

Parvathamma Vs. Jayamma

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Court : Karnataka

Decided On : Sep-26-2018

Judge : Chief Justice

Appeal No. : WP 17295/2014

Appellant : Parvathamma

Respondent : Jayamma

Judgement :

W.P.No.17295/2014 1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE26H DAY OF SEPTEMBER, 2018 BEFORE HONBLE MR.JUSTICE DINESH MAHESHWARI, CHIEF JUSTICE WRIT PETITION No.17295 /2014 (GM-CPC) BETWEEN: SMT. PARVATHAMMA AGED ABOUT64YEARS W/O LATE C. HANUMANTHAIAH RESIDING AT NO.59, 9TH CROSS, GANESHA BLOCK, NANDINI LAYOUT BANGALORE560096. ... PETITIONER (BY SRI. N. SHANKARANARAYANA BHAT, ADV.) AND:

1. SMT. JAYAMMA W/O LATE C. HANUMANTHAIAH AGED60YEARS RESIDING AT NO.42 NEAR BRILLIANT PUBLIC SCHOOL SUNKADAKATTE BANGALORE560091 2. THE DIVISIONAL RAILWAY MANAGER SOUTH-WESTERN RAILWAY (SBC) BANGALORE - 560023 3. THE SENIOR DIVISIONAL SECURITY COMMISSIONER (RPF) DIVISIONAL OFFICE, SECURITY BRANCH DIVISIONAL RAILWAY MANAGER W.P.No.17295/2014 2

OFFICE COMPLEX (SBC) SOUTH-WESTERN RAILWAYS BANGALORE560023.
... RESPONDENTS (BY SRI.VINAY.N, ADV. FOR SRI. MARIAPPA.M.S FOR R1
SRI.V.K.NARAYANA SWAMY, CGC FOR R-2 AND R-3) THIS WRIT PETITION IS
FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA
PRAYING TO CALL FOR RELEVANT RECORDS AND QUASH THE

ORDER

ON AN APPLICATION FILED UNDER SECTION151CPC IN O.S. NO.997/2012
DATED193.2014 ON THE FILE OF THE COURT OF THE XVI ADDL. CITY CIVIL
& SESSIONS JUDGE, BANGALORE CITY VIDE ANN-G AND ETC. THIS WRIT
PETITION COMING ON FOR PRELIMINARY HEARING IN B GROUP THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

By way of this writ petition, the petitioner, who is defendant No.3 in a suit for declaration and consequential reliefs as filed by the respondent No.1 of this petition [O.S.No.997/2012 in the Court of the XVI Additional City Civil Judge (CCH-12), Bengaluru]., has questioned the order dated 19.03.2014 in the said suit whereby, the Trial Court has rejected an application filed on her behalf under Section W.P.No.17295/2014 3 151 of Code of Civil Procedure, 1908 (CPC), seeking leave to file a counter-claim. The relevant background aspects of the matter are that each one of the principal disputants i.e., the plaintiff (respondent No.1) and the defendant No.3 (petitioner) is seeking to assert herself to be the legally wedded wife of late Sri.C.Hanumanthaiah, who was employed as Head Constable in Railway Protection Force and died on 24.11.2009, after his retirement from service. The plaintiff-respondent No.1 has filed the suit aforesaid seeking declaration that she was the legally wedded wife of the said Sri.C.Hanumanthaiah and hence, is entitled to receive the family pension and other service benefits from his employer (defendant Nos.1 and

2) related with South Western Railways. The plaintiff has averred that her marriage with late Sri.C.Hanumanthaiah was solemnized on 17.05.1972 and three children were born out of the wedlock. It is also asserted in the plaint that late Sri.C.Hanumanthaiah was regularly on travel in relation to his duties, but the family

