

K.V. Jagadish Vs. Narayanappa and Others

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Court : Karnataka

Decided On : Sep-01-1999

Reported in : ILR2000KAR1981; 2000(1)KarLJ618

Judge : Hari Nath Tilhari, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115 and 151; Civil Law Amendment, 1976 - Sections 104

Appeal No. : Civil Revision Petition No. 142 of 1996

Appellant : K.V. Jagadish

Respondent : Narayanappa and Others

Advocate for Def. : Sri V.S. Gunjal, Adv.

Advocate for Pet/Ap. : Sri C.M. Nagabhushana, Adv.

Judgement :

ORDER

1. This revision petition under Section 115 of the Code of Civil Procedure, for short, 'CPC' arises from the judgment and order dated 23rd December, 1995, passed by (Sri A. Mohan Ram), 14th Additional City Civil Judge, Bangalore, dismissing or rejecting the defendant 4's application under Section 151 of the CPC moved in original suit number O.S.4223 of 1995, whereby the 4th defendant

sought permission to complete the construction of the building in suit and to occupy the same.

2. The facts of the case in the nutshell are that the plaintiff- respondent filed the suit for declaration of title as well as for perpetual injunction in respect of an area of 3 acres 6 guntas of land of Sy. No. 6/2, Kempapura Village, Yelahanka Hobli. He also sought decree for recovery of possession. The decree has also been sought for partition by metes and bounds.

Along with the suit, the plaintiff filed an application for temporary injunction, against defendants restraining them from alienating the suit schedule property, on 30th June, 1995 and also moved an application I.A. III for injunction restraining the defendant from making any construction of the building in the suit scheduled property. The plaintiffs claim to be the legal heirs (sons and daughters of Munishamappa), who is alleged to have died in 1969. Plaintiffs alleged that the suit property was acquired by Munishamappa by purchase from one Ramegowda vide sale deed dated 30th of October, 1916 and Ramegowda has, in his turn has purchased this property from one Kurubara Kamakka wife of Muniyappa during the year 1911. Munishamappa was alleged to have died intestate leaving his sons and daughters, who claimed 8th share in the property. Munishamappa's wife is also alleged to have died prior to him. According to plaintiffs, one Venkategowda described as the father of defendants 2 and 4 and husband of defendant 1, as per plaintiff allegations and defendants 3, 5 and 6 are described as the cousins of Venkategowda. Plaintiffs alleged that Venkategowda's father Muniswamegowda and father of defendants 3, 5 and 6 were brothers having been described as the brothers of Narayanamma, wife of Munishamappa. According to plaintiffs, Venkategowda was acting as the Manager of the family of the defendants. Thereafter, the partition deed took place and, according to plaintiffs, Venkategowda taking undue advantage of old age of Munishamappa, got entered his name in the records of rights describing himself as auction purchaser and defendants are said to have divided the property amongst themselves, but plaintiffs alleged that the defendants had never purchased in any auction in sale and entries were manipulated.

The plaintiffs came to know of the mischief, later on and filed the suit. The plaintiffs claim to be in possession of the suit property, the plaintiffs claim to be belonging to Munishamappa and to plaintiffs. The Trial Court, no doubt granted interim injunction and, thereafter the interim injunction is yet continuing. The defendant has not applied either for vacation or for temporary injunction or its modification and, as admitted by the Counsel for the revision petitioner, no written statement in the suit has been filed nor any application for vacation of injunction. Instead the defendant 4 moved the application under Section 151 for being permitted to continue and to complete the constructions that were standing.

The Trial Court did take into consideration the R.T.Cs entries filed by defendants from 1975-76, 1980-81, 1985-86 and 1987-88. It has also taken into consideration the endorsement of Tahsildar that it is not possible to give record of rights pertaining to property. The Court below mentioned that the plaintiffs have also tiled the copies of the revenue revision and settlement register and copies of survey report. It observed that the xerox copies in the case have been produced, but there is nothing on record to show how this Venkategowda came to acquire the intestate. It is also mentioned that there is no document showing that defendant 4 has been authorised to make construction on suit property nor there is any document showing that survey number was alienated or converted for non-agricultural purpose. So it opined that mere construction of the building to certain level by defendant 4 will not be something of a consequence in the light of the circumstances to show that defendant has sem-blance of title. The Court below observed that, in absence of any permission having been obtained from the competent authority from making construction, that is, from the authority namely Bangalore Development Authority or any planning authority, the Court cannot on the basis of R.T.Cs' entries, grant permission to defendant 4 to construct or to continue the construction, particularly when he has not shown any sem-blance of title to the property which appears to have purchased by Munishamappa's ancestors in 1960, considered and opined it would have not been in the interest of justice to grant the permission to construct or to put further constructions and rejected the application.

