

(2010) 08 KAR CK 0015
In the Karnataka High Court
Case No : Writ Petition No. 1247 of 2009

Sri v. Chandrashekaraiah

APPELLANT

Vs

Smt. Puttamma and Others

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Citation : (2010) 08 KAR CK 0015

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : S.U. Manjunath, for the Appellant; T. Seshagiri Rao, for R5, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the parties.

2. The petition coming on for preliminary hearing is considered for final disposal having regard to the facts and circumstances.

3. The facts of the case are briefly stated hereunder:

The Petitioner is a Defendant in a pending civil suit. The suit is filed by Respondent Nos. 1 and 5 herein along with Respondents 2 to 4, who are the other Defendants, apart from the Petitioner. The suit is for permanent injunction restraining the Defendants including the Petitioner from interfering with the suit property. The Petitioner claims that the suit property was allotted to the Plaintiff-first Respondent herein, under a family arrangement as recorded under a document dated 20.04.1974 and that she was in exclusive possession of the same. The suit property is agricultural land. The Defendants are the divided sons of the Plaintiff. It was alleged that they along with other persons, were making hectic attempts to interfere with the suit property. There is also a criminal complaint lodged against the Defendants. The Petitioner herein had filed his written statement, contesting the suit while denying that there was a partition or any family arrangement. It is claimed that apart from the suit property, there are

several other properties which are all joint family properties. It was only on account of discord amongst the women folk in the family, that the Defendants were living separately, but however, there was no partition of the properties. The Petitioner claims that he was in fact, in possession and enjoyment of the suit property. It is contended that the Plaintiff was the third wife of his father and the other Defendants are her sons. It is further alleged that the Plaintiff and the other Defendants have in collusion set-up the alleged family arrangement and the purported signature of the Petitioner under the deed recording a family arrangement, was forged. The Petitioner states that he is the son of the second wife of late Veeranna. The other Defendants have taken advantage of his illiteracy and have used their learning to defraud the Petitioner of his legitimate share in the family properties. In that, the Defendants have manipulated the revenue entries in respect of the family properties to exclude the Petitioner from the properties. The Petitioner has challenged the correctness of the revenue entries in appropriate proceedings. It is further alleged that even during the pendency of the suit, the Plaintiff has bequeathed the suit property under a registered gift deed dated 09.06.2004 in favour of Respondent No. 5, who in turn, had filed an application seeking to implead herself in the suit. That application was contested by the Petitioner. But, however, the same having been allowed, the Petitioner seeks to challenge the same.

4. The learned Counsel for the Petitioner, while reiterating the above circumstances, contends that the suit being one for bare injunction filed in the year 1997 and the impleading applicant claiming under a gift deed admittedly, executed during the pendency of the suit, the applicant could not claim a right to continue the suit by virtue of the said gift deed. Further, since the suit is for the relief of bare injunction, the only issue that would arise is whether there was alleged interference by the Defendants with the suit property, and therefore, the impleading applicant would have no cause of action to claim a right to participate as a co-Plaintiff. The reason assigned by the trial court that the application deserves to be allowed in order to avoid multiplicity of proceedings, is not a consideration on which an application under Order I Rule 10(2) of the Code of Civil Procedure, 1908 (hereinafter referred to as "Code of Civil Procedure " for brevity) could have been allowed. It is these primary contentions, which are sought to be enlarged in the arguments put forth.

5. It is contended that the relief of injunction, if granted, would confer a right in personam, to enforce the same against the Defendants. Such a right is not one which runs with the land in order that the impleading applicant could claim a vested right in seeking to continue the suit as a co-Plaintiff on the basis of the gift deed that is said to have been executed in her favour during the pendency of the suit, without even the court being taken into confidence in respect of the same. The cause of action is alien to the impleading applicant and therefore, the suit was rendered infructuous, if the Plaintiff was no longer the owner of the property. The impleading applicant seeking to step Into the shoes of the Plaintiff as Plaintiff No. 2 is hence not permissible.

6. While on the other hand, the learned Counsel for the Respondent No. 5, who has contested this petition, would assert that the suit properties have indeed been gifted to Respondent No. 5 by Respondent No. 1 and the trial court has, in recognition of such a transfer, allowed the application as the said Respondent is not a stranger to the property, but, one who has acquired title to the same and, as any order passed in respect of the suit property, would affect her interest, there was a need and necessity to be made a party to the proceedings and hence, the application has been rightly allowed and that there is no substance in the writ petition. The learned Counsel places reliance on the following judgments:

