

(1986) 02 MAD CK 0048
In the Madras High Court
Case No : Appeal No. 393 of 1973

Thiruvenkata Kounder

APPELLANT

Vs

Ramachandran and 4 others

RESPONDENT

Date of Decision : 20-02-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 3, Order 2 Rule 3(1), Order 2 Rule 3(2), Order 2 Rule 4, Order 2 Rule 4(a)

Citation : (1986) 02 MAD CK 0048

Hon'ble Judges : Ratnam, J; M.A. Sathar Sayeed, J

Bench : Division Bench

Advocate : P.S. Ramachandran and V. Syamalam, for the Appellant;
K. Sarvabhauman and K. Sampath, for the Respondent

Final Decision : Allowed

Judgement

Ratnam, J.—The plaintiff in O.S. No. 260 of 1976, Sub-Court, Cuddalore, is the appellant in this appeal. The Appellant instituted that suit praying for the reliefs of declaration of his exclusive title to eight items of immovable properties and for the recovery of a sum of Rs. 96,172 with subsequent interest or alternatively for taking accounts of a dissolved partnership of the name of M/s. TK. Rathnaswamy Kounder. The appellant and the deceased Rathnaswamy Kounder were brothers. Respondents 1 and 2 in this appeal are the sons of the deceased Rathnaswamy Kounder, while respondents 3 and 4 are his daughters. The fifth respondent is the widow of the deceased Rathnaswamy Kounder. According to the case of the appellant, neither the deceased Rathnaswamy Kounder nor he had any ancestral properties and that items 1 to 5 were purchased by the appellant out of his own earnings. Claiming that the deceased Rathnaswamy Kounder did not contribute any funds for the acquisition of these items of immovable properties and stating that the patta for the lands as well as the registry in the Municipality for the houses stood in his name and further that he had also prescribed title by adverse possession, the appellant sought declaration of his title with reference to those items of immovable properties on the ground that after the death of his brother

Rathnaswamy Kounder, the respondents adopted an attitude of hostility towards the appellant and prevented him from enjoying the properties. The further case of the appellant was that on 7th April, 1972, the deceased Rathnaswamy Kounder and he entered into a partnership for the purpose of carrying on cashew trade, the appellant having contributed towards his share capital in the partnership a sum of Rs. 30,000 given by the deceased Rathnaswamy Kounder as gift to the appellant in consideration of the services rendered by him. The appellant claimed that according to the terms of the deed of partnership, he is entitled to a one-third share in the profit, while the deceased Rathnaswamy Kounder was entitled to a two-third share and the accounts were looked into and a sum of Rs. 96,172 was due to him. On the death of Rathnaswamy Kounder, the partnership became dissolved, but the respondents who had succeeded to his estate inclusive of the partnership assets, denied the claim made by the appellant in relation to the partnership and this necessitated the recovery of a sum of Rs. 96,172 as borne out by the accounts of the partnership, according to the appellant. By way of abundant caution, the appellant also prayed for a preliminary decree for accounting. In the written statement filed by the first respondent which was adopted by the court, he put forth the plea that the appellant never contributed anything for the acquisition of items 1 to 8 of the suit properties, but that his father, the deceased Rathnaswamy Kounder made all the purchases and was also in possession and enjoyment of the properties so purchased by paying land revenue as well as the property tax, etc. The claim of the appellant that he purchased items 1 to 8 of the suit properties was thus disputed by the respondents. The acquisition of title by prescription put forth by the appellant was also questioned by the respondents. With regard to the partnership business, it was the case of the respondents that in or about 1972, with a view to reduce the income tax payable, the deceased Rathnaswamy Kounder made a fictitious entry in the accounts for the gift of Rs. 50,000 to the appellant, but that the appellant never contributed any amount at all and there was no intention on the part of the deceased Rathnaswamy Kounder to gift any amount to the appellant. The claim of the appellant that he is entitled to recover a sum of Rs. 96,172 or a preliminary decree for accounts was stoutly disputed by the respondents on the ground that he did not contribute anything at all and that the claim was misconceived as well as unjust. An objection was also raised by the respondents that the suit is bad for mis-joinder of causes of action.

2. In an additional written statement, the respondents contended that the appellant and respondents continued to live as members of a joint family having common mess even after the death of Rathnaswamy Kounder and that the appellant must be debited with one-half of the expenses incurred for the maintenance of the family for the years ending 31st March, 1973, 31st March, 1974, 31st March, 1975 and 31st March, 1976.

3. On the aforesaid pleadings of the parties, issues relating to the purchase of items 1 to 8 of the suit properties by the deceased Rathnaswamy Kounder in favour of the appellant, the entitlement of the appellant to recover a sum of Rs.

96,172 on the alternative relief of accounting, the suit being bad for mis-joinder of causes of action, the liability of the respondents to render an account and the entitlement of the appellant for a declaration were framed.

