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**Harish vs Krishna Reddy**

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**SooperKanoon Citation** : sooperkanoon.com/1882574

**Court** : Karnataka Orders

**Decided On :** Feb-05-2024

**Judge** : M G UMA

**Appeal No.** : WP/54215/2017

**Appellant** : Harish

**Respondent** : Krishna Reddy

**Judgement** :

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF FEBRUARY, 2024 BEFORE THE HON'BLE MRS JUSTICE M G UMA WRIT PETITION NO. 54215 OF 2017 (GM-CPC) BETWEEN: HARISH S/O. NARASAPPA AGED 35 YEARS RESIDING AT TUBURAHALLI VILLAGE VARTHUR HOBLI BANGALORE EAST - 560 066 PETITIONER (BY SRI: S. SHAKER SHETTY, ADVOCATE) AND:

1. KRISHNA REDDY S/O. LATE MUNISWAMY AGED ABOUT 63 YEARS

2. NARAYANA REDDY

Digitally S/O LATE MUNISWAMY signed by AGED ABOUT 61 YEARS PAVITHRA N Location: high court of R1 & R2 ARE AT karnataka TUBARAHALLI VILLAGE VARTHUR HOBLI BANGALORE EAST BENGALURU - 560 066

3. NANDISH .K S/O. LATE KRISHNA REDDY AGED ABOUT 29 YEARS NO.181, TUBARAHALLI VILLAGE RAMAGONDAHALLI POST BENGALURU - 560 066 -2- RESPONDENTS (BY SRI: B. RAMESH, ADVOCATE AND SRI: K.K. MANJUNATH, ADVOCATE FOR R1 TO 3) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227

**OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER**

DATED 23.9.2017 PASSED ON I.A.NO.4 BY THE XXXIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE CITY IN O.S.5516/2016 VIDE ANNEXURE-E AND ETC., THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING - B GROUP THIS DAY, THE COURT PASSED THE FOLLOWING:

## ORDER

The plaintiff in OS No.5516 of 2016 on the file of the learned XXXIX Additional City Civil and Sessions Judge, Bengaluru City, is impugning the order dated 23.09.2017 allowing IA.IV filed under Section 151 of CPC and dismissing the suit filed by the plaintiff seeking partition and separate possession.

2. Heard Sri S Shaker Shetty, learned counsel for the petitioner and Sri B Ramesh, learned counsel for the respondents. Perused the materials on record.

3. Learned counsel for the petitioner contended that the petitioner as plaintiff filed the suit OS No.5516 of 2016 seeking partition and separate possession and also for declaration that the sale deeds alleged to have been executed -3-

by defendant No.18 and his son as null and void and not binding on the plaintiff. During the pendency of suit, defendant No.18, 19 and 23 have filed IA.IV under Section 151 of CPC seeking dismissal of the suit as not maintainable. The Trial

Court proceeded to allow the said application and dismissed the suit. Being aggrieved by the same, the petitioner is before this Court.

4. Learned counsel submitted that Section 151 of CPC do not confer right on the Trial Court to dismiss the suit. The

## Trial Court has not invoked specific provision of law i.e., Order

VII Rule 11 of CPC, which empowers the Court to dismiss the suit on specified grounds. When mixed question of facts and law are involved in the suit, the Trial Court could not have proceeded to dismiss the suit in limine.

5. Learned counsel further submitted that the Trial

Court committed an error in observing that Muniswamy, the grand father of the petitioner died during 1981 and since the petitioner was born much later, he is not entitled to file the suit. But in fact, Muniswamy had died in the year 1987 i.e., on 24.11.1987. -4-

6. Learned counsel further submitted that Section 9 of CPC does not bar the plaintiff from filing the suit, as the right to sue survive in his favour. Ignoring all these facts and circumstances, the Trial Court proceeded to allow the application, which is bad in law.

7. Learned counsel placed reliance on the decision of

Hon'ble Apex Court in Ram Chand and Sons Sugar Mills Pvt. Ltd. Vs Kanhaya Lal Bhargava and Ors.1 in support of his contention that Section 151 of CPC cannot be made applicable to dismiss the suit in a casual manner, when there are specific provision of law under Order VII Rule 11 of CPC.

8. Per contra, learned counsel for the respondents

opposing the petition submitted that initially the suit OS No.776 of 1996 was filed seeking partition and separate possession between 5 brothers and the said suit came to be decreed. The plaintiff in the said suit being not satisfied with the share allotted in her favour, preferred Regular First Appeal No.1939 AIR 1966 SC 1899 -

5- of 2006. When the first appeal was pending before this Court, parties have entered into compromise.

9. Learned counsel submits that on 12.11.1999, 5

brothers of Muniswamy entered into registered partition deed, as two daughters have executed the registered relinquishment deed relinquishing their right in favour of their brothers. Later on 25.06.2015, a confirmation deed confirming execution of the registered partition deed dated 12.11.1999 was executed. The father of the petitioner is a party to the said confirmation deed and on the very same day, the sale deed was also executed by all the parties to the concerned in favour of a third party. However, later the father of the petitioner filed OS No.7482 of 2015 seeking partition and separate possession in the family property and also challenging the confirmation deed dated 25.06.2015 on the ground that he never executed said deed and he was not present at the time of executing the deed. However, the facts remains that the sale deed which was also executed and registered on the same day was never challenged by the father of the petitioner.