1. Dr. Narendranath Shetty and Smt. Pushpa N. Shetty, both the petitioners are rep. by their GPA Holder, U.K. Hegde Vs. Sri P.S. Rama Rao Pisey and Others,
2. Dhurandhar Prasad Singh v. Jai Prakash University and Ors. AIR 2001 SCW 2674.
3. Sapan Kumar Pandit v. U.P. State Electricity Board and Ors. AIR 2001 SCW 2685.
4. Babulal Khandelwal and Ors. v. Balkishan D. Sanghvi and Ors. AIR 2009 SC 67.
5. Hanuman Ram Vs. The State of Rajasthan and Others,
6. Sahdeo Singh and Others Vs. Ramchhabila Singh and Others,
7. Subhash Chandra Vs. Har Govind Singh,
8. Meka Chinnappa Reddy and Anr. v. Meka Pulla Reddy 2000 INDLAW AP 293
9. Sri Vardhaman Stanakvisi Jain Sravak Sangh Vs. Chandrakumar and Another,
7. On a consideration of the above and having regard to the facts and circumstances, the point for consideration is:

Whether in a suit for bare injunction, a transferee, pendente lite, is a proper and a necessary party to be impleaded?

8. The case law cited at the bar is briefly referred to, in Dr. Narendranath Shetty's case supra, the facts were as follows:

The first Respondent therein was the Plaintiff in a suit for partition and separate possession. The first Defendant in the suit is said to have executed a sale deed in respect of one of the items of the suit schedule properties in favour of the Petitioner therein, on the footing that it was the vendors of self-acquired property and the Petitioner was put in possession of the same. During the pendency of the suit, the first Defendant died. His legal representatives were brought on record. The suit was thereafter decreed. The legal heirs of the first Defendant challenged the same and were ultimately before the Apex Court in an appeal after having unsuccessfully contested the proceedings before the lower Courts. The Apex Court modified the judgment and decree to hold that the Plaintiff was entitled to 11/40th share in the property in one of the properties and 1/10th share in

another item. While it was observed that he was not at all entitled to any share in yet another item. The Petitioners in the case before this Court being purchasers of the properties, pendente lite, had filed an application before the Apex Court, seeking leave to file an application to implead themselves and seeking modification of the judgment passed in the appeal by the Apex Court. The Court declined permission to file such an application. The Plaintiff thereafter had initiated the final decree proceedings. In the said proceedings, the Petitioners again filed an application to implead themselves claiming as proper and necessary parties, on the footing that they had purchased item No. 2 of the plaint scheduled properties. That application was rejected. This Court was therefore, addressing the question whether a purchaser of the property, pendente lite, in a suit for partition could be impleaded in final decree proceedings.

9. This Court placed reliance on the judgment of the Supreme Court in the case of Khemchand Shankar Choudhari and Another Vs. Vishnu Hari Patil and Others, wherein it was held as follows:

6. Section 52 of the Transfer of Property Act no doubt lays down that a transferee pendente lite of an interest in an immovable property which is the subject matter of a suit from any of the parties to the suit will be bound in so far as that interest is concerned by the proceedings in the suit. Such a transferee is a representative in interest of the party from whom he has acquired that interest. Rule 10 of Order 22 of the CPC clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is made. It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard. He can also prefer an appeal against an order made in the said proceedings but with the leave of the appellate Court where he is not already brought on record. The position of a person on whom any interest had devolved on account of a transfer during the pendency of any suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding, or an official receiver who takes over the assets of such a party on his insolvency. An heir or a legatee or an official receiver or a transferee can participate in the execution proceedings even though their names may not have been shown in the decree preliminary or final.

and this Court held that Order XXII Rule 10 Code of Civil Procedure, deals with the procedure in case of assignment before a final order in a suit and that, in the case of an assignment, creation or devolution of any interest during the pendency of the suit, the suit may, by leave of the Court be continued by or against the person to or upon whom such interest has come or devolved and even assuming that the Petitioners before this Court were not proper parties, they could be impleaded as assignees under Order XXII Rule 10(1) of Code of Civil Procedure. Even though an application was filed under Order I Rule 10 Code

of Civil Procedure, the labelling was unimportant and the Court could always treat the same as one under Order XXII Rule 10(1) Code of Civil Procedure.

10. The primary consideration therefore, according to this Court, was that it was to be addressed whether the relief could be granted in favour of the applicant and that would be a question which could be gone into during the course of the proceedings and cannot be said at the very threshold and this Court also relied upon the judgment in Phoolchand and Another Vs. Gopal Lal, , to hold that insofar as partition suits are concerned, if an event transpires after the preliminary decree which necessitates a modification of the shares, the Court can and should modify the shares allotted, but this can only be done, so long as the final decree has not been passed and held that the Petitioners were entitled to be impleaded as proper and necessary parties.

