

(2015) 07 KAR CK 0180

In the Karnataka High Court

Case No : Writ Petition No. 104144/2015 (GM-WAKF)

The Administrator, Sherkhan Jumma Masjid

APPELLANT

Vs

Lakshmikant and Others

RESPONDENT

Date of Decision : 27-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 17, 151

Citation : (2015) 07 KAR CK 0180

Hon'ble Judges : B. Manohar, J

Bench : Single Bench

Advocate : Ramesh N. Misale, for the Appellant; Mrutunjaya Tata Bangi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J—Petitioner who is defendant No. 3 in KWT/BGM/SR(O.S. NO. 2/2013) on the file of Presiding Officer, Karnataka Wakf Tribunal, Belagavi division, Belagavi, filed this writ petition challenging the order dated 07.04.2015 rejecting I.A. No. 13 filed under Order 18 Rule 17 read with Sec. 151 of Civil Procedure Code

2. Respondent Nos. 1 to 4 herein filed a suit before the Karnataka Wakf Tribunal seeking for a declaration declaring that the notification issued by defendant No. 1 on the basis of the report of defendant No. 3 in so far as it relates to the suit properties is illegal, void, ab-initio as it violates principles of natural justice, consequential relief of declaration declaring that the plaintiffs are lawful owners in possession of the suit shop premises comprised in C.T.S. No. 2937 to 2941 of Khade Bazaar, Belagavi and also for decree of permanent injunction restraining the defendants from interfering with the peaceful possession of suit schedule properties.

3. Case of the plaintiffs is that the suit schedule properties were in possession of permanent lessee of the original grantee of the land. He sold the same to Shri

Padmappa Jinappa Shetty and he sold the same to Tukkappa Padmappa Tavanshetty and he in turn sold the same to Shri Swamy Hanumant Naik Potadar. The purchaser sold the same in favour of Dattoba Ramappa Kolekar and he executed the registered sale deed of permanent leasehold right pertaining to the shop premises in favour of Sri Kashinath Yeshvantrao Deshpande. The said Sri Kashmath Yeshvantrao Deshpande subsequently demolished the old shop premises purchased by him and constructed a new shop premises by amalgamating all the properties mentioned as CTS No. 2937-2941 of Khade Bazaar as per the orders of the competent authority in the year 1949 and common CTS number has been assigned to the said property as CTS No. 2937. The said Sri Kashmath Yeshvantrao Deshpande died on 21.09.1966 and in view of relinquishment of right by other legal heirs of late Sri Kashmath Yeshvantrao Deshpande, name of his four sons came to be entered and out of which, one son by name Madhukar died leaving behind plaintiff Nos. 3 and 4 and they have inherited the right of their father late Madhukar and their names are records in the CTS Records. The third son of Sri Kashmath Yeshvantrao Deshpande by name Sri Gopal relinquished his right in the suit property by executing a deed of relinquishment in favour of his three brothers. They have continued the business of late Sri Kashinath Yeshvantrao Deshpande in the suit schedule properties. The plaintiffs contended that they have been in actual possession inheriting the ownership right. The specific case of the plaintiffs is that the suit properties are not the properties of the Wakf at any point of time. The plaintiffs and their predecessors have been in possession for over more than 100 years without obstruction from anybody. However, the defendants claiming right over the properties, a report has been submitted by the third defendant. On the basis of the said report the defendants are claiming possession. In view of the same, plaintiffs filed the suit with the above relief.

4. The contesting defendants in the suit filed the statement of objections. On the basis of the pleadings of the parties issues were framed.

5. The plaintiffs examined witnesses of their side and third defendant examined himself as DW1 and got marked documents. Thereafter, case was posted for arguments. Plaintiffs have addressed their arguments. However, third defendant has taken three adjournments for the said purpose. Subsequently, he filed I.A. No. 13 under Order 18 Rule 17 of CPC for recalling DW1 for adducing further evidence in respect of proof of Ex. D.1 by reopening the case. The plaintiffs filed objections to the said application contending that at this belated stage D.W. 1 cannot be recalled for adducing further evidence to prove Ex. D.1. When the case has been posted for arguments the plaintiffs have already addressed their arguments, the third defendant instead of arguing the case, has taken three adjournments and they filed application, I.A. No. 13 at belated stage, cannot be entertained and sought for dismissal of the application.

6. The trial Court on the basis of pleadings on I.A. No. 13 framed the following points.

"1) Whether the applicant /defendant No. 3 has made out sufficient ground to recall D.W. 1 for adducing further evidence in respect of proof of Ex. D.1 ?

2) What order?"

7. The trial Court after considering the arguments addressed by the parties held point No. 1 in the negative and accordingly rejected the application. The trial Court is of the view that, when the case has been posted for arguments of the defendants' side, the third defendant came up with I.A. No. 13 under Order 18 Rule 17 R/W Sec. 151 of CPC to recall D.W. 1 and for adducing further evidence in order to prove Ex. D.1 on the ground that Ex. D.1 has to be marked as secondary evidence in view of non-availability of original agreement. The trial Court after considering the matter rejected the said application.