3. Feeling aggrieved by the order of the Trial Court rejecting the application for permission to complete the construction or put further constructions, the defendant 4 has come up in revision before this Court under Section 115 of the Code.

I have heard Sri C.M. Nagabhushana, learned Counsel for the revision petitioner.

4. Learned Counsel for the revision petitioner Sri Nagabhusbana contended that the Court below acted illegally in granting the injunction, even when the revenue record entries reveal that defendant 4 has been in possession and equity demanded that the permission should have been granted for further construction. Learned Counsel contended that the Court below erred in law as well as acted illegally in not granting the permission. Learned Counsel contended that the learned Judge failed to consider that the non-granting of permission to put constructions on the building has a tendency to cause a great hardship and irreparable injury to the revision petitioner-defendant 4 and putting up constructions will not cause any harm to the plaintiffs, but it will be beneficial to them, if the constructions are put thereon and, therefore Court below acted illegally or with material irregularity in exercise of its jurisdiction in rejecting the permission.

The contentions raised on behalf of the revision petitioner have hotly been contested. It has been contended that revision petition is misconceived and is not maintainable. The respondents' Counsel contended that jurisdiction of this Court under Section 115 is confined to jurisdictional error, as per Section 115(1), clause (a), (b) or (c). Learned Counsel contended that it is only jurisdictional error on the basis of which interference can be made, but revision will not lie from an order of simple error of fact or law. Learned Counsel contended that the Court below could refuse the permission, if in its opinion that was not in the interest of justice to exercise power under Section 151. Learned Counsel further contended that the order passed by the Court below does not suffer from any error or error of fact or law or error of jurisdiction.

5. I have applied my mind to the contentions raised by the learned Counsel for the parties. It has to be taken note that the jurisdiction of this Court under Section 115 of the CPC, though as laid down by the Supreme Court in Shankar Ramchandra Abhyankar v Krishnaji Dattatraya Bapat, is the part of general appellate jurisdiction

of the Court, but it is circumscribed by the conditions specified in Section 115 and can be exercised only within the four corners of those conditions and, in cases covered by those conditions.

6. Learned Counsel for the revision petitioner made his best efforts to rely on clause (c) of Section 115, which may be quoted herewith so far it is relevant, whereas the principal clause of Section 115 reads as under:

'115. Revision.--(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such Subordinate Court appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order deciding an issue, in the course of a suit or other proceeding, except where-

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto'.

Clause (c) of Section 115 indicated, if in exercise of jurisdiction illegally or with material irregularity. The Court exercises powers under Section 115 of the CPC subject to other parts and conditions being established.

6-A. What has been the meaning of this phrase, The expression has 'acted illegally or with material irregularity has been subject of consideration by their Lordships of the Privy Council as well as the Supreme Court.

Learned Counsel further referred to proviso to Section 115, particularly clause (b) thereof. Proviso has not to be read separately or independently of the main provision. Firstly 'so far as acting illegally or with material irregularity' is concerned in the case of N.S.V. Aiyangar v Hindu Religious and Charitable Endowment Board, Madras¹, their Lordships interpreted it and it will be profitable to quote the following observations-

'The section empowers the High Court to satisfy itself upon three matters, (a) that order of subordinate Court is within its jurisdiction; (b) that case is one in which Court ought to have proceeded to exercise the jurisdiction; (c) that in exercising jurisdiction the Court has not acted illegally, that is in breach of some provision of law, or with material irregularity, that is by committing some error of procedure in the Course of Trial which is material in that it may have affected the ultimate decision, that is committing some error of procedure. If the High Court is satisfied upon these matters, it has no power to interfere, because it differs, howsoever profoundly, from the conclusions of subordinate Court upon questions of fact or law'.

The expression acted illegally has been construed to mean that the Court subordinate has acted in breach of some provision of law and material irregularity means, the Court has acted in breach or has committed some error of procedural law in course of time. But if the case is not one which can be brought within the clutches of either clause (a), (b) or (c), then even if High Court differs from the finding or decision arrived at by the Court below it has no jurisdiction to interfere. This law has later on been followed in very many cases by the Supreme Court and in the case of Keshardeo Chamria v Radha Kissen Chamria, which is popularly known as Chamria v Chamria. Their Lordships of the Supreme Court, again quoted with approval the observations of Hon'ble Mr. Justice Eose made in the case of Narayan Sonaji v Sheshrao Vithoba, wherein it is said that:

'The words illegally or material irregularity do not cover either errors of fact or law. They do not refer to decision arrived at, but to the manner in which it has been arrived at. The errors contemplated relate to material defects of procedure and not to errors either of law or fact after the formalities which the law prescribes have been complied with'.