had settled with the permanent residence at Sunkadakatte. W.P.No.17295/2014 4 It is alleged in the plaint that late Sri.C.Hanumanthaiah deserted his wife and children sometime in January, 2007 as he was in illicit relationship with a married woman. It is further alleged that upon demise of Sri.C.Hanumanthaiah on 24.11.2009, the plaintiff approached the Railway Authorities to claim family pension, representing herself as his First Beneficiary; and she also approached Canara Bank as his Nominee, but she was informed that another woman by name Smt. Parvathamma had approached Canara Bank claiming to be his widow. Aggrieved by this development and being advised by the Authorities to approach the Court, the plaintiff has filed the present suit. The petitioner, who has been arrayed as defendant No.3 in the suit, has filed her detailed written statement, categorically denying the claim of the plaintiff as being the wife of late Sri.C.Hanumanthaiah. Per contra, the petitioner (defendant No.3) has asserted that she was the legally wedded wife of late Sri.C.Hanumanthaiah; that their marriage took place on 10.03.1969; and that three daughters were born out of their wedlock. While denying the status of the plaintiff as being the wife of Sri.C.Hanumanthaiah, the W.P.No.17295/2014 5 petitioner has asserted that she alone was the legally wedded wife and the plaintiff was only in illicit relationship with him. The petitioner has also denied the knowledge about the plaintiff being included as first beneficiary in the pension payment order or as a nominee in Canara Bank. After pleadings of the parties, the Trial Court framed the necessary issues and the matter was posted for evidence. However, on 27.07.2013, the petitioner filed an application seeking rejection of the plaint. The said application was rejected by the Trial Court while imposing costs of Rs.5,000/-. A writ petition filed in this Court in that regard was also dismissed. Thereafter, when the matter was again posted for cross-examination of PW.1 on 26.08.2013, the petitioner attempted to file the so-called counter-claim under Order VIII Rule 6-A CPC. The Trial Court found that the counter-claim was neither filed within the stipulated time nor was accompanied by the appropriate application seeking permission to file and hence, ordered that the counter-claim so filed could not be considered. The matter was again called out on 26.08.2013 for the second time at 12.35 p.m, but the defendants were not ready to cross-examine PW.1 W.P.No.17295/2014 6 and time was also prayed for payment of previously imposed costs. Hence, the matter

was again called for the third time at 1.30 p.m. on 26.08.2013 and this time, an application under Section 151 CPC was filed on behalf of the petitioner, seeking leave to file the counter-claim. By the impugned order dated 19.03.2014, the Trial Court rejected the application, as being totally baseless. In this writ petition against the order aforesaid, on 15.04.2014, this Court ordered status quo to be maintained; and thereafter, the interim order was extended from time to time. In the net result, the suit has not proceeded in trial because of the pendency of this writ petition. Learned counsel for the petitioner, with reference to the decision of the Supreme Court in the case of Jag Mohan Chawla and another v. Dera Radha Swami, Satsang and others: AIR 1996 SC2222 has strenuously argued that the Trial Court has acted wholly illegally in rejecting the prayer for filing the counter-claim in this case. Learned counsel would argue that the Trial Court has proceeded on entirely irrelevant considerations and on an erroneous assumption that the counter-claim filed by the petitioner had already W.P.No.17295/2014 7 been rejected, although there had not been any previous order rejecting the counter-claim of the petitioner. It is also submitted that the counter-claim could be filed at any stage before the evidence is completely closed and the matter is reserved for judgment. In the present case, according to the learned counsel, the rejection of counter-claim would result in serious prejudice to the petitioner. Having given thoughtful consideration to the submissions made and having examined the record, this Court finds no reason to consider interference in this matter, particularly when the prayer on behalf of the petitioner for filing counter-claim appears to be only of another attempt to avoid final conclusion of the matter on merits and to create unnecessary complications in the fair trial of the real issues involved in the matter. It is noticed that in the impugned order, the Trial Court proceeded with the observation that the defendant's application for counter-claim filed under Order VIII Rule 6-A CPC had already been rejected, though, in fact, on 26.08.2013, the Court had only ordered that counter-claim filed by the applicant could not be considered. However, W.P.No.17295/2014 8 such an observation of the Trial Court does not, in any manner, mitigates the substance of the matter. On the facts and in the circumstances of the case, this Court is clearly of the view that the prayer for filing counter- claim was required to be rejected outright, in view of the basic frame of the suit and the stand of the respective parties. As noticed, the