8. Being aggrieved by the same, the defendant No. 3 filed this petition.

9. Sri Ramesh N. Misale, learned Advocate for the petitioner contended that the order passed by the trial Court rejecting I.A. No. 13 filed under Order 18 Rule 17 r/w Sec. 151 of CPC is contrary to law. Reading of the provisions of Order 18 Rule 17 of CPC makes it very clear that at any stage of the proceedings the Court may recall and examine the witnesses. In the instant case, when the case was posted for arguments, the application is filed in order to prove Ex. D.1. The Court has got power to recall and examine the witnesses. Hence, the order passed by the trial Court is contrary to law. In support of his contention, he relied upon the judgment of Hon"ble Supreme Court reported in K.K. Velusamy Vs. N. Palanisamy, (2011) 3 CTC 422 : (2011) 4 JT 38 : (2011) 2 RCR(Civil) 875 : (2011) 4 SCALE 61 : (2011) 11 SCC 275 : (2011) 4 SCR 31 .

10. Sri Mrutyunjaya Tata Bangi, learned Advocate for the respondent Nos. 1 to 4 argued in support of the order passed by the trial Court and contended that when the case has been posted for the arguments and plaintiffs have already argued the case, defendant No. 3 instead of arguing the case filed application for reopening the case and to adduce further evidence to prove Ex. P.1, which is not permissible. The power under Section 151 or Order 18 Rule 17 of CPC has to be exercised sparingly not in a routine case. Power under Order 18 Rule 17 of CPC is not intended to be used routinely merely for asking. The trial Court after considering the matter in detail has dismissed the application. The petitioner has not made out a case to interfere with the same. Accordingly, sought for dismissal of the writ petition.

11. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the impugned order passed by the Wakf Tribunal and also other relevant records.

12. The plaintiffs have filed the suit seeking for a declaration that notification dated 20.03.2011 issued by the first respondent is illegal, void, ab-initio and also declaration that the plaintiff is the lawful owner and in possession of the suit

schedule property and permanent injunction restraining the defendants from disturbing the lawful possession.

13. The contesting defendants filed written statement. On the basis of the pleadings of the parties the trial Court framed necessary issues and went for trial.

14. After conclusion of trial case was posted for arguments. The plaintiffs have already addressed their arguments and the case has been posted for arguments on behalf of defendant No. 3. At that time, defendant No. 3 took three adjournments. Thereafter, LA No. 13 was filed under Order 18 Rule 17 r/w Sec. 151 of CPC seeking for recalling D.W. 1 for adducing further evidence in order to prove Ex. D.1 by reopening the case. Plaintiff objected the said application contending that at this belated stage no such application could be filed for reopening case for adducing further evidence. The trial Court after considering the matter in detail found that, at that belated stage third defendant cannot file such an application for reopening the case and dismissed the application.

15. The Hon"ble Supreme Court in a judgment reported in *Bagai Construction Thr. Its Proprietor Mr. Lalit Bagai Vs. Gupta Building Material Store*, (2013) 3 AD 235 : AIR 2013 SC 1849 : (2013) 116 CLT 489 : (2013) 3 JT 192 : (2013) 170 PLR 259 : (2013) 3 RCR(Civil) 304 : (2013) 2 SCALE 769 : (2013) 14 SCC 1 : (2013) AIRSCW 1564 examined Order 18 Rule 17 CPC and held that, though the Court has got inherent power under Order 18 Rule 17 CPC to recall and examine the witness at any stage of the suit, however, the said power must be exercised sparingly and in an appropriate case and not as a general rule, merely on the ground that recalling and reexamination would not cause any prejudice to the parties. The power under Section 151 of CPC or Order 18 Rule 17 of CPC is not intended to be used routinely, merely for asking If so used, it will defeat the very purpose of various amendments to the Code to expedite the trial.

16. Further, the Hon"ble Supreme Court in a judgment reported in *K.K. Velusamy Vs. N. Palanisamy*, (2011) 3 CTC 422 : (2011) 4 JT 38 : (2011) 2 RCR(Civil) 875 : (2011) 4 SCALE 61 : (2011) 11 SCC 275 : (2011) 4 SCR 31 at paragraph No. 8 held as under:

"8. Order 18 Rule 17 of the Code enables the court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18 Rule 17 can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit requesting the Court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the Court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined (Vide *Vadiraj Naggapa Vernekar (D) Through Lrs. Vs. Sharad Chand Prabhakar Gogate*, AIR 2009 SC 1604 : (2009) 7 JT 202 : (2009) 4 SCALE 90 : (2009) 4 SCC 410 : (2009) 3 SCR 1071 . Order 18 Rule 17 of the

Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue of doubt, by recalling any witness either suo moto, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purpose of such clarification, it may, of course, permit the parties to assist by putting some questions."

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17. In view of the authoritative pronouncement of law by the Hon"ble Supreme Court, interpreting Order 18 Rule 17 of CPC, I find that there is no infirmity or irregularity in the order passed by the trial Court dismissing the application filed. The petitioner can address his arguments on Ex. D.1 in order to substantiate his case. When the case was posted for arguments, that too, the plaintiff has already addressed arguments, question of reopening the case by recalling D.W. 1 for adducing further evidence in respect of proof of Ex. D.1 does not arise. The order passed by the trial Court is in accordance with law. Accordingly, writ petition is dismissed.