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10. Learned counsel submitted that in the meantime,

two sisters of the petitioner filed suit OS No.6881 of 2015 seeking their share in the property that was allotted in favour of their father. The petitioner had filed an application under

## Order VII Rule 11 seeking rejection of the plaint and in the

alternative to stay the further proceedings till disposal of the suit OS No.7482 of 2015 filed by the father. Both the applications came to be rejected by the Trial Court and the said

## order was never challenged either by the petitioner or by his

father. After suffering the order in OS No.6881 of 2015, the petitioner has filed separate suit OS No.5516 of 2016 seeking partition and separate possession of

his share in the schedule property and also to declare that the sale deeds alleged to have been executed by defendant No.18 and his son in favour of several purchasers are not binding on the plaintiff. The prayer made by the plaintiff is vague and lacks particulars.

11. Learned counsel submitted that when the suit filed by the father in OS No.7482 of 2015 is still pending, the petitioner could not have filed the present suit OS No.5516 of

2016. Therefore, IA.IV was filed seeking dismissal of the suit as not maintainable and the Trial Court after considering the -7- contention of the parties, rightly allowed the application. There are no merits in the petition. Hence, he prays for dismissal of the petition.

12. The facts and circumstances of the case which are

referred to above are not in dispute. Admittedly, the father of the petitioner filed the suit OS No.7482 of 2015 challenging the confirmation deed dated 25.06.2015 and also seeking partition and separate possession of his share. It is not in dispute that two sisters of the petitioner filed the suit OS No.6881 of 2015 seeking their share in the property i.e., allotted in favour of their father. It is also not in dispute that the petitioner and his father have filed two applications under Order VII Rule 11 of CPC in the said suit, seeking rejection of the plaint or in the alternative to stay the further proceedings till dismissal of the suit OS No.7482 of 2015 filed by the father, and both the applications were dismissed. The said order has reached finality. It is thereafter, the petitioner filed the present suit OS No.5516 of 2016. There is absolutely no reason as to why the petitioner has chosen to file fresh suit seeking partition and separate possession and also for declaration that the various sale deeds are not binding on him.

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13. It is the contention of learned counsel for the

petitioner that he being the grandson of Muniswamy, is entitled for share in the schedule property and right to sue accrues in his favour. Section 9 of CPC does

not bar for seeking the claim. Even though such contentions appear to be very appealing, there is no justification for the petitioner to file one more suit for partition and separate possession and also for declaration, when such a relief is already claimed by the father of the petitioner in OS No.7482 of 2015. The contention of the learned counsel for the petitioner is that the Trial Court has not invoked

## Order VII Rule 11 of CPC. The Trial Court has not dismissed

the suit or rejected the plaint under Order VII Rule 11 of CPC, but it has invoked inherent power under Section 151 of CPC to dismiss the suit.

14. Learned counsel has placed reliance on the decision

of Hon'ble Supreme Court in Ram Chand and Sons Sugar Mills Pvt. Ltd. (supra), and in paragraph 9 has discussed about the scope of the inherent power of a Court under Section 151 of CPC and held as under: -9-

> "9. Having regard to the said decisions, the scope of the inherent power of a court under section 151 of the Code may be defined thus : The inherent power of a court is in addition to and complementary to the powers expressly conferred under the Code. But that power will not be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provision. Whatever limitations are imposed by construction on the provisions of section 151 of the Code, they do not control the undoubted power of the court conferred under section 151 of the Code to make a suitable

## order to prevent the abuse of the process of the

Court." (emphasis supplied)

15. Thus, the inherent power under Section 151 of CPC

definitely do not control the power of the Court to pass a suitable order to prevent the abuse of the process of the Court. If the contention of the petitioner herein is to be accepted, each - 10 - of the sharers under joint family are entitled to file and maintain separate suits even though other suits filed by the co- sharers are pending. This will definitely lead to abuse of process of law. There is absolutely no reason as to why the petitioner is not willing to get himself impleaded in the suit filed by the father.

16. Learned counsel for the respondents contended that

since the father of the petitioner was not successful in getting the interim order in the suit OS No.7482 of 2015, the present suit was filed by the petitioner seeking similar relief. It is the plausible explanation which the Court can get when there are no other reasonable explanation as to why the plaintiff has chosen to file separate suit with similar prayer, when the suit filed by his father is pending consideration.

17. The submission made by the learned counsel for the

petitioner is that the Trial Court has committed an error in forming an opinion that the petitioner was born much later to the death of the grand father Muniswamy. Such observations made by the Trial Court in the impugned order may not effect the rights of the parties, as the parities have to probabalise - 11 - their contention regarding their right to seek partition and separate possession by leading evidence.

18. I have gone through the impugned order passed by

the Trial Court. It has taken into consideration various contentions raised by the parties and has discussed at length before proceeding to allow IA.IV. I do not find any illegality or perversity in the order passed by the Trial Court. Hence, the writ petition is dismissed. Sd/- JUDGE *bgn/- List No.: 1 Sl No.: 11

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