

Gangadharappa Vs. Basavaraj

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Court : Karnataka

Decided On : Mar-16-1995

Reported in : AIR1996Kant155; I(1996)DMC194; ILR1995KAR2642; 1995(5)KarLJ134

Judge : L. Sreenivasa Reddy, J.

Acts : [Constitution of India](#) - Article 20(3); [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 - Order 26, Rule 10A; General Clauses Act, 3(38)

Appeal No. : Civil Ren. Petn. No. 486 of 1995

Appellant : Gangadharappa

Respondent : Basavaraj

Advocate for Def. : B.C. Udayashankar, Adv.

Advocate for Pet/Ap. : Mahantesh Hosmath, Adv.

Judgement :

ORDER

1. Though the matter is listed for admission to-day, with consent of both the counsel, it is taken up for final disposal.

2. The petitioner is the father of the respondent. The respondent herein is the plaintiff in O.S. No. 26/92. He has instituted the said suit against his father for

partition and separate possession of his share in the coparcenary properties. The defendant has resisted the said suit on the ground that the plaintiff is not entitled to claim partition in the joint family properties since he was not born to him. Therefore, he filed I. A. No. 8 under Order 26, Rule 10A r/w Section 151 C.P.C. for appointment of a Commissioner for purpose of blood test and genetic finger printing test of the plaintiff to find out whether he is his son. The said application was resisted by the plaintiff on the ground that he could not be compelled to undergo the test as it was violative of Article 20(3) of the [Constitution of India](#). The learned Munsiff having upheld the said objection rejected the said I.A.

3.-4. In my view the impugned order is erroneous and is liable to be set aside for the following reasons: Clause (3) of Article 20 of the [Constitution of India](#) deals with Accused's immunity from being compelled to be a witness against himself. This clause gives protection to (i) to a person 'accused of an offence';

(ii) against compulsion 'to be a witness', (iii) against himself. Therefore, it is clear from clause (3) of Article 20 that the protection under this clause is confined to criminal proceedings or proceedings of criminal nature before a Court of law or other Tribunal before whom a person may be accused of an 'offence' as defined in Section 3(38) of the General Clauses Act. It would not, therefore, extend to parties and witnesses in civil proceedings or proceedings other than Criminal. In *Mallela Suryanarayana v. Vijaya Commercial Bank Ltd.*, AIR 1958 Andh Pra 756 and *R. P. Ulaganambi v. K.C. Loganayagi*, 1986 Cri. LJ 1522 the High Court Andhra Pradesh and the High Court of Madras respectively have taken the view that the immunity granted by Article 20(3) of the [Constitution of India](#) does not extend to civil proceedings and the intent of this Article is to afford some protection to a person involved in a crime, having regard to the predicament in which he would be placed and to interpret it as applying to all proceedings civil or criminal which might at a subsequent period expose the person concerned to prosecution on the basis of answers given by him, is to enlarge the scope of this Article and to defeat justice. Therefore, in my view, the learned Munsiff was not at all right in dismissing I. A. No. 8 on the ground that the prayer made therein amounted to testimonial compulsion violative of Article 20(3).

5. Under Hindu Law illegitimate sons living together with their putative father do not constitute coparcenary and father has no power to admit them as his coparceners. In my considered view, the trial Court in order to enable the defendant to prove that the plaintiff was not born to him and he is not entitled to claim partition in the suit proper-tics ought not to have rejected I.A.S.

6. For the foregoing reasons, this Revision Petition is allowed. The impugned order on I.A. No. 8 is hereby set aside I.A. No. 8 is allowed and the trial Court shall appoint a Commissioner for the purpose mentioned therein at the cost of the defendant. There shall be no order as to costs.

7. Petition allowed.

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