

(1977) 12 KAR CK 0004

In the Karnataka High Court

Case No : Civil Revision Petition No. 2050 of 1976

V. Krishna Bhat

APPELLANT

Vs

Ravishankar and Others

RESPONDENT

Date of Decision : 20-12-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 6, 115

Citation : AIR 1978 Kar 117 : (1978) ILR (Kar) 401 : (1978) 1 KarLJ 144

Hon'ble Judges : N.D. Venkatesh, J

Bench : Single Bench

Advocate : K. Krishna Bhat, for the Appellant; K. Shivashankar Bhat, for the Respondent

Judgement

1. The first defendant in O. S. No. 105 of 1970 on the file of the I Additional Civil Judge at Mangalore, has preferred this revision against the order of that court on I. A. No. XVII dated 22-9-1976.
2. Respondents 1 to 4 are the plaintiffs; respondents 5, 6, 7, 8 and 9 are defendants 2 to 6 respectively in the suit.
3. Plaintiffs are minors and are represented by their next friend--their maternal uncle in the suit. During the course of this order I shall be referring the parties as they appear in the original suit in the court below.
4. Defendants 2 to 4 are the sons of the first defendant, and the fifth defendant is his wife. The sixth defendant is the mother of the plaintiffs and the widow of one Rama Bhat. The first defendant is the brother of the said Rama Bhat who died on 6-7-1968 leaving behind him the plaintiffs and his widow as his legal representatives.
5. It appears that after his death, within a period of a few months, a partition took place in which the family properties came to be divided between the plaintiffs and their mother on the one side and the other defendants on the other. In this connection it is also stated that a registered partition deed was executed

on 18-9-1968.

6. According to the plaintiffs this was not a genuine partition. They allege that it is one sided, inequitable, and had taken place at the pressure and persuasion of the first defendant. They also allege that the said partition is the result of fraud, undue influence and coercion committed by the first defendant. On these allegations they have brought the suit for effecting a proper partition and for obtaining their 24/50th share in the plaint schedule properties. They have also sought for rendition of accounts and for mesne profits.

7. The valuation of the suit for purposes of court-fee constitutes nearly about Rs. 2 lakhs and the total court-fee payable would be about Rs. 14,000/-. According to the plaintiffs they do not possess any means to pay the necessary court-fee. Therefore, they have filed I. A. No. XVII requesting the Court to permit them to prosecute the suit in forma pauperis.

8. After taking evidence and hearing the parties concerned, the learned Civil Judge, has allowed I. A. No. XVII. Being aggrieved, the first defendant has come up with this revision.

9. For the plaintiffs their maternal uncle who has been acting as a next friend in the suit examined himself and has closed his side of the evidence on I. A. No. XVII. No oral evidence has been let in by contesting defendants, but they rely on certain documents which have already been filed in the suit.

10. The two main grounds urged by Sri K. Krishna Bhat, learned counsel for the first defendant (petitioner herein) in support of his contention that I. A. No. XVII should have been dismissed by the Court below are, (i) that the plaintiffs have not disclosed all their assets in their application as provided under Sub-rule (2) of Order 33 C. P. C., and (ii) they also possess sufficient means to pay the requisite court-fee.

11. While rebutting these grounds Sri K. Shivashankar Bhat, learned Counsel for the plaintiffs (contesting respondents herein) also raised two preliminary objections, the first of which is that the question of sufficiency of court-fee on a plaint is a matter essentially between the State and the parties concerned, and the defendants in the suit will have no locus standi to intervene in this dispute. Secondly, he contended that even assuming that the contesting defendants have a right to have their say in the matter, they cannot pursue the same up to this Court invoking its limited powers u/s 115 C. P. C., to nullify the decision of the court below.

12. The decision reported in Shri M.L. Sethi Vs. Shri R.P. Kapur, provides an effective answer to the first preliminary objection of the learned Counsel for the contesting respondents. Their Lordships of the Supreme Court have been pleased to observe, at para 7 of the judgment as follows :--

"Under Order 33 Rule 9, it is open to the Court on the application of the defendant to dispauper the plaintiff on the grounds specified therein, one of them

being that his means are such that he ought not to continue to sue as a pauper. An immunity from a litigation unless the requisite Court-fee is paid by the plaintiff is a valuable right for the defendant. It follows therefrom as a corollary that the proceedings to establish that the applicant-plaintiff is a pauper, which will take away that immunity, is a proceeding in which the defendant is vitally interested. This is further borne out by order 33 Rule 6 which confers the right on the opposite party to participate in the enquiry into the pauperism and adduce evidence to establish that the applicant is not a pauper."

In this view of the matter it cannot be said that the claim of a party to sue as a pauper is a matter to be sorted out between him and the State. The defendants have a right to intervene and to contest the claim of the plaintiffs to use as a pauper.

