC. Plaintiff filed objections to I.As. 13 and 14 on 27.03.2012. The said applications were allowed on the ground that, if defendants are not permitted to cross-examine the PWs and lead evidence, there is scope for multiplicity of proceedings. Feeling aggrieved, the plaintiff has filed these writ petitions. Sri. G.A. Srkante Gowda, learned advocate appearing for the petitioner contended that there is material irregularity and an irrational act on the part of the learned Trial Judge in passing the impugned order. Learned counsel submitted that there was no bona fides of whatsoever nature on the part of the defendants, who along with their advocates remained absent all along and hence I.As. 13 and 14 ought to have not been allowed.

2. Sri. M.D. Raghunath, learned advocate appearing for the 2nd respondent on the other hand contended that the 2nd defendant had engaged the services of Sri. M.S. Vishwanath, a senior member of Hassan Bar to conduct the case and since the said advocate was not keeping good health for some time prior to filing of I.As. 13 and 14, he could not cross-examine PWs. 1 to 4 and place defendants' evidence. Learned counsel submitted that along with the affidavit of the 2nd respondent, medical records in proof of Mr. M.S. Vishwanath being unwell and having taken treatment have been produced. Learned counsel submitted that the said advocate died on 09.12.2012 and in the circumstances, the discretionary order passed by the Trial Court does not warrant interference.

3. Perused the records. The point for consideration is "whether the impugned order is irrational and warrant any interference?"

4. The facts noticed supra are borne out from the record and there is no dispute that Sri. M.S. Vishwanath, learned advocate had appeared for defendant No. 2 being unwell took treatment and passed away on 19.12.2012.

5. In the case of K.K. Velusamy Vs. N. Palanisamy, , considering the principles laid down in the case of Vadiraj Naggapa Vernekar (D) Through Lrs. Vs. Sharad Chand Prabhakar Gogate, and taking note of the provision under S. 151 of CPC,

the Apex Court has held that in the interest of justice the Trial Court is free to consider whether it is necessary to reopen the evidence and if so in what manner and to what extent. Perusal of the record would show that the plaintiff has also taken sufficient time in the matter of adducing his evidence. After PW. 1 was examined, application was filed to summon the witnesses. PWs. 2, 3 and 4 have been examined on different dates. No doubt, the defendants and their advocates had remained absent. The record of the case would show that Sri. M.S. Vishwanath, advocate appearing for the defendant No. 2 being unwell has not appeared. However, the Trial Court in its discretion has allowed I.As. 13 and 14, subject to payment of cost. Keeping in view the conduct of the defendants, stringent conditions ought to have not been imposed while allowing I.As. 13 and 14. The view taken by the Trial Court, that in order to avoid multiplicity of proceedings and to meet the ends of justice, an opportunity should be provided for cross-examination of PWs. 1 to 4 and lead evidence of the defendants cannot be held as one passed with material irregularity or acting in an unreasonable manner. However, there is need for modifying the order passed on I.As. 13 and 14 to put the defendants on terms, so that the trial should be expedited, the suit decided expeditiously.

In view of the above, the writ petitions stand disposed off as follows:

- a) I.As. 13 and 14 filed in the Trial Court stand allowed subject to defendant No. 2 paying cost of Rs. 25,000/- to the plaintiff on next hearing date of the suit.
- b) Cross-examination of PWs. 1 to 4 shall be completed before 27.04.2013.
- c) The defendants shall adduce & complete their side of evidence before 29.06.2013.
- d) The Trial Court is directed to hear the arguments and decide the suit within a period of 8 weeks from the date the trial is complete.
- e) In order to enable the Trial Court to decide the matter as per the time schedule, supra, the Trial Court is directed to pre-pone the case to 04.04.2013.
- f) Both the parties are directed to appear before the Trial Court on the said date.
- g) PW. 1 be cross-examined on 04.04.2013 and the cross-examination of PWs. 2 to 4 be completed before 27.04.2013.
- h) Both the parties shall render necessary co-operation to the Trial Court to decide the matter within the said period.