

(1998) 03 KAR CK 0019

Karnataka High Court

Case No: Regular First Appeal No. 300 of 1992

P. Viswanatham

APPELLANT

Vs

Bangalore Club and Others

RESPONDENT

Date of Decision: March 20, 1998

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10 (2), Order 1 Rule 8, Order 1 Rule 9, Order 14 Rule 2

Citation: (1999) 1 CivCC 360 : (1999) ILR (Kar) 2016 : (1998) 4 KarLJ 401

Hon'ble Judges: Hari Nath Tilhari, J

Bench: Single Bench

Advocate: Sri K.S. Hanumantha Rao, for the Appellant; Sri Mohandas N. Hegde, for the Respondent

Judgement

1. Heard the learned Counsel for the appellant Sri K,S. Hanumantha Rao and Sri Mohandas N. Hegde, learned Counsel for the respondents.

2. The only question that arises in this case is whether the Trial Court was justified in dismissing the plaintiff's suit for declaration that his removal from defendant's club is illegal simply on the ground that suit is badly framed on account of non-joinder of members of the club and whether the Court should have entered into merits of the case in absence of necessary parties or the Court should have decided the issue whether the necessary party had not been impleaded and if so its effect and should have directed the plaintiff or given time to the plaintiff to implead the parties which in view of the Trial Court have been necessary parties and thereafter should have decided the case on merits or thereafter should have dismissed the case on the ground that necessary parties not being impleaded and no relief can be granted.

3. The facts of the case in brief are, that plaintiff had prayed for a decree for declaration that his removal from the membership of the defendant Club is illegal and to declare that the letter of the defendant dated 26-5-1990 bearing No. REF : BC

: ACC : 2039 is void and without effect and for permanent injunction against the defendant and its officers, servants, etc., restraining them from preventing the plaintiff from making use of the Club of the defendant as a permanent member of the Club and making use of all the facilities available as a member of the Club. Plaintiff's case is as per Rule VI(g)10, a member of the Club should pay the bills regularly and if the bill is not paid within 45 days, the member automatically loses the credits available and thereafter a notice would be sent calling upon him to make payments within 15 days failing which he shall be posted as defaulter and the Committee has been conferred with discretionary powers to remove the member from the Club. On 15-1-1990 plaintiff was issued with a reminder to pay dues for the month of November 1989 on or before 27-1-1990. Thereafter another bill was sent on 9-2-1990 claiming payment of arrears of Rs. 925/- for the month of January 1990. The said bill included arrears for the previous month amounting to Rs. 825/- and it was stipulated that the amount is to be paid on 28-2-1990 and further time for payment with delayed payment charges was given till 3-3-1990. Thereafter, defendant sent another letter dated 7-3-1990 asking the plaintiff to pay the bills of arrears to avoid automatic stoppage of credit and subsequently on 7-3-1990 the defendant-Club sent another bill for Rs. 1,021/- for the period of February 1990 which included the past arrears. The latest bill issued on 7-3-1990 had given time till 3-4-1990 for making payment with delayed charges. Plaintiff's case is that he had paid the entire amount of dues of Rs. 1,050/- on 13-3-1990 with delayed charges and has obtained receipt and at plaintiff's request, defendant issued a renewed affiliation card on 7-5-1990 which is valid for a period of three months from 7-5-1990 to 6-8-1990. Plaintiff's case is that issuance of affiliation card conclusively establishes the fact that the plaintiff continued to be a permanent member of the defendant-Club. Plaintiff asserted that he was not given the bill relating to March 1990 and on his enquiry he was informed on 16-5-1990 that, he has been removed from the membership for non-payment of Club dues. Plaintiff asserts that the removal order passed against the plaintiff by the Club was illegal as he has already paid off the amounts as stipulated in the bills issued to him.

4. The defendant-respondent filed the written statement denying the plaintiff allegations as well as taking the plea to the effect that the defendant-Club has been an unregistered body and it being an unregistered body, the suit was not maintainable without impleading all the members of the Club who are equally joint owners of the Club and prayed for dismissal of the suit. A plea was also taken that the plaintiff had no cause of action for the suit.

5. The Trial Court framed the following issues.-

(1) Whether the plaintiff proves that, his removal from the defendant-Club is illegal?

(2) Whether plaintiff is entitled to permanent injunction against the defendant from preventing him in attending the Club and enjoying the facilities of the Club?

(3) To what order and reliefs the parties are entitled to?

An additional issue was also framed,

(1) Whether suit is bad for non-joinder of necessary parties?