13. I will take up the second preliminary objection for consideration at a later stage.

14. In support of the first contention of the first defendant (petitioner herein) that the plaintiffs have not disclosed all their assets in their application seeking permission of the Court to sue as paupers, he mainly place reliance on three registered sale deeds dated 6-1-1970 executed by all the parties (including the plaintiffs and defendant) under which some properties which had been kept undivided at the partition had been sold subsequently. It is said that under these documents the plaintiffs are entitled to get their shares of the purchase money on future dates -- the dates when each of these minor defendants respectively attain majority. According to this agreement plaintiffs 2, 3, 4 and 1, it appears, are entitled to get Rs. 3,148/- Rs. 3,148/-Rs. 3, 148/- and Rs 18,903/- respectively by 31-3-1981 31-3-1983, 31-3-1985 and 31-3-1987 respectively with interest at an annual rate of 5 1/2 per cent. The contesting defendant's main ground is that the plaintiffs have not disclosed these facts in their application, and therefore, for lack of good faith and for suppression of these facts their application is liable to be rejected. The learned counsel for the plaintiffs does not dispute the fact of there being sale deeds D/- 6-1-1970 and the recitals therein stipulating the payment of the aforesaid sums to these minor plaintiffs on future dates, but what he contends is that this omission, in the circumstances of the case, should not be made much of by the defendants, and the Court below had rightly not taken these contentions too seriously. He further contends that the decisions relied on by the contesting defendant in support of his say that the application has to be thrown out on the ground of non-disclosure alone, have no bearing on the facts of this case and are clearly distinguishable. According to the learned counsel the plaintiffs are all minors and the suit is brought on their behalf by their maternal uncle, and he cannot be expected to know all these details. It is stated that the plaintiffs' mother who might have known these facts, being a party to the said documents, has not been helping them, and that therefore the plaintiffs were unaware of these facts.

15. The learned Counsel for the contesting defendant places reliance in support

of his case on a number of authorities. In *Navadu Nuka Raju Vs. Rajani China Appanna and Others*, it is stated that every applicant should approach the Court for leave to sue as a pauper with a full and complete disclosure of his moveable and Immovable property assets. If he does not do it, the application is liable to be dismissed. It is further stated that the motive for such nondisclosure is immaterial and even if the undisclosed property is not sufficient to pay the court-fee it does not alter the situation. That was a case in which the life interest of the party in a particular property had not been disclosed. The learned single Judge who decided the said case has been pleased to observe that utmost good faith is required of the petitioner when he discloses his properties and assets. The decision in *Maharaj Bali and Another Vs. Mt. Tirath Dei and Others*, is also to the same effect. The Division Bench of that Court was pleased to observe that utmost bona fide is required of the petitioner in the matter of disclosure of his assets. To that effect also are the decisions reported in *Ghanshyam Dass Rastogi Vs. A.N. Syal and Another*, *Rajib Lochan Mahton and Others Vs. Prafulla Kumar Ojha*, *Lakhyeswar Karmi and Others Vs. Padmabati Karmi and Others*, and *Widdia Pat Upadhiya and Another Vs. Mahadeo Shastri and Others*.

16. It is true that Sub-rule (5) of Order 33 provides that where an application to sue in forma pauperis is not framed and presented in the manner prescribed by Rules 2 and 3, it should be rejected. Sub-rule (2) says that every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits and a schedule of any moveable or Immovable property belonging to the applicant with the estimated value thereof. But, it is contended by the learned Counsel for the plaintiffs that a mere non-disclosure of the properties belonging to the plaintiffs is not fatal. In addition to that, according to him, it is necessary to see as to whether the conduct of the plaintiffs lacks bona fides and good faith. He draws a distinction between the facts of the cases referred to by the other side and the case on hand. In, the instant case the parties are minors and they have brought the suit to nullify a partition, which, according to them, is the result of fraud and coercion. The suit is brought on behalf of the minor's by their maternal uncle. This situation, according to the learned Counsel, has to be taken note of while trying to know as to whether the non-disclosure of all the properties is with any ulterior motive or just an innocent act. In this connection he places reliance on a decision of the Allahabad High Court in *The State of Punjab Vs. Sri R.P. Kapoor and Others*. In that decision reference is also made to 1968 All LJ 1102, a previous decision of the Division Bench of that Court. It is stated in that decision that: "It is not every suppression of assets from the Schedule annexed to a pauper petition that can result in an order of refusal of permission to sue as a pauper. There may be cases of bona fide omissions also. The view consistently taken by all the courts is that if the omission of any assets from such a schedule is bona fide, it cannot be made a ground for refusing permission to sue as a pauper. The question whether there were any omissions at all and whether such omissions were not bona fide are clearly questions of fact." I am inclined to agree with the above view

17. It is true that, as stated in *Rajakumar Bhagwatsaran Vs. V.P.V. Rajan and Others*, the motive for suppression is irrelevant, but utmost good faith is expected of persons who seek permission to sue as pauperis. But, as observed by their Lordships of the Allahabad High Court in the decision referred to above that it is not every case of omission that is fatal, but only omissions indicative of lack of bona fide or good faith on the part of the applicants that would indeed be fatal and the party lacking in good faith is not entitled to these concessions at all.

