
(2014) 3 AKR 783 : (2014) ILR 3780 : (2014) 3 KCCR 2146

Karnataka High Court

Case No: C.R.P. No. 555/2013 (IO)

P.M. Gopi

APPELLANT

Vs

B.M.

RESPONDENT

Venkatalakshmamma

Date of Decision: June 3, 2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 2 Rule 2, Order 21 Rule 101, Order 21 Rule 103, Order 21 Rule 104, Order 21 Rule 97

Citation: (2014) 3 AKR 783 : (2014) ILR 3780 : (2014) 3 KCCR 2146

Hon'ble Judges: H.G. Ramesh, J

Bench: Single Bench

Advocate: P.M. Siddamallappa, Advocate for Jeevan Kumar B.S, Advocate for the Appellant; Siddappa, Advocate for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Huluvadi G. Ramesh, J.

This Revision Petition is filed against the order passed in O.S. No. 4715/2012 by the XXXVII Addl. City Civil

Judge, Bangalore, dated 5.9.2013 on I.A. No. 6 filed under Order 2 Rule 2 of CPC filed by the defendant-petitioner to dismiss the suit filed by

respondents 1 to 6 herein on the basis of findings given by the said Court in Execution Petition No. 411/2011.

2. Petitioner is stated to be the purchaser of the suit schedule property from his vendor by name Gururaj. Incidentally, it appears, Gururaj claims

that he is the son of Narasaiah and Narasaiah had gifted the property in favour of Gururaj. Respondents 1 to 6 are claiming to be the wife and

children of late Narasaiah. Petitioner filed Execution Petition No. 411/2011 before the Executing Court in respect of execution of decree for

specific performance which was obtained by him in O.S. No. 8753/2011. The respondents 1 to 6 resisted the same by filing an application under

Order 21 Rule 97 r/w Section 151 of CPC. The Execution Court after raising several issues for consideration, dismissed the said application

negating the contentions of the respondents. However, a separate suit in O.S. No. 4715/2012 came to be filed by respondents 1 to 6 on the very

same day of filing of Execution Petition by the petitioner on the premise that the so called Gift Deed executed in favour of petitioner by Narasaiah

was a sham document, no such valid Gift Deed is executed by Narasaiah and as such they are entitled for possession of suit schedule property. In

this view of the matter, the issue to be decided in this revision petition is whether order of dismissal of application IA-6 filed under Order 2 Rule 2

of CPC is just and proper and also as to whether the suit filed by respondents be tried as a separate suit.

3. The learned counsel for the petitioner argued that, petitioner had filed O.S. No. 8733/2011 for specific performance and obtained an order of

decree. In execution of the same, he filed Execution Petition No. 411/2011. Respondents resisted the execution and filed separate suit O.S. No.

4715/2012 for declaration with respect to the Gift Deed that the same is null and void and not binding on them. In that suit, petitioner filed IA-6 to

dismiss the suit on the ground that when the issues are settled by the Executing Court, considering the same issue once again in another suit is not

proper and the suit is not maintainable. The learned counsel relied upon the decision of this Court in the case of Chandrakant Mallappa Desai &

another v. Mishrimal (1984 (1) KLJ 347), wherein it is held as under:

To avoid multiplicity of proceedings and to read the proviso contained in Rules 101, 103 and 104 or Order 21 of the Code, harmoniously, as the

same are to be read and interfered harmoniously and also keeping in view Section 10 of the Code, the proper course appears to hold that if on the

date of initiation of the proceeding under Rule 97 of Order 21 of the Code, a suit between the parties has already been filed by the party who has

sought to establish a right which he claims to the present possession of the property, proceeding instituted under Rule 97 of Order 21 of the Code,

being a subsequent proceeding involving the same issues that are required to be decided in a pending suit between the same parties in respect of

the same subject-matter, shall have to be stayed pending decision in the suit.

4. He further contended that, respondents having realized the situation, are trying to prolong the proceedings by ingenious method and accordingly,

filed the suit the very same day of filing of Execution Petition so that they could have the advantage of stalling of execution of decree obtained by

the petitioner. He further submitted that filing of the suit on the very same day of filing of Execution Petition cannot be treated as a separate suit

pending consideration. The respondents had raised objection in the Execution Petition by filing an application under Order 21 Rule 97 of the CPC

and all such objections have been dealt with by the trial Court. Therefore, the suit filed by the respondents cannot be treated as an independent suit

as per Order 21 Rules 101, 103 and 104 of CPC and accordingly, sought for setting aside the order passed by the trial Court on IA-6 regarding

maintainability of suit, by allowing the Revision Petition.

