(2015) 07 KAR CK 0358

In the Karnataka High Court

Case No : Writ Petition No. 106671/2015 (GM-CPC)

Yallamma APPELLANT

Vs

Dasharathsa and Others RESPONDENT

Date of Decision : 27-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 14, 151

Citation : (2015) 07 KAR CK 0358

Hon'ble Judges : B. Veerappa, J

Bench : Single Bench

Advocate : Santosh D. Nargund, for the Appellant

Final Decision : Dismissed

Judgement

B. Veerappa, J—The plaintiff filed the above writ petition challenging the order dated 09.06.2015 on I.A. No. II in O.S. No. 23/2012 dismissing the application under Order 11 Rule 14 read with Section 151 of CPC.

2. It is the case of the plaintiff that he has filed O.S. No. 23/2012 for partition and separate possession in respect of suit schedule properties contending all the suit schedule properties are joint family properties of both the plaintiff and the defendants. The defendants filed written statement and contended that the 1st wife of Ramachandrasa Miskin died on or about 1953 leaving behind her only daughter Yallamma. She was aged about 65 years. Sumitrabai, second wife of Ramachandrasa Miskin was performed in the year 1955. Thereafter, in the year 1960-61 Ramachandrasa Miskin performed the marriage of Yallamma. The CTS No. 1227B, Ward No. 4 was purchased by late Ramachandrasa Miskin in the year 1956 and houses property bearing No. 2662 was purchased by him on 17.01.1973. Both houses are very old houses, but properties yielded no income and rest of the immovable properties are not joint family properties, they are self acquisitions of each member and also contended that so far as the vehicles are concerned, they are standing in the individual names of the defendants which are purchased by them. The gold and silver mentioned in the plaint are not at all

existing any time. The deposits in the banks stated in the plaint are false and concocted, there are no deposits in any banks, there is no joint family business, there is no joint family earnings, there is also no joint family, consequently there is no karta of the joint family etc. Therefore, sought for dismissal of the suit.

3. After completion of the evidence on both sides, when the matter was posted for arguments, at that stage, the plaintiff filed an application under Order 11 Rule 14 read with Section 151 of Code of Civil Procedure for direction directing the defendants to produce Bank Accounts for their family business of jewellery and money lending for a period of five years from 2009-14 in respect of following shops, i) M/s. Ramachandra Yellappa Miskin and sons, Sarafgatti, Hubli, ii) M/s. Bhavani Jewelers, Sarafgatti, Hubli and iii) M/s. Rajeshwari Jewelers, Sarafgatti, Hubli, contending that during the course of inventory, defendant No. 1 noticed the order by manipulating the articles of gold and silver have been illegally shifted before commencement of the inventory work. As such no satisfactory inventory work has been held. In order to find out the truth of the income and asset of the joint family business, it is necessary to obtain accounts of family firms mentioned in the accompanying list etc. The said application was resisted by the defendants and filed objections specifically denied the entire contents of the application are false and baseless and contended that the documents sought to produce as mentioned in the application are no way concerned to the suit schedule properties. The documents called upon to produce are pertaining to different firms the said firms are not parties to the present suit. Therefore, the plaintiff cannot ask calling upon the defendants to produce the documents. The application filed only with intention to harass the defendant and drag the matter. Therefore, defendants sought to dismiss the application. After considering the entire material on record, the Trial Court by impugned order dated 02.06.2015 has dismissed the said application. Against the said order, present writ petition is filed.

4. I have heard Shri Santosh D. Naragund, learned counsel for the petitioner.

5. Learned counsel for the petitioner contended that at any stage of the proceedings the plaintiff can file an application under Order 11 Rule 14 of CPC. Therefore, the impugned order passed by the Trial Court dismissing the application of plaintiff is erroneous and contrary to law. He also contended that thereby proceeded to pass impugned order which has resulted miscarriage of justice.

6. The learned counsel for the petitioner has also relied upon to the decision of this Court in the case of Annaji Babaji vs. Patson Agencies and another reported in 1981(2) KLJ 158 and in the case of Shri K.S. Raina and another vs. Haryana Financial Corporation dated 26.04.2002 and contended that the impugned order passed by the Trial Court is erroneous and sought to allow the writ petition.

7. I have given my anxious consideration to the arguments advanced by the learned counsel for the petitioner and perused the entire material on record.

8. Admittedly, the plaintiff filed the suit for partition and separate possession contending that the plaintiff and defendants are joint family members and the suit schedule properties are joint family properties. The plaint averments had been specifically denied by defendants, except two items i.e., CTS No. 1227B and 2662, houses which are very old houses and they are not getting any yield. The remaining immovable properties are not joint family properties and they are self acquired properties of each member and also contended that there is no joint family business and there is no joint family earnings, there is also no joint family, consequently there is no karta of the joint family. The defendants have denied the every plaint averment of the plaintiff and even not admitted the relationship at all. Therefore, it is burden on the plaintiff to first establish that he is the member of the joint family and he is entitled the share in the suit schedule properties.

9. Having regard to the facts, he filed an application to direct the defendants to produce books of accounts of family business of jewelry, money lending for a period of five years from 2009-14 in respect of the shops as already stated above. Admittedly, the said properties are not at all properties mentioned in the suit schedule properties. It is the imagination of the plaintiff subsequently, when the matter was posted for arguments. Even otherwise, the defendants in categorical terms in the written statement specifically contended that there is no family business and there is no joint family earnings. There is also no joint family, consequently there is no karta of the joint family. When the defendants specifically denied in the written statement and also reiterated the same in the objections to the application, it is for the plaintiff to prove her right that she is entitled for share only after full fledged trial.

10. In so far as the principle of laws relied upon by the learned counsel for the petitioner in the case of Annaji Babaji vs. Patson Agencies and another reported in 1981(2) KLJ 158 and in the case of Shri K.S. Raina and another vs. Haryana Financial Corporation dated 26.04.2002, there is no quarrel with regard to the law laid down. But, the facts of the said cases are not at all applicable to the facts and circumstances of the present case. It is no doubt at any time, the Trial Court can exercise the discretion under Order 11 Rule 14 Civil Procedure Code and in the present case, the Trial Court exercised its discretionary power under Order 11 Rule 14 of Civil Procedure Code and dismiss the application holding that the plaintiff has to establish his right in the suit for partition. After determination of the share the question of direction to produce the accounts and demarcation of the shares arises. The Trial Court after considering the entire material on record has recorded a finding that the suit filed by the plaintiff for partition and separate possession and defendants have denied the share of the plaintiff in the suit schedule property. The firms were not made as parties to the suit. Admittedly, as contended by the defendants, the firms are not made as parties. In this case, firstly it has to be decided as to whether the plaintiff is having the share in the suit schedule property, if the plaintiff succeeds in proving that she is having the share and also that income being earned from the suit schedule

property, then she can claim accounts and share and that aspect has to be considered in the final decree proceedings, but not at this stage and more over application filed when the matter was posted for arguments. Therefore, Trial Court exercising the discretion power as contemplated has dismissed the application and the same is in accordance with law.

Petitioner has not made out any ground to interfere with the impugned order passed by the Trial Court. Accordingly, the writ petition is dismissed with costs of Rs. 2,500/-.