4. Before the Court below, on behalf of the appellant, Exs. A1 to A36 were filed and the appellant examined himself as P.W. 1, while, on behalf of the respondents, Exs. B1 to B20 were marked and the first respondent gave evidence as D.W. 1. After the evidence was so let in and arguments were heard and judgment was reserved in the suit, the appellant filed an application on 20th July, 1978 in I.A. No. 1471 of 1978 praying that the court may grant leave to join the prayer for the recovery of the sum of Rs. 96,172 or the alternative relief of accounting and for an account of the income from the suit properties along with the relief of declaration and recovery of possession already prayed for. This application was opposed by the respondents herein on the ground that the objection relating to the mis-joinder of the causes of action and the suit being bad on that account had been raised even in the written statement filed on 30th November, 1976 and that the application had been filed belatedly after the conclusion of the arguments. It was also the further objection of the respondents that though the appellant filed an application for amendment of the plaint as no leave under the provisions of O.2, R.4, C.P.C., was either asked for or obtained and that such leave must be ordinarily obtained before the institution of the suit and could not thereafter be granted.

5. On a consideration of the oral as well as the documentary evidence, the learned Subordinate judge found that items 1 to 8 of the suit properties were purchased by the appellant and that the deceased Rarhnaswamy Kounder did not have anything to do with them. Consequently, the title of the appellant to the eight items of immovable properties was declared and the relief of recovery of possession was also granted to him with future mesne profits. There is no dispute now before this Court at the instance of the respondents concerning the title of the appellant to the eight items of immovable properties as well as the decree in his favour for recovery of possession. Dealing with I.A. No. 1471 of 1978 and the related issues, the learned Subordinate Judge was inclined not to dismiss that application on the ground of delay, but felt that there was no nexus between the claims made by the appellant with regard to immovable properties and the partnership firm and that the claims were also not on the same cause of action and, therefore the claim of the appellant based on the partnership would be hit by the provisions of O.2, R.4, C.P.C. Referring to the non-obtaining of leave by the appellant despite his attention having been drawn to the mis-joinder of causes of action, the learned Subordinate Judge was of the view that the denial of the title of the appellant was the cause of action for recovery of possession, while the cause of action for the recovery of money or the relief of accounting was the partnership, which had nothing to do with the immovable properties and, therefore, leave sought for by the appellant cannot be granted. In that view, I. A. No. 1471 of 1978 was dismissed and the claim of the appellant for recovery of a sum of Rs. 96,172 or the alternative relief of accounting was

also negated. It is this part of the judgment and decree of the Court below that is objected to by the appellant in this appeal.

6. The principal contention of the learned counsel for the appellant is that the Court below overlooked that O.2, R.4, C.P.C., relating to joinder of certain claims in a suit for recovery of immovable property is really in the nature of an exception to O.2, R.3, C.P.C., which permits the uniting of several causes of action against the same defendant or the same defendants jointly in the same suit and that the grant of leave could be done by the Court at any stage. Reference in this connection was made by the learned counsel for the appellant to the decision in *Mrs. Jankibai Prahladrai Brijlal Seksaria Vs. Kashinath Raghunath Kelkar and Others*, . On the other hand, the learned counsel for the respondents submitted that though the Court below did not choose to dismiss I.A. No. 1471 of 1976 on the ground of delay, its dismissal could be justified on the ground. Elaborating this, the learned counsel pointed out that the objection as regards the mis-joinder of causes of action had been raised at the earliest in the written statement filed by the respondents, but the appellant did not take any serious notice of the same and ask for leave, but had persisted in maintaining that objection even as late as 29th July, 1978, when I.A. No. 1471 of 1978 was filed by him praying for leave and, therefore, no exception could be taken to the dismissal of I.A. No. 1471 of 1978 by the court below. It was the further submission of the learned counsel that in the absence of compliance with O.2, R.4, C.P.C. by obtaining leave, the appellant was rightly non-suited by the court below.

7. We may first proceed to deal with the argument of the learned counsel for the respondents based on delay. It is true that the written statement filed by the respondents herein as far back on 30th November, 1976, in paragraph 7, drew attention to the suit being bad for mis-joinder of causes of action. Though the appellant could have immediately thereafter taken the necessary steps to cure this defect pointed out by the respondents, he did not do so, but waited till the conclusion of the arguments and filed the application in I.A. No. 1471 of 1979 as late as 20th July, 1979. We are really not impressed by the argument of delay, as we do not see any serious prejudice caused to the respondents. The entire evidence even with reference to the relief for recovery of money claimed by the appellant or for a preliminary decree for accounting was already there on record. All that was necessary for the Court was to consider the application in I.A. No. 1471 of 1978 on a proper appreciation of the relevant provisions of the CPC and pass orders. Unfortunately, that was not done. We agree with the Court below that though there has been some delay in the filing of I.A. No. 1471 of 1976 by the appellant, it is not a delay of such magnitude as to justify the throwing out of the application. As pointed out earlier, the appellant could have moved in the matter soon after the objection was raised, but the circumstances that he did so only on 20th July, 1976, when I.A. No. 1471 of 1978 was fled, after the evidence was recorded and the matter had been argued, cannot in our view, be regarded as compelling the Court to dismiss the same on the only ground of delay or

laches. We, therefore, agree with the Court below that I.A. No. 1471 of 1978 could not be dismissed on the ground of delay, especially when we do not see any serious prejudice caused to the parties.