11. In the case of Dhurandhar Prasad Singh's case supra, the facts are as follows:

The Appellant had filed a suit for a declaration to declare that the termination of his services from an educational institution by the Secretary of the governing body, as being illegal. In the suit, the governing body had entered appearance, but no written statement was filed and the suit was decreed *ex parte* for all purposes and the Defendants were restrained from giving effect to the order of termination. The judgment debtors however, did not comply with the decree, compelling the Appellant to take out execution of the judgment and decree. In the execution case, an objection was filed by the Principal of the College as well as the University objecting to the executability of the decree on the ground that during the pendency of the suit, the institution had become a constituent unit of the University and the erstwhile governing body ceased to exist and since the University was not impleaded as a party to the suit, the decree was unexecutable. Even during the pendency of the execution case, the institution again became a constituent unit of yet another University and that University also filed a similar objection in the execution. The executing court allowed the execution and the matter was carried in revision to the High Court. The matter was remanded to the executing Court to consider the objections raised afresh. After permitting the parties to adduce evidence on such remand, parties did adduce evidence in support of their respective cases. The objections were ultimately rejected by the executing court, which was again challenged by way of revision before the High Court. It set aside the order of the executing Court, which was then challenged before the Apex Court. The questions that arose for consideration before the Apex Court were as follows:

1. Whether in case of devolution of interest during the pendency of a suit as postulated under Order 22 Rule 10 of the Code, decree passed against the predecessor-in-interest without bringing the successor-in-interest on the record would make the decree nullity and the same can be executed against such a person who was not impleaded as party?

2. Whether application under Order 22 Rule 10 seeking leave of the Court is required under law to be filed by that person alone upon whom interest has devolved during the pendency of the suit and by nobody else ?

12. The Apex Court after an extensive consideration of the case law on the point, held that the decree was passed against the governing body of the College, which was the Defendant, without seeking the leave of the Court to continue the suit against the University upon whom, the interest of the original Defendant devolved and impleaded it. Such an omission did not make the decree void ab initio, so as to invoke the application of Section 47 of the Code and entail dismissal of execution. The validity or otherwise of a decree may be challenged by filing a properly constituted suit or taking any other remedy available under law on the ground that the original Defendant absented himself from the proceedings of the suit after appearance as it had no longer any interest in the subject of dispute or did not purposely take interest in the proceeding or colluded with the adversary or any other ground permissible under law and further held as follows:

10. Procedure in case of assignment before final order in suit. (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) the attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of Sub-rule (1).

25. Plain language of Rule 10 referred to above does not suggest that leave can be sought by that person alone upon whom the interest has devolved. It simply says that the suit may be continued by the person upon whom such an interest has devolved and this applies in a case where the interest of Plaintiff has devolved. Likewise, in a case where interest of Defendant has devolved, the suit may be continued against such a person upon whom interest has devolved, but in either eventuality, for continuance of the suit against the persons upon whom the interest has devolved during the pendency of the suit, leave of the court has to be obtained. If it is laid down that leave can be obtained by that person alone upon whom interest of party to the suit has devolved during its pendency, then there may be preposterous results as such a party might not be knowing about the litigation and consequently not feasible for him to apply for leave and if a duty is cast upon him then in such an eventuality he would be bound by the decree even in cases of failure to apply for leave. As a rule of prudence, initial duty lies upon the Plaintiff to apply for leave in case the factum of devolution was within his knowledge or with due diligence could have been known by him. The person upon whom the interest has devolved may also apply for such a leave so that his interest may be properly represented as the original party, if it ceased to have an interest in the subject matter of dispute by virtue of devolution of interest upon another person, may not take interest therein, in ordinary course,

which is but natural, or by colluding with the other side. If the submission of Shri Mishra is accepted, a party upon whom interest has devolved, upon his failure to apply for leave, would be deprived from challenging correctness of the decree by filing a properly constituted suit on the ground that the original party having lost interest in the subject of dispute, did not properly prosecute or defend the litigation or, in doing so, colluded with the adversary. Any other party, in our view, may also seek leave as, for example, where Plaintiff filed a suit for partition and during its pendency he gifted away his undivided interest in the Mitakshara Coparcenary in favour of the contesting Defendant, in that event the contesting Defendant upon whom the interest of the original Plaintiff has devolved has no cause of action to prosecute the suit, but if there is any other co-sharer who is supporting the Plaintiff, may have a cause of action to continue with the suit by getting himself transposed to the category of Plaintiff as it is well settled that in a partition suit every Defendant is Plaintiff, provided he has cause of action for seeking partition. Thus, we do not find any substance in this submission of learned Counsel appearing on behalf of the Appellant and hold that prayer for leave can be made not only by the person upon whom interest has devolved, but also by the Plaintiff or any other party or person interested.

It was on that footing, that the appeal was allowed.