18. Whether the conduct of a party lacks good faith and whether the omission to mention all the properties belonging to him is a deliberate act of suppression has to be ascertained from the facts of that particular case and the surrounding circumstances. As already stated above, in the instant case, the plaintiffs are minors and it is alleged that their mother who was a party to the earlier partition has not been taking any helpful attitude and the suit is brought by their maternal uncle acting as a next friend. In the circumstances of the case and in view of the evidence on record it is not possible to say that they have wantonly not disclosed about their rights for the unpaid purchase moneys payable to them under the sale deeds dated 6-1-1970. Their application is not liable to be rejected only on this ground.

19. The next ground urged by the learned Counsel for the contesting defendant is that the plaintiffs do possess sufficient means to pay the court-fee, and therefore, they should not be allowed to sue as paupers. He submits that it was possible for them to raise sufficient loans for this purpose, at least on the security of their shares of the family properties. In support of this contention he places reliance on a decision reported in *Sanyukta Vs. Prem Kumar Madan and Others*, wherein it is stated that "what is to be seen is not whether a person possesses sufficient property which can enable him to pay the prescribed fee but whether he has sufficient means for this purpose." To this effect also is a ruling of the Patna High Court reported in *Dulhin Suraj Mukhi Devi and Others Vs. Jokhu Raj and Others*, . On the other hand, the learned Counsel for the plaintiffs submits that in view of the fact that his clients are minors it is not possible for them to raise loans on the security of their shares in the family property unless they can secure court's permission as provided under the Hindu Minority and Guardianship Act. It is in this connection he places reliance on a decision of the Andhra Pradesh High Court reported in *Katam Virupakshiah and Others Vs. Matam Sivalingaiah and Others*, . his Lordship is pleased to observe as follows:--

"It cannot be assumed that a person who is entitled to a share in joint family property of considerable value would always be able to raise comparatively smaller amounts on its security. When the property does not consist of cash, the test is not whether a person has a power in the abstract of raising money, but whether, in the concrete circumstances of the case, he could succeed in raising anything substantial by exercising that power. In each case evidence would be necessary to enable one to judge whether money could be raised on the properties.

Held on facts that as the de facto guardian of the minor petitioners was not legally competent u/s 11 of the Hindu Minority and Guardianship Act, 1956. to offer their undivided share of the joint family property as security, the applicants could not be said to be capable of raising funds."

To this effect also is the decision of our High Court in Radhakrishna Nayak v. Kunhappa Nayak (1969 (2) Mys LJ 220), wherein his Lordship Narayana Pai J., (as he then was), has been pleased to observe as follows at Para-6 of the Judgment:--

"It appears to me that what is really necessary is that the plaintiff in question should either possess property or have such control over property as is sufficient to enable him to command credit and raise sufficient money to pay the Court-fee. In Munipapiya v. Munimarappa ((1930) 8 Mys LJ 1) it has been pointed out that for purposes of Rule 1 of Order XXXIII a person cannot be said to be possessed of sufficient means unless he has actual control over a thing and unless he is in possession of it or can reduce it into his possession without having recourse to law."

20. If the facts of this case are viewed in the light of the decisions referred to above, it cannot be said that the minor plaintiffs either possess property or have such control over any property as is sufficient to enable them to command credit and raise sufficient means to pay the court-fee,

21. In my opinion the revision petitioner cannot succeed on either of the grounds urged here.

22. Besides these, it was urged by the learned Counsel for the plaintiffs that in the circumstances of this case the petitioner should not be permitted to invoke the revisional jurisdiction of this Court to nullify the decision of the court below. About the revisional powers of the High Court there have been number of rulings of the Supreme Court and I may mention only one such case hers. In the decision referred to above Shri M.L. Sethi Vs. Shri R.P. Kapur, their Lordships have been pleased to observe as follows:

"The jurisdiction of the High Court u/s 115 of C.P.C., is a limited one, The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved.

Section 115 empowers the High Court to satisfy itself on three matters (a) that the order of the subordinate court is within its jurisdiction; (b) that the case is one in which the Court ought to exercise jurisdiction; and (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provision of law, or with material irregularity by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision.

"And if the High Court is satisfied on these three matters it has no power to interfere because it differs from the conclusions of the subordinate court on

questions of fact or law. A distinction must be drawn between the errors committed by subordinate courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said court, and errors of law which have no such relation or connection. An erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court cannot be corrected by the High Court u/s 115."

23. If the facts and circumstances of this case are considered in the light of what is stated above by their Lordships of the Supreme Court, it cannot be said that the decision of the learned Civil Judge on I. A. No. XVII calls for interference at the hands of this court.

24. For the reasons stated above, this revision petition fails and is dismissed.

25. Parties are directed to bear their own costs.

26. Revision dismissed.