
(2011) 07 KAR CK 0071
In the Karnataka High Court
Case No : M.F.A. No. 5555 of 2010 (CPC)

State of Karnataka

APPELLANT

Vs

M.S. Nagendra Kumar and Others

RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Citation : (2011) 07 KAR CK 0071

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : K.G. Raghavan for M/s. Dua Associates, for the Appellant; B.M. Krishna Bhat, for R1-R5, R8-R17, R20, R22-R25 and Sri S.B. Shahapur, AGA for R26, for the Respondent

Final Decision : Allowed

Judgement

S.N. Satyanarayana

1. The appellant, State Government had filed OS. No. 7574/2002 seeking declaration of title in respect of suit schedule property, which consists of Ramanjaneya Temple building and adjacent properties. The said suit was filed on 8.11.2002 for the relief of declaration and injunction, which came to be dismissed for default on 18.4.2006. Subsequently, appellant herein filed Miscellaneous Petition seeking recall of the order of dismissal and restoration of the suit on the ground that Assistant Commissioner of Muzrai. Who was incharge of suit died on 7.4.2006. Thereafter, additional charge of Muzrai, Assistant Commissioner, was given to one Smt. Vijaya on 13.6.2006. Subsequently, it was changed by posting another person by name Madhav R to the said post on 14.6.2006. In the meanwhile, nobody appeared in the suit in OS. No.7574/2002, which was posted to 18.4.2006. Hence the said suit came to be dismissed for default. It is further stated that in the month of January, 2006 the previous counsel who was appearing for plaintiff died resulting in issue of court notice to plaintiff. Therefore, in the light of all these confusions there was no representation on behalf of plaintiff on 18.4.2006.

2. The said Miscellaneous Petition in Misc. No. 496/2006 was contested by defendants in the original suit by filing statement of objections denying the grounds urged in the miscellaneous petition. Evidence was recorded in the said Miscellaneous proceedings. On appreciation of pleadings and evidence, the court below dismissed the Miscellaneous Petition holding that there is error on the part of plaintiff in not properly explaining reasons for non appearance of either plaintiff or its counsel on 18.4.2006 either in the pleadings or in evidence adduced before it in the Miscellaneous Petition. This appeal is filed challenging the said order of dismissal dated 1.4.2010 passed in Misc. No. 496/2006.

3. Heard the Counsel for appellant and respondents. Perused the order impugned along with pleadings and evidence recorded in the said proceedings. On re appreciation of the same this Court find that the court below has gone too technically. Admittedly, the suit is by State represented by its officers. Admittedly, the said officer died on 7.4.2006 i.e., two day's prior to the date of hearing on 9.4.2006. It is also not in dispute that the counsel appearing for the plaintiff had also died in the month of January and court notice was issued to plaintiff. In such situation, even the private litigants may not be so diligent and punctual to make alternate arrangement to attend the litigation in such short interval. When that being the case better diligence cannot be expected from the officers of State Government i.e. plaintiff in the original suit to make alternate arrangements immediately thereafter and to make proper representation on 18.4.2006. Some how this aspect has lost sight of the court below while considering miscellaneous petition filed by plaintiff seeking to set aside the order of dismissal dated 18.4.2006.

4. Considering the evidence and pleadings in miscellaneous petition and also finding of the learned trial judge in the order impugned this Court find that there is no justification in the order dated 1.4.2010 passed in Misc. Petition No. 496/2006 dismissing the same and confirming the order dated 18.4.2006 passed in the original suit. The reason assigned to dismiss the Miscellaneous Petition does not stand to reason. The court below while considering the Miscellaneous Petition should have taken into consideration the seriousness of the claim involved in the suit while considering the reason for non appearance on 18.4.2006. it has also failed to notice that the Miscellaneous Petition seeking recall of the said order is filed immediately thereafter. Though there is delay of 46 days, the same is properly explained.

5. In the result the appeal is allowed. The impugned order dated 1.4.2010 passed in Misc. Petition No. 496/2006 is set aside, consequently, the Miscellaneous Petition is allowed and the original suit in OS. No. 7574/2002 is restored to file. Since contesting defendants who are respondents herein are before this Court through counsel, this Court find that it is just and proper to fix a date for appearance of parties in restored OS. No. 7574/2002. Accordingly, the trial Court i.e., IX Addl. City Civil and Session Court, Bangalore shall call OS. No. 7574/2002 on 22.8.2011. On that day, both plaintiff and defendants in the said

original suit who are respectively appellant and respondents in this appeal shall appear before the court below either in person or through counsel and proceed with the matter on merits.