petitioner (defendant No.3) and the respondent No.1 (plaintiff) are litigating against each other while claiming oneself to be the legally wedded wife of late Sri.C.Hanumanthaiah. The plaintiff has asserted in the plaint that she was married to late Sri.C.Hanumanthaiah on 17.05.1972 and three daughters were born out of their wedlock. The plaintiff has further alleged that there was matrimonial dispute with her husband because of the reason that he was having illicit relationship with another woman, who was already married and was having three children. This another woman, as mentioned in the plaint, is none other but the present petitioner, who has been arrayed as defendant No.3 in the suit. The present petitioner, in her written statement, per contra, has alleged that she was the W.P.No.17295/2014 9 legally wedded wife of late Sri.C.Hanumanthaiah; their marriage took place on 10.03.1969; and three daughters were born out of their wedlock. The petitioner (defendant No.3) has conversely imputed that late Sri.C.Hanumanthaiah developed illicit relationship with the plaintiff and such a relationship had no legal sanction at all and the plaintiff cannot claim the status of the wife of late Sri.C.Hanumanthaiah. The pleadings on the record make it clear that the stance of both the litigating ladies i.e., the plaintiff and the present petitioner are counter to each other; with each one asserting herself to be the legally wedded wife of late Sri.C.Hanumanthaiah, and the other lady having been in illicit relationship with him. As noticed, the plaintiff has prayed for the relief of declaring herself to be the wife of late Sri.C.Hanumanthaiah and his legal heir; and consequently entitled to receive the family pension and other benefits. The petitioner has filed her written statement refuting the plaint averments and asserting her own status as the wife of late Sri.C.Hanumanthaiah. W.P.No.17295/2014 10 The issues involved in the matter are clear and explicit and the suit ought to proceed in trial so as to finally adjudicate on the cross-claims made by the plaintiff and the petitioner. However, it appears that the present petitioner, who is defendant No.3 in the suit, has been making all attempts to obstruct and delay the trial so as to avoid final conclusion of the suit. In such attempts at protraction, the petitioner earlier filed an entirely baseless application under Order VII Rule 11 CPC, seeking rejection of the plaint. There was absolutely no reason that such an application was at all moved. Such an application was dismissed with costs of Rs.5,000/-. The writ petition filed in this Court in that

regard was also dismissed. Moreover, the three order sheets drawn on 28.06.2013 make out that when the matter was placed for cross-examination of PW-1, the so-called counter-claim was filed on behalf of the present petitioner. The Court found that the same was not even accompanied by a proper application seeking permission to file. However, PW-1 was ordered to wait and when the matter was taken up in the second call, the defendants were not ready to cross-examine W.P.No.17295/2014 11 PW-1 and again, time was sought, for payment of costs and for cross-examination. PW-1 was again asked to wait. Thereafter, at 1.30 p.m., the present application under Section 151 CPC was filed seeking permission to file the counter-claim. The Trial Court took note of all the background aspects and hence, rejected the application. As noticed hereinbefore, of course, the observation of the Trial Court about rejection of the counter-claim earlier are not perfectly in accord with the order sheets drawn in the case, but on the substance of the matter, the Trial Court has indicated the fact that the Court had already declined to entertain the counter-claim. In any case, what the petitioner seeks to take by way of counter-claim is nothing but re-assertion of the averments already pleaded in the written statement; and the petitioner seeks to claim relief on that basis in her favour, which appears to be entirely unnecessary because the consequences of the determination of real issue involved in the matter, i.e., which of the contesting parties is the legally wedded wife of late Sri.C.Hanumanthaiah, shall obviously W.P.No.17295/2014 12 follow. Hence, the prayer of the petitioner for filing a counter-claim is even otherwise required to be rejected. The decision of the Supreme Court in the case of Jag Mohan Chawla (supra) does not make out any case in favour of the petitioner in this petition. Therein, the Supreme Court has laid down that the defendant could claim any right by way of counter-claim in support of any cause of action that has accrued to him even though it may be other than the cause of action averred by the plaintiff. The said decision relates to different principles and has no application to the facts of the present case. It is also noticed that before the Trial Court, a decision by the learned Single Judge of this Court in the case of Hanumanthagouda vs Bandu @ Bandedappa Venkatesh Kulkarni and Others : ILR 2001 KAR179 was cited on behalf of the petitioner in support of the submission that the counter-claim could be filed at any stage. In the said case, a Division Bench decision of this Court in the case of Shantesh Gureddi