8. Unfortunately for the appellant, the Court below had taken the view that the reliefs relating to immovable property and the partnership business are based on different causes of action, one having no connection whatever with the other and, therefore, the appellant is precluded by the provisions of O.2, R.4, C.P.C., from claiming the reliefs relating to partnership. Under O.2, R.3, C.P.C., save otherwise provided, the plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly. From this, it is clear that several causes of action available to a plaintiff may be joined in the same suit against the same defendant or the same defendants jointly. In this case, the relief relating to immovable property arose out of a denial of the title of the appellant by the respondents. The relief with respect to the partnership arose owing to the entering into a deed of partnership on 7th April, 1979 and the death of Rathnaswamy Kounder, resulting in the dissolution of the partnership. No doubt, these two causes of action are not the same. But these different causes of action are available to the appellant against the same respondents jointly. Ordinarily, therefore, the appellant could have, under O.2, R.3, C.P.C. joined or united in the same suit the causes of action arising with reference to the immovable as property as well as the partnership. There is no dispute that if so joined, the lower Court would have had jurisdiction to entertain the suit and we, therefore, need not consider O.2, R.3(2), C.P.C. O.2, R.4, C.P.C. makes a pointed reference to suits for recovery of immovable property and provides that normally causes of action with reference to claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof, or claims for damages for breach of any contract under which the property or any part thereof is held; or claims in which the relief sought is based on the same cause of action, alone can be united with a suit for recovery of immovable property and none other, unless leave of court is granted. In other words, in suits relating to recovery of immovable property, reliefs pertaining to such property in the nature of mesne profits or arrears of rent or damages for breach of any contract under which the property or any part thereof is held and claims in which the relief prayed for is referable to the same cause of action, etc., can be united and not other reliefs referable to causes of action, though with reference to immovable property. A conjoint reading of O.2, R.3 and 4, C.P.C. clearly indicates that while O.2, R.3, C.P.C., is of general application to several causes of action arising against the same defendant or same defendants jointly and such causes of action may be united in the same suit, O.2, R.4, C.P.C., is really in the nature of an exception to the general rule and ordinarily permits the uniting of causes of action relating to O.2, R.4 (a), (b) and (c), C.P.C., only in a suit for recovery of immovable property and not others. If some other causes of action for reliefs other than those under O.2, R.4 (a), (b) and (c), C.P.C., with reference to recovery of immovable property is available, then, to join such a cause of action with a suit

for recovery of immovable property, leave of Court would be necessary. In the suit instituted by the appellant, he had prayed for a declaration of his title to the immovable properties and for recovery of possession with mesne profits and that exhausted all the reliefs available to the appellant without the need for obtaining leave of court under O.2, R.4, C.P.C. But the cause of action with reference to immovable property under O.2, R.4, C.P.C., without obtaining leave of court leaves the cause of action with reference to the partnership, which does not relate to immovable property in tact and there was thus no need for the appellant to have resorted to O.2, R.4, C.P.C., with reference to reliefs against the partnership, which was not immovable property. The relief relating to the partnership prayed for by the appellant cannot be stated to have arisen out of any cause of action for a suit for the recovery of immovable property as such and in such an event, no leave of Court would be necessary under O.2, R.4, C.P.C. In other words, on the facts of this case, O.2, R.3 (1), C.P.C., would apply and the appellant was entitled to unite in the suit the causes of action with reference to recovery of immovable property or the partnership, as such causes of action arose in favour of the appellant against the same respondents jointly. It was, therefore, wholly unnecessary for the appellant to have even prayed for leave under O.2, R.4, C.P.C., as he did in I.A. No. 1471 of 1978. We are, therefore, of the opinion that it is unnecessary to consider what would be the appropriate stage for the grant of leave in accordance with the provisions of O.2, R.4, C.P.C. In view of this, it is not necessary to refer to the decision in *Mrs. Jankibai Prahladrai Brijlal Seksaria Vs. Kashinath Raghunath Kelkar and Others*, , relied on by the learned counsel for the appellant. On a careful consideration of the grounds set out by the Court below for the dismissal of I.A. No. 1471 of 1978, we are satisfied that its dismissal cannot be sustained and since we have taken the view that on the facts and circumstances of this case no leave at all was necessary, it follows that the dismissal of the suit by the Court below with reference to the reliefs prayed for by the appellant in relation to the partnership business cannot be sustained. We accordingly set aside that part of the judgment and decree of the Court below relating to the refusal of relief to the appellant as regards the partnership business and remit that question for decision afresh by the Court below on the basis of the evidence already available and pass appropriate orders thereon. Consequently, the appeal is allowed. There will be, however, no order as to costs.