

Nataraja and Others Vs. Padma and Others

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Court : Karnataka

Decided On : Jan-27-2015

Judge : B. Manohar

Appeal No. : Writ Petition Nos. 54683-684 of 2014 (GM-CPC)

Appellant : Nataraja and Others

Respondent : Padma and Others

Judgement :

(Prayer: These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to quash the Order passed by the learned Principle Civil Judge, Hiriyyur in O.S.No.33/1997 dated 16.10.2014 on IAS filed for seeking amendment of the written statement vide Annexure - K and L and to grant an Interim Order to stay all further proceedings in O.S.No.33/'1997 pending on the file of the learned Principle Civil Judge, Hiriyyur.)

1. Petitioners are defendants No.4, 8(a) and 8(b) in O.S.No.33/ 1997 on the file of the Principal Civil Judge, Hiriyyur. Being aggrieved by the order dated 16-10-2014 rejecting the application filed under Order VI Rule 17 of CPC have filed these writ petitions.

2. The predecessors of respondents 1 to 5 Nagappa and Nagendrappa had filed the suit seeking for partition and separate possession of 1/2 share in respect of 'A' schedule property and also declaration, declaring that the plaintiffs are the owners

of 'B' schedule property and restraining the defendants from interfering with their possession in respect of 'B' schedule property and for other reliefs The contesting defendants in the suit filed written statement. On the basis of the pleadings of the parties, the Trial Court framed necessary issues. The parties went for trial. Thereafter, the Trial Court passed a decree on 17-4-2014 decreeing the suit filed by the plaintiffs. Being aggrieved by the said judgment and decree, defendants 1, 4 and 8 filed an appeal before the First Appellate Court. In the appeal, the defendants 1, 4 and 8 also filed an application under Order XLI Rule 27 of CPC for production of additional evidence. The Lower Appellate Court after considering the matter in detail and taking into consideration the additional documents, quashed the order passed by the Trial Court and remanded the matter to the Trial Court for reconsideration with a direction to the Trial Court to consider the additional documents produced by the defendants and pass orders.

3. After remand, the 8th defendant died and his legal representatives have come on record as defendants 8(a) and 8(b). Defendant No.4 and defendant No.8(a) and (b) filed two separate applications under Order VI Rule 17 of CPC to amend the written statements incorporating the counter claim as provided under Order VIII Rule 6(A) of CPC. The said application was opposed by the plaintiffs contending that after lapse of 17 years, that too after remanding the matter, the defendants cannot maintain the counter claim under the guise of amendment of written statement under Order VI Rule 17 of CPC. The Trial Court after considering the matter in detail, relying upon the judgment reported in 2008(2) KCCR 1009 in the case of BOLLEPANDA P. POONACHA AND ANOTHER V/S K.M.MADAPPA rejected both the applications filed by defendant No.4 as well as defendants No.8(a) and 8(b).

Being aggrieved by the said order, the present writ petitions have been filed.

4. Sri.B.M.Siddappa, learned counsel appearing for the petitioners inter alia contended that the order passed by the Trial Court is contrary to law. At any stages of the proceedings, the defendant can seek for amendment of the written statement. In the instant case, at the time of filing the written statement, the 4th defendant was a minor and he was represented by the court guardian. After he

attained the majority, he has taken steps to make the counter claim. Since the First Appellate Court remanded the matter to the Trial Court, the Trial Court once again can frame the issues permitting the parties to lead evidence and pass orders. In these circumstances, the defendants can make a counter claim as if it was the original proceedings. The order passed by the Trial Court cannot be sustained. Hence sought for allowing the writ petition by setting aside the order passed by the Trial Court.

5. On the other hand, Sri.K.Murthy, learned counsel appearing for respondents 1 to 5 argued the matter in support of the order passed by the Trial Court and contended that on an application filed by the defendants before the Lower Appellate Court for production of additional documents, the Lower Appellate Court directed the Trial Court to consider the additional documents and remanded the matter to the Trial Court. Hence, the defendants cannot amend the written statement by incorporating the counter claim. The Trial Court relying upon various judgments has passed the order impugned and the same is not liable to be interfered with by this Court and sought for dismissal of the writ petition.

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

7. The records clearly disclose that the deceased Nagappa and Nagendrappa had filed the suit seeking for partition and separate possession 'A' schedule property and also declaration that they are the absolute owners of 'B' schedule property. The defendants have filed written statement. On the basis of the oral and documentary evidence, the Trial Court passed the judgment and decree. The said judgment and decree was challenged by defendants 1, 4 and 8 in an appeal before the Lower Appellate Court. When the matter was pending before the Lower Appellate Court, an application under Order XLI Rule 27 of CPC was filed for production of additional documents. The Lower Appellate Court, taking into consideration the additional documents produced by the defendants, set aside the judgment and decree passed by the Trial Court and remanded the matter to the Trial Court for reconsideration of the same afresh. After remand, defendant Nos.4, 8(a) and 8(b) filed applications on 27-8-2014 under Order VI Rule 17 of CPC seeking permission

to amend the written statements filed by them by way of counter claim as provided under Order VIII Rule 6A of CPC. The said application was objected by the plaintiff.

8. The Trial Court after considering the arguments addressed by both the parties rejected the applications on the ground that the Lower Appellate Court remanded the matter to the Trial Court only to consider the additional documents. At this point of time, the defendants cannot amend the written statement by incorporating the counter claim. The Trial Court relied upon a judgment reported in 2008 (2) KCCR 10G9 (supra) at paragraph 10 as held as under-go. The provision of Order VIII, Rule 6A must be considered having regard to the aforementioned provisions. A right to file counter claim is an additional right. It may be filed in respect of any right or claim, the cause of action therefore, however, must accrue either before or after the filing of the suit but before the defendant has raised his defence. Respondent in his application for amendment of written statement categorically raised the plea that the appellants had trespassed on the lands, in question, in the summer of 1998. Cause of action for filing the counter claim inter alia was said to have arisen at that time. It was so explicitly stated in the said application. The said application, in our opinion, was thus clearly not maintainable."

9. I find no infirmity or irregularity in the order passed by the Trial Court. The Trial Court has given a finding only on the additional documents filed by the defendants as directed by the Lower Appellate Court. The defendants cannot make out a fresh case by amending the written statement and by incorporating the counter claim. The finding recorded by the Trial Court is purely a question of fact. The petitioners have not made out a case to interfere with the same. Accordingly, the writ petitions are dismissed.

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