13. In Babulal Khandelwal's case, the Respondent No. 1 had filed a suit for administration of estate of his deceased-parents, who were also the parents of the other Respondents. During the pendency of the suit, Respondent No. 1, who was the Plaintiff, filed an application for impleading the Appellants as parties to the suit, who challenged the alienation of two items of the properties. That application was allowed and the plaint was permitted to be amended, whereby, the Appellants, who were before the Apex Court, were impleaded as Defendants to the suits inspite of their objections that, Respondent No. 8 was a Company, in which, the Appellants were only shareholders and that, they were not in any way related to the parties to the suit and therefore, the order was sought to be questioned, on the ground that in a suit for administration of the estate of a deceased, the transactions entered into by him during his lifetime, could not be called into question and therefore, those with whom such transactions had been entered into, were not necessary parties. The Apex Court held that in an administration suit, the Court while considering the grant of authority to an individual having an interest in the estate of the deceased to administer the estate, has also to determine the extent of the estate of the deceased at the time of his death to facilitate the distribution of the estate to all the heirs of the deceased. The Court is not called upon to determine the right and title of the parties in the properties of the estate, but to ascertain the extent of the properties of the estate. Consequently, the impleadment of persons who may be involved in some transaction or the other concerning the estate, may become necessary parties in the administration suit and accordingly, the appeal was dismissed.

14. From a reading of the above case law, it is seen that on facts, none of the above judgments relate to the fact situation pertaining to the present case on hand. Insofar as the addition of parties under Order I Rule 10 Code of Civil Procedure is concerned, the Apex Court in the case of Razia Begum Vs. Sahebzadi Anwar Begum and Others, has held as follows:

The question of addition of parties under Rule 10 of Order 1 of the Code of Civil Procedure, is generally not one of initial jurisdiction but of a judicial discretion to be exercised in view of all the facts and circumstances of a case: that in a suit relating to property the party sought to be added should have a direct interest as distinguished from a commercial interest in the subject-matter of a litigation, and that where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy. The Supreme Court held that Order 1, Rule 10(2) requires liberal construction.

and the Division Bench of the Andhra Pradesh High Court, in the case of Chappidi Subbareddy (died) and Others Vs. Chappidi Narapureddy and Others, has held as follows:

From a conspectus of all the aforesaid judgments, touching upon the present aspect, broadly, the following would emerge: Firstly, for the purpose of impleading a transferee pendente lite, the facts and circumstances should be gone into and basing on the necessary facts, the Court can permit such a party to come on record, either under Order 1 Rule 10 Code of Civil Procedure or under Order 22 Rule 10 Code of Civil Procedure, as a general principle: Secondly, a transferee pendente lite is not entitled to come on record as a matter of right; Thirdly, there is no absolute rule that such a transferee pendente lite, with the leave of the Court should, in all cases, be allowed to come on record as a party; Fourthly, the impleadment of a transferee pendente lite would depend upon the nature of the suit and appreciation of the material available on record: Fifthly, where a transferee pendente lite does not ask for leave and come on record that would obviously be at his peril, and the suit may be improperly conducted by the Plaintiff on record; Sixthly, merely because such transferee pendente lite does not come on record, the concept of his (transferee pendente lite) not being bound by the judgment does not arise and consequently he would be bound by the result of the litigation, though he remains unrepresented; Seventhly, the sale transaction pendente lite is hit by the provisions of Section 52 of the Transfer of Property Act; and, Eighthly, a transferee pendente lite, being an assignee of interest in the property, as envisaged under Order 22 Rule 10 of Code of Civil Procedure, can seek leave of the Court to come on record on his own or at the instance of either party to the suit.

15. From a reading of Section 52 of the Transfer of Property Act, where during the pendency of the suit, the property which was the subject matter of the suit, can

only be transferred with the leave of the Court and on such terms, as may be imposed by the Court, or otherwise/the transaction would be a nullity. On that principle, a transferee pendente lite is not entitled to come on record as a matter of right and there is no absolute rule that such a transferee pendente lite should in all cases be allowed to come on record as a party.

16. However, in the present case on hand, the impleading applicant is the daughter of Respondent No. 1 and now claims to be the absolute owner of the suit property under a registered gift deed executed by her mother, the Plaintiff in the suit. It cannot be said that the transfer affects the right or interest of the Defendants, pending the suit and hence the transfer cannot be said to fall within the mischief of Section 52 of the Transfer of Property Act.

17. Further, the judgment and decree that may ultimately be rendered is, in respect of the suit property with which it was alleged that the Defendant was seeking to interfere. Therefore, the impleading applicant has sufficient interest to protect the suit property from such interference by the Defendants, and hence, the trial Court was justified in allowing the application by the impleading applicant.

Accordingly, the writ petition is dismissed.