
(2002) 04 KAR CK 0002
In the Karnataka High Court
Case No : C.R.P. No. 2143 of 2001

V.N. Shivaram

APPELLANT

Vs

B.M. Nagappa and Another

RESPONDENT

Date of Decision : 05-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 2003 Kar 18 : (2002) 3 KCCR 1872

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : G.S. Baat and V. Vijayakumar, for the Appellant; C.R. Subramanyan, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J.—Though this matter has come up for admission, by consent of the parties, the same is taken up for hearing. Accordingly, I heard the learned Counsel appearing for the parties.

2. The petitioner-defendant has assailed the legality and validity of the order dt. 13-2-2001 passed by the learned Prl. Civil Judge (Jr. Dn.), Madikeri, on LA. VI in O.S. No. 204/96.

3. After hearing both the sides on the application, LA. VI, filed by the respondent-plaintiff, the Trial Court allowed the amendment introducing the additional relief on facts already on record.

4. The principal submission canvassed by the learned Counsel appearing for the petitioner is that the respondent plaintiff has filed LA. for temporary injunction in O.S. 204/96. After hearing both the sides and considering the pleadings of both the parties, the Trial Court has refused to grant the interim order as sought by the respondent-plaintiff and the same was confirmed by the Appellate Court. Against the said order, the respondent filed the revision petition No. 1554/97 before this Hon''ble Court. The said revision petition had come up for

consideration on 13-5-1997. After hearing both the parties, this Court has passed the well considered order holding that there is no violation of bye-law No. 19 and the construction put up by the petitioner is strictly in accordance with the plan sanctioned by the authority and no other material has been placed before this Court to unsettle the finding arrived at concurrently by the Courts below.

5. The learned Counsel appearing for the petitioner placed reliance upon the Judgment of the Supreme Court in case of Muni Lal Vs. The Oriental Fire and General Insurance Company Ltd. and another, . He has taken me through the relevant portion of the order passed by the Supreme Court at Para-6, which reads as follows (at page 644) :

"On a consideration of this case in its proper perspective, we are of the view that granting of amendment, of plaint seeking to introduce alternative relief of mandatory injunction for payment of specified amount is bad in law. The alternative relief was available to be asked for when the suit was filed but not made. He cannot be permitted to amend the plaint after the suit was barred by the limitation during the pendency of the proceeding in the appellate Court or the second appellate Court. Considered from this perspective, we are of the opinion that the District Court and the High Court were right in refusing the prayer of amendment of the suit and the Courts below had not committed any error of law warranting interference."

6. Hence, he prayed that the revision petition may be allowed, since the order passed by the trial Court is contrary to well settled law laid down by the Supreme Court.

7. Per contra, the learned Counsel appearing for the respondent contended that the suit filed by the respondent plaintiff and amendment as sought for, will not alter the pleadings taken by the respondent in O.S. No. 204/96. The said amendment application is filed taking into consideration that the construction in violation of sanctioned plan taken up by the petitioner is contrary to the Karnataka Town and Country Planning Act and bye-laws. Therefore, taking into consideration, the violation of the building bye-laws, there is no option except to make proper application for seeking amendment and the trial Court has rightly considered his request and allowed the LA. filed by the respondent-plaintiff. The learned counsel has also placed reliance on the judgment of this Court in ILR 1996 KLJ 222 : (1996 AIHC 1659) wherein it is held that the amendment introducing additional relief on facts already on record can be allowed even after expiry of limitation period. Hence, he prayed that the petitioner has not made out any case before this Court u/s 115 CPC.

8. The short question that arises for my consideration is, whether the amendment application LA. VI filed by the respondent, is maintainable ?

9. The learned counsel for the petitioner has rightly pointed out that the respondent has already made application seeking for temporary injunction in respect of the construction taken up by the petitioner as contrary to the

sanctioned plan. The said plea has not been accepted by the trial Court and the order refusing to grant temporary injunction is confirmed by the Appellate Court and this Court in the revision filed by the respondent, held that the construction taken up by the petitioner is strictly in accordance with law and building bye-laws and there is no violation of building bye-law No. 19 and further it has held that no other material has been placed before this Court to unsettle the finding correctly arrived by the Courts below. This matter has been already settled by this Court by order dt. 13-5-1997. Therefore, the said application for amendment is contrary to the provision of Karnataka Town and Country planning Act. Hence, the said amendment sought for by the respondent-plaintiff is not sustainable at this distance of time. The trial Court entertained the application contrary to the well settled law laid down by this Court. Further the learned counsel for the petitioner has rightly pointed out that in the case of Muni Lal, the Supreme Court has held that the granting amendment of plaint seeking to introduce alternative relief of mandatory injunction is bad in law. Alternative relief available to be asked for when the suit was filed but not made later. He cannot be permitted to amend the plaint at this distance of time. in my considered view the trial Court has committed an error in permitting the respondent plaintiff to amend the prayer for injunction which is contrary to the well settled law laid down by the Apex Court and this Court.

10. Therefore, I do not find any justification to sustain the order passed by the trial Court on I.A. No. VI. Having regard to the factual and legal position of law in the instant case as stated supra, the impugned order passed by the trial Court on I.A. No. VI dated 13-2-2001 is liable to be quashed.

Accordingly, the revision petition is allowed and the order passed by the trial Court on I.A. No. VI dated 13-2-2001 in O. S. No. 204/1996 is hereby set aside. Parties to bear their own costs.