The Trial Court observed that the additional issue was a pure issue of law. When the fresh issue was a pure issue of law and it answered Issue No. 2 in negative and dismissed the suit, the Trial court should have tried that issue ordinarily. Any way it appears that the Trial Court had tried Issue Nos. 1 and 2 jointly and recorded the finding of Issue No. 1 in favour of the plaintiff. Had the Trial Court tried Issue No. 1 and additional Issue No. 1 together, it could have held that in absence of necessary parties, the plaintiff is not entitled to the reliefs of permanent injunction and dismissed the suit. Feeling aggrieved from the judgment and decree of the Trial Court dismissing the plaintiff's suit, the plaintiff has come up in appeal.

6. Learned Counsel for the appellant has contended before me that the learned Trial Court should not have dismissed the suit in toto. He submitted that at least a decree of declaration should have been granted and in any case before dismissing the suit on this technical ground that necessary parties have not been impleaded, plaintiff-appellant should have been given the opportunity to implead the necessary parties or to take necessary steps. Learned Counsel submitted that if in the opinion of the Trial Court that other members of the Club are also necessary parties, before dismissing the suit, the Trial Court should have given the opportunity to implead those parties.

7. On behalf of the respondents Sri Mohandas N. Hegde pointed out that Club being an unregistered body, either other members of the Club had to be impleaded or plaintiff should have taken steps under Order I, Rule 8 to make the suit a representative suit. On behalf of the respondents it has been contended that without suit was not properly framed, no effective remedy can be granted.

8. I have applied my mind to the contentions of the learned Counsel for the parties. It appears that the learned Civil Judge has not applied his mind to the provisions of Order XIV, Rule 2. Order XIV, Rule 2 reads as under.-

"Order XIV, Rule 2.-

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue".

Hence, the pleading give rise to the issue to the effect whether the necessary parties have been impleaded and if not been impleaded, whether suit itself is maintainable and if the Court would have found that necessary parties have not been impleaded, the Court could have dismissed the suit only after giving the parties an opportunity to comply with the directions to implead necessary parties without trying the same on merits. The Trial Court, therefore, in such a case, if it would have applied its mind to Order XIV, Rule 2, it would not have gone into the merits of the case and recorded its findings. Because those findings on merits would not be binding on the parties not impleaded. Any way, so far as the contentions of the learned Counsel for the appellant is concerned that all the members were not the necessary parties, I am unable to accept that contention. The Club being an unregistered body, every member of the Club had to be impleaded. A body or institution or a society which is unregistered does not get a legal status or legal entity by itself and in such a case each and every member of the society has got to be impleaded as necessary party to the suit or in such cases where the number is such that it cannot be counted, or ascertained or it may be difficult to be ascertained or it may delay the proceedings of the suit, it is open to the plaintiff to act either under Order I, Rule 8 for the suit being treated as a representative one and those parties impleaded may be taken to be representing the whole body of institution. Had the issues 1 and 2 be decided by the Trial Court that suit is not properly framed and it is bad for non-joinder of the necessary parties, two options would have been open to the Trial Court either to dismiss the suit or to give an opportunity to the parties to take proper action to remove the deficiency. The basic concept that is to be kept in mind is that technicalities are not to be allowed to interfere with the course of justice and a proper course should be followed to avoid multiplicity of proceedings. In such a case, in view of Order I, Rule 9, CPC the Court could have given time to the plaintiff to remove the deficiency either by applying under Order I, Rule 8 or for impleadment of the parties or it could have directed the plaintiff to implead the parties or plaintiff could have moved an application for suit being treated as a representative one. As the suit was not properly framed, in my opinion, the findings recorded on Issue No. 1 is also bad.

9. Thus considered in my opinion, the judgment and decree of the Court below has to be set aside. It appears just and proper that case may be remanded to the Court below for trial afresh i.e., after giving the plaintiff an opportunity to remove the deficiency arising out of non-impleadment of necessary parties namely the members of the Club by either moving an application for impleadment of necessary parties or taking the alternative recourse under Order I, Rule 8. If thereafter the plaintiff does not comply, then it is open to the Trial Court to dismiss the suit on this technical ground. But if deficiency is removed, suit may be tried afresh according to

law and finding may be recorded on the issues involved in the case after written statement is filed by the defendant. Subject to the above, the appeal is allowed. Judgment of the Trial Court is set aside. Suit is remanded to the Court below for providing the appellant an opportunity to remove the deficiency arising from non-im pleadment of the necessary parties either by recourse to Order I, Rule 8 or under Order I, Rule 10(2).