vs Smt. Thayamma : ILR 1999 KAR898 was cited before the learned Single Judge but, the learned Single Judge referred to the observations of the W.P.No.17295/2014 13 Supreme Court in Mahendra Kumar v. State of Madhya Pradesh : AIR 1987 SC1395 that the counter-claim could be filed even after filing of the written statement and also referred to the other decisions of the Supreme Court, observing that the delay and laches in making the application for amendment was not a ground for refusal of the amendment; and on that basis, observed as under:Thus, taking a cue from the above dictum of the Supreme Court held that the Court must lean in favour of full and complete justice. I am of the view that the principle decided by the Division Bench can be extended to a case where the evidence is not completely closed by the parties and before the matter is reserved for judgment. With respect, this Court is clearly of the view that the observations in Hanumanthagoudas case (supra) that the decision of the Division Bench of this Court could be extended or expanded as regards the stage of filing of a counter-claim, cannot be considered to be of a binding precedent for being not in conformity with the Division Bench decision of this Court, specifically holding that counter-claim 'should be' filed before commencement of evidence. W.P.No.17295/2014 14 In the case of Shantesh Gureddi (supra), the Division Bench of this Court noted with approval the observations made by a learned Single Judge of this Court in the case of Parvathamma v. Lokanath: ILR 1991 KAR965 as follows: this Court 12. The above question had specifically fallen for consideration before in Parvathammas (supra) wherein K.A.Swamy, J.

held that counter claim, if not set up in the written statement, then it has to be setup before issues are framed, but any rate evidence commences. The reasons which prevailed with him for taking the said view were.- before case recording of (a) Permitting filing of counter claim at a belated stage will cause great prejudice to the plaintiff in a suit since he will not be able to adduce evidence by anticipating any counter claim. (b) The scheme under the Rules 6A to 6G of Order VIII CPC does not permit by necessary implication such course, and, (c) it would lead to protracting the trial and defeat the very object for which right to file counter claim has been given. The Division Bench finally concluded on the matter, while holding as under: 17. For the above reasons, we hold that the defendant can file his counter claim even after filing of written statement but it should be before the

commencement of the W.P.No.17295/2014 15 evidence in the trial so that the issues are settled in relation to the counter claim as well granting fair opportunity to the plaintiff to adduce evidence in that regard also. The aforementioned clear enunciation of principles by the Division Bench of this Court that though the counter- claim could be filed even after filing of the written statement but, it should be before the commencement of evidence, with great respect, could not have been expanded by a Single Judge of this Court to mean that the counter-claim could be filed at any time before the matter is reserved for judgment. This Court is unable to find any such enunciation of law in the decisions of the Supreme Court referred to in the case of Hanumanthagouda (supra). In any case, if at all the learned Single Judge dealing with Hanumanthagoudas case was of the view that the law laid down by the Division Bench of this Court requires reconsideration, or modification, or modulation, the only course open was to refer the matter for consideration of a Larger Bench of this Court. The learned Judge, sitting Singly, could not have laid down the law beyond, away and contra the decision of the Division Bench of this Court, particularly when nothing was shown that the principles W.P.No.17295/2014 16 enunciated in the Division Bench of this Court stood overridden by any decision of the Supreme Court. As per Order VIII Rule 6-A CPC, when the counter- claim is treated as a cross-suit, it would be against the procedure contemplated by CPC if the same is allowed to be filed at any stage until delivery of Judgment. By its very nature, the same ought to be filed before commencement of evidence, as specifically held by the Division Bench of this Court in Shantesh Gureddi v. Smt.Thayamma: ILR 1999 KAR898 In the present case, as noticed, PW-1 had been attending the Court regularly for her cross-examination. Hence, it has to be taken that the evidence has begun. In the totality of circumstances of the case, the attempt to file the counter-claim after the matter was set down for cross- examination of PW-1 could only be rejected as being entirely impermissible, apart from being wholly unnecessary. As noticed above, the earlier petition filed by the petitioner under Order VII Rule 11 CPC was dismissed with costs of Rs.5,000/-. The error, if any, on the part of the Trial Court in the impugned order dated 19.03.2014 had been of W.P.No.17295/2014 17 not rejecting the application filed by the petitioner for leave to file counter-claim with further costs. In the totality of circumstances, it appears necessary to dismiss this

petition with costs and with further direction for expeditious proceedings. Accordingly and in view of the above, this petition stands dismissed with costs quantified at Rs.5,000/-. Having regard to the circumstances of the case, it is also considered appropriate and hence, directed that the Trial Court shall assign specific priority to this matter and shall make an endeavour to conclude the trial at the earliest, preferably before 21.12.2018. CHIEF JUSTICE Sd/- In

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