
(2015) 01 KAR CK 0068

Karnataka High Court

Case No: Writ Petition No. 55596 of 2014 (GM-CPC)

C.L. Sachin

APPELLANT

Vs

C.M. Lingaraju and
Others

RESPONDENT

Date of Decision: Jan. 21, 2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10(2), 151

Citation: (2015) 01 KAR CK 0068

Hon'ble Judges: B. Manohar, J.

Bench: Single Bench

Advocate: Siddamallappa P.M., Advocate, for the Appellant

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B. Manohar, J.

Petitioner is the plaintiff in O.S. No. 327/2009 on the file of the Principal Civil Judge & JMFC, Channagiri. Being

aggrieved by the order dated 06-09-2014 allowing the application I.A. No. 4 filed under Order 1 Rule 10(2) r/w. 151 of C.P.C. to transpose 4th

defendant as plaintiff, the petitioner has filed this writ petition.

2. The plaintiff has filed the suit against defendant Nos. 1 to 5 seeking for partition and separate possession. The defendant Nos. 1 and 4 have filed

written statement. The 4th defendant at paragraph No. 2 of her written statement has objected for partition alleging that the suit schedule properties

are already partitioned. However, in paragraph Nos. 5 & 6 of the written statement, it is averred that if the Court comes to the conclusion that

there is no partition of the joint family properties, the 4th defendant is also entitled for the share in the properties.

3. On the basis of the pleadings of the parties, the Trial Court framed necessary issues. The parties went for trial. After conclusion of the trial,

during the course of argument, the plaintiff filed a memo to withdraw the suit filed for partition as settled out of Court. The 4th defendant to the suit

objected for the same and filed the an application under Order 1 Rule 10(2) r/w. 151 of C.P.C. to transpose her as plaintiff. The plaintiff filed his

objection to the said application contending that the 4th defendant cannot be transposed as a plaintiff, as she has not stepped into the witness box

and she cannot contest the matter on the pleadings of the plaintiff. The trial Court taking into consideration the fact that the suit is for partition and

separate possession of the joint family properties and defendant No. 4 is the co-parcener to the property, permitted defendant No. 4 to be

transposed as plaintiff. Being aggrieved by the same, the present writ petition has been filed.

4. Sri. Siddamallappa P.M, learned counsel appearing for the petitioner contended that the order passed by the trial Court is contrary to law. The

4th defendant in the written statement has taken a specific contention that the joint family properties are already partitioned as per the registered

partition deed dated 10-01-1995. Hence, she cannot come back and make an application to transpose her as a plaintiff. The 4th defendant's

pleading is contrary to the application and she cannot be transposed as plaintiff. Further, it is the priority of the plaintiff to withdraw the suit. The

fourth defendant cannot object for withdrawal of the suit.

5. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the order impugned and other relevant

records.

6. The records clearly disclose that the plaintiff has filed the suit seeking for partition and separate possession of the joint family properties

contending that there is no partition of the joint family properties. The defendants 1 to 5 objected for partition. After conclusion of the trial, during

the course of arguments, the plaintiff filed a memo for withdrawal of the suit as it is settled out of Court. In view of that, the 4th defendant filed an

application for transposing her as plaintiff. The said application was allowed by the Trial Court.

7. It is the contention of the learned advocate appearing for the petitioner that the 4th defendant having objected for partition in the written

statement, cannot be transposed as the plaintiff and she cannot seek for partition of the joint family properties. In support of his contention, he

relied upon the judgment reported in AIR 1995 Madhya Pradesh 202 in the case of Mathura Bai and Others v. Daryanamal and Others. I find that

there is no infirmity or irregularity in the order passed by the Trial Court. In a suit for partition, the status of the parties is one and the same. The 4th

defendant has not made any counter claim. She can be transposed as a plaintiff; since the plaintiff has won over the other members of the family to

deny her share in the joint family properties. The judgment relied upon by the advocate appearing for the petitioner is not applicable to the facts of

the present case. The petitioner has not made out a case to interfere with the order passed by the Trial Court. Accordingly, the writ petition is

dismissed.