

M.V. Narayan Vs. S. Suguna and Others

M.V. Narayan Vs. S. Suguna and Others

SooperKanoon Citation : sooperkanoon.com/1173181

Court : Karnataka

Decided On : Feb-19-2015

Judge : A.V. Chandrashekara

Appeal No. : M.S.A.No. 30 of 2014

Appellant : M.V. Narayan

Respondent : S. Suguna and Others

Judgement :

(Prayer: MSA Filed Under Sec.104 R/W Order Xliii Rule 1(U) Of Cpc., Against The Judgment And Decree Dated 25.1.2014 Passed In R.A.No.195/2013 On The File Of The Prl. District Judge, Bangalore Rural District, Bangalore, Allowing The Appeal And Setting Aside The Order Dated 5.7.2013 Passed In O.S.No.305/2011 On The File Of The Senior Civil Judge And Jmfc., Nelamangala, Restoring The Suit To The File Of The Court Below, For Disposal In Accordance With Law.)

1. The present appeal filed under Order XLIII Rule 1(u), C.P.C. by this appellant is directed against the final order passed in R.A.195/13 dated 25.1.2014 which was pending on the file of Principal District Judge, Bangalore Rural.
2. Appellant herein is the 5th defendant in O.S.305/11. The 1st respondent herein is the lone plaintiff in the said suit. The remaining respondents are defendants 1 to 4 in the said suit. Parties shall be referred to as plaintiff and defendants as per their ranking in the trial court.

3. Plaintiff is the grand daughter of Siddamma, w/o Gurappa and daughter of 2nd defendant-Siddaraju. Defendant no.3 is the brother of the plaintiff and defendant no.4 is the younger sister of the plaintiff. The 5th defendant was subsequently impleaded on an application being filed under Order I Rule 10, C.P.C. by the plaintiff.

4. According to the plaintiff, herself and defendants 1 to 4 constitute a joint family and the suit schedule property measuring 2 acres in Survey No.43 of Thammenahalli village of Dasanapura Hobli, Bangalore North Taluk, as described in the schedule appended to the plaint, is the ancestral property of the joint family.

5. Defendants 1 to 4 filed written statement taking a specific stand that the property in question was alienated on 15.11.1985 through a registered sale deed in favour of the 5th defendant and that the 5th defendant is a necessary party. According to them, the suit itself is not maintainable when the schedule property has been alienated through a registered document long prior to 20.12.2004, the cut-off date found in Section 6(1) of the Hindu Succession (Amendment) Act, 2005, which has come into effect from 9.9.2005.

6. On the basis of the averments made in the written statement filed by defendants 1 to 4, plaintiff chose to file an application under Order I Rule 10, C.P.C. with a request to add M.V.Narayan, purchaser of the property, as 5th defendant in the said suit. The said application was objected to by the 5th defendant himself and ultimately he has been impleaded as 5th defendant in the suit. He has filed detailed written statement denying all the material averments and has averred that the suit itself is not maintainable in view of the fact that the schedule property has been alienated through a registered document long prior to 20.12.2004, the cut-off date found in Section 6(1) of the Hindu Succession Act (Amendment Act of 2005) which has come into effect from 9.9.2005, and therefore the suit is barred by time since it is not brought within 12 years from the date of alienation.

7. Apart from this, an application was filed on behalf of the 5th defendant under Order VII Rule 11 (d), C.P.C. on the ground that the suit is filed 12 years after the alienation was made in the year 1985 by way of a registered sale deed, i.e. much prior to the cut-off date found in Section 6(1) of the Hindu Succession Act

(amendment Act of 2005) which has come into effect from 9.9.2005.

8. Against the said order dated 5.7.2003 passed on the I.A. filed under Order VII Rule 11, C.P.C., the plaintiff chose to file an appeal under Section 96, C.P.C. before the district court, Bangalore Rural, in R.A.195/13. The said appeal has been allowed and the order dated 5.7.2013 passed by the learned Civil Judge (Senior Divn.), Nelamangala, in O.S.305/11 has been set aside. The matter is restored to its original position. It is this order dated 25.1.2014 passed in R.A.195/13 which is called in question in this appeal on various grounds as set out in the appeal memo.

9. Heard the learned counsel for the parties.

10. The suit of the plaintiff-Suguna is a straight suit for partition and separate possession on the ground that the schedule property is an ancestral property of her paternal grand mother and therefore she has 1/5th undivided share in it. Defendants 1 to 4 have taken a specific stand that the suit itself is not maintainable in view of alienation made in the year 1985 through a registered sale deed to them and further, the suit is barred by time. The same stand is reiterated by the 5th defendant. It is his case that the alienation cannot be challenged since it is made long prior to 20.12.2004, the cut-off date found in sub-section (1) of Section 6 of the Hindu Succession which came into effect from 9.9.2005.

11. The learned judge has come to the conclusion that the alienation was made prior to 20.12.2004 and therefore such alienation cannot be called in question. It is observed that any alienation made prior to 20.12.2004 found in the amended section is saved. Apart from this, the alienation so challenged is long after 12 years from the date of alienation. If the plaintiff had herself mentioned about the alienation made in the year 1985 in favour of the 5th defendant without making him a party, it would have been something different.