5. The learned counsel for the petitioner also relied upon the decision of the Apex Court in the case of N.S.S. Narayana Sarma and Others Vs.

Goldstone Exports (P) Ltd. and Others, wherein it is held that, when any person claiming title to the property in his possession obstructs the

attempt by the decree-holder to dispossess him from the said property, the executing Court is competent to consider all questions raised by the

persons offering obstruction against execution of the decree and pass appropriate order which under the provisions of Order 21 Rule 103, is to be

treated as a decree. It has further held that, Rules 97 to 101 of Order 21 contain the provisions enabling the executing Court to deal with a

situation when a decree holder entitled to possession of the property encounters obstruction from any person. From the provisions of these rules

the scheme is clear that the legislature has vested wide powers in the executing Court to deal with all issues relating to such matters. It is a general

impression prevailing amongst the litigant public that difficulties of a litigant are by no means over on his getting a decree for immovable property in

his favour. Indeed, his difficulties in real and practical sense, arise after getting the decree. Presumably, to tackle such a situation and to allay the

apprehension in the minds of litigant public that it takes years and years for the decree holder to enjoy fruits of the decree, the legislature made

drastic amendments in the provisions of the aforementioned Rules, particularly, the provision in Rule 101, in which it is categorically declared that

all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under

Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application shall be determined by the Court dealing with the

application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for

the time being in force, be deemed to have jurisdiction to decide such questions.

6. In the light of the arguments advanced by the parties, it is to be ascertained as to whether the suit filed on the date of filing of Execution Petition

is to be treated as a separate suit pending consideration and whether there is any scope of maintainability of separate suit by the objector in the fact

situation.

7. While dismissing IA-6, trial Court observed that the findings of the execution court are entirely different from the findings of the trial Court on

merits as objectors have specifically stated about their right, title and interest over the suit schedule property and with regard to the act of the

donee and purchaser with respect to the same. When the rights of the plaintiffs are affected by the acts of defendants with respect to the suit

schedule property, the trial Court has to give its findings on merits. It is further observed that petition filed by the plaintiffs before the execution

Court under Order 21 Rule 97 r/w Section 151 of CPC came to be dismissed and against which, an Appeal is pending before the High Court and

on this ground, dismissal of the suit filed by respondents 1 to 6 does not arise. It is further observed that there is no bar under law for filing separate

suit by the plaintiffs for obtaining a decree and objections before executing Court while noting the decision rendered in Chandrakanth Mallappa

Desai" case (cited supra). It has also held that as per Section 10 of CPC when two parallel proceedings are pending between the parties,

subsequent proceedings before another Court shall be stayed.

8. In my opinion, filing of the suit on the very day after filing of execution petition cannot be, by any stretch of imagination, said that the suit is

pending as on the date of filing of the execution petition. Secondly, the opinion rendered by the trial Court is that two parallel proceedings would

be maintainable between same parties and by exercising the power, subsequent proceedings before another Court could be stayed. But, the same

appears to be erroneous. The judgment rendered by the Apex Court in the case of N.S.S. Narayana Sarma"s case (cited supra) makes it clear

that when all tenable or untenable contentions have been raised by the objector and same has been answered by the execution Court, then as per

Rule 101 Order 97 of CPC, it is to be treated as a suit and decree has to be rendered. When such an order is also under challenge before the

High Court, it appears that filing of another suit, though filed on the very same day of filing of execution petition and entertaining the said suit is

nothing but an abuse of process of law. At the most, all tenable contentions could be raised in the appeal before this Court with regard to right, title

and interest or fraud, if any pleaded. As is observed by the Apex Court in Para-15 in the case of N.S.S. Narayana Sarma"s case, the very method

adopted by the respondents herein is nothing but, to nullify the decree obtained by the decree holder-petitioner herein.

9. In view of the above, it is made clear that, since already order passed by the execution Court is challenged before this Court in an Appeal, it is

redundant to continue the proceedings now raised in the suit filed by the respondents 1 to 6 herein.

Accordingly, the impugned order passed by the trial Court on I.A. 6 is set aside with the above observations.

Petition is allowed.