12. In rejection of plaint under Order VII Rule 11, C.P.C., it to be on the basis of plaint averments and the pleas taken in the written statement are totally irrelevant. The principles to this effect are reiterated in the case of BHAU RAM .v. JANAK SINGH and OTHERS (AIR 2012 SC 3023). Paragraph 8 of the said decision is

relevant and the same is reproduced below:

'The law has been settled by this court in various decisions that while considering an application under Order VII Rule 11, CPC, the court has to examine the averments in the plaint and the pleas taken by the defendants in its written statements would be irrelevant (vide C.Natarajan .V. Ashim Bai and Another - [2007] 14 SCC 183): (AIR 2008 SC 363 : 2007 AIR SCW 6953). Ram Prakash Gupta .V. Rajiv Kumar Gupta and others ([2007] 10 SCC 59, Hardesh Ores (P) Ltd. .v. Hede and Company ([2007] 5 SCC 614) : (2007 AIR SCW 3456), Mayar (H.K.) Ltd. .v. Owners and Parties Vessel M.V.Fortune Express and others ([2006] 3 SCC 100 : (AIR 2006 SC 1828) : (2006 AIR SCW 863), Supan Sukhdeo Sable and others .v. Assistant Charity Commissioner and others ([2004] 3 SCC 137) : (AIR 2004 SC 1801) : (2004 AIR SCW 799), Saleem Bhai and others .v. State of Maharashtra and others ([2003] 1 SCC 557) : (AIR 2003 SC 759) : (2003 AIR SCW 174). The above view has been once again reiterated in the recent decision of this court in The Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman .v. M/s Ponniammam Educational Trust represented by its Chairperson/Managing Trustee (2012 (6) JT 149) : (2012 AIR SCW 4136).'

13. So far as the aspect of limitation is concerned, it is a mixed question of law and facts and it cannot be decided unless evidence is recorded to this effect. Limitation would not commence unless there is a clear and unequivocal threat to the right claimed by the plaintiff. The principles to this effect have been reiterated by the Hon'ble apex court in the case of C.NATARAJAN .v. ASHIM BAI (AIR 2008 SC 363).

14. What is argued before this court by the learned counsel for the appellant is that in the very affidavit filed under Order I Rule 10, C.P.C. the plaintiff has mentioned about the alienation of the suit schedule property made in favour of the 5th defendant in the year 1985 through a registered sale deed and therefore, plaintiff is liable to be rejected. This court is unable to accept the contention urged by the learned counsel. The plaintiff has made reference about such alienation on the basis of the specific stand taken by defendants 1 to 4 in the written statement. If

the defendants had not taken such a stand, probably there was no occasion for her to have impleaded the 5th defendant in her suit.

15. Whether plaint discloses cause of action is essentially a question of fact, but whether it does or does not disclose cause of action has to be found out from a reading of the plaint itself. Therefore the averments made in the plaint as a whole will have to be seen to find out whether clause (d) of Rule 11 of Order VII, C.P.C. is really applicable. It is not permissible to cull out a single sentence or a passage and to read it out of context in isolation. Although it is the substance and not merely the form that is to be looked into, pleadings have to be construed as they stand without addition or subtraction of words or change of its apparent grammatical sense.

16. Mere observation of the trial court that the plaintiff may not succeed ultimately would not be a ground to reject the plaint. A cause of action is a bundle of facts which are required to be proved for obtaining the relief and for the said purpose, material facts are required to be stated but not the evidence, except in certain cases where pleadings relied on are in regard to misrepresentation, fraud, willful default, undue influence or of the same nature.

17. In the present case, the cause of action mentioned in the plaint is that in the year 2011, a request was made by the plaintiff to effect partition and to give her share, but in the light of refusal by the defendants, she was constrained to file the suit. The effect of alienation, according to the plaintiff, came to her knowledge only when defendants 1 to 4 filed written statement. Therefore mere reference about the alienation so made in favour of the 5th defendant through a registered sale deed in the year 1985 cannot be considered as the ground to reject the plaint.

18. It is not as though the 5th defendant has no avenue to air his grievance before the trial court. He can request the trial court to frame appropriate issue regarding maintainability of the suit in the light of alienation being saved in terms of the proviso relating to the cut-off date, i.e. 20.12.2004 found in proviso to sub-section (1) of Section 6 of the Hindu Succession (Amendment) Act, 2005, which came into effect from 9.9.2005. He can make further request to the court to frame additional issue regarding limitation in the light of alienation being made long ago, i.e. more

than 25 years ago.

19. On going through the plaint, it is clear that suit has remained to be a straight suit filed by the plaintiff for the relief of partition and separate possession on the ground that she has undivided 1/5th share in the suit schedule property which is the ancestral property of her paternal grandmother. The defence taken up by defendants 1 to 5 in their respective written statement cannot be the ground to reject the plaint. As already discussed, their grievance could be suitably met with by framing appropriate issues by the trial court in regard to limitation as also maintainability in view of alienation being allegedly prior to 20.12.2004, the cut-off date found in sub-section (1) of Section 6 of the Hindu Succession (Amendment) Act, 2005, which came into effect from 9.9.2005.

20. In this view of the matter, the approach adopted by the first appellate court is proper. No interference is called for with the detailed order passed by the first appellate court by allowing the appeal. No illegality or perversity is found in the approach of the first appellate court. Accordingly the order impugned will have to be upheld.

21. In the result, I pass the following order:

ORDER

The appeal is dismissed. Notwithstanding dismissal, the trial court is expected to frame appropriate issue(s) keeping in mind the averments found in the pleadings of the parties, at the earliest.

Parties to bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com