In the case of M/s. D.L.F, Housing and Construction Company (Private) Limited v Sarup Singh and Others, has also explained clause (c) of Section 115(1) of the CPC and observed its scope is confined either to breach of some provision of law or to material defects of procedure affecting the ultimate decision and not to errors of either of fact or law after the prescribed formalities have been complied with. Keeping these basic principles, in view relating to scope of jurisdiction and interpretation of clause (c) of Section 115, the contentions of the petitioners' Counsel have to be considered. Before I proceed further, it will be appropriate to deal with clause (b) of proviso on which learned Counsel for the petitioners placed much reliance. Proviso to Section 115 which has been added after coming into force of Civil Laws Amendment 104 of 1976. It provides that: provided High Court shall not under this section vary or reverse any order made or any order deciding an issue in the course of suit or other proceedings, except where clause (a). (b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made. If we read this proviso to Section 115 it means that the effect of this proviso is, that, it is only, in cases where the Court comes to the conclusion that the order passed by the Trial Court even if it suffers from jurisdictional error coming either under clause (a), (b) or (c) of Section 115, the Court is not bound and shall not interfere with the order, merely on the ground that order suffers from jurisdictional error. It is after the Court has come to the conclusion that case is the one covered by clause (a), (b) or (c) or principal section that is sub-section (1) of Section 115 it has to consider and to look into: Whether the order is one, if it is allowed would occasion failure of justice and will cause irreparable injury to the party, as per clause (b) to proviso and if answer be in affirmative then it will refuse to uphold the order but if answer is in negative it will refuse to reverse its order. But first condition or thing to be established is: Whether the order suffers from jurisdictional error. If the first condition is not satisfied and the petitioner fails to establish that the case is one

covered by either clause (a), (b) or (c) or sub-section (1) of Section 115, then the condition of second stage under provisos 'a' and 'b' will not come into picture.

7. In this case much emphasis has been laid that, if constructions are not allowed to be raised, then injustice and irreparable injury would be caused to the defendant, because his material is there. The learned Counsel contended that the Court below was not justified and committed error in not relying on the R.T.C.s', entries, the Trial Court has referred the entries and considered other circumstances and on the basis thereof, it opined that this is not the sufficient evidence.

Secondly the injunction order had been granted. Injunction order hadnot been objected to nor challenged before the Court below. No application been made nor any objection has been filed against temporary injunction order by the defendant and injunction order is, as it is. Thedefendant-revision petitioner has not filed any written statement norany objections to that and, so at this stage, it cannot be permitted toargue and challenge the order of temporary injunction granted in the suit.

8. Here revision is confined to the question of granting of permission. It is one of the settled principles of law that when a matter of claim in suit is to be tried and which requires Trial Court's decision on merits after Trial no party should be allowed to change the character of property, i.e., to change the position to the detriment of the other party during the pendency of suit. The permission if granted to raise the construction other than whatever existing, then it may result in not onlyinjury to the plaintiff, but injury to defendant himself, because when the suit is decreed, then in that case, either the constructions will have to be demolished and the cost will have to be borne by the plaintiff, and in addition to cost incurred in raising further construction the defendant will have to pay the cost of demolition. The interest of justice did not and does not require that said permission should be granted. The opinion of the Trial Court may be correct or incorrect, I am not going to express any opinion and I am not going to reverse the impugned order. There is no jurisdictional error on the part of Court below. The Court thought it fit not to grant permission, it refused permission and, as it exercised jurisdiction after

considering the pros and cons of the matter and, then rejected the application, so it cannot be said to be a case of failure to exercise the jurisdiction. No law has been shown to me by the petitioners' Counsel, in support of his contention to say that Court has acted in breach of this provision of law to show or establish that Court below acted illegally or with material irregularity.

9. Learned Counsel contended that this is a case where there is an unjust order of injunction granted. His contention may be there that is unjust order. Whether it was unjustifiable to grant the order of injunction, or Court acted illegally in passing the temporary injunction is not a question before me in the revision.

10. The illegality of jurisdiction has not been established by showing any provision of the Act or the Rules which require certain procedure to be followed has been violated or has not been followed and, so it cannot be said that the Court has acted illegally or with material irregularity and so the case cannot be said to be one coming within the framework of Section 115(c).

As case does not come within the clutches of any of the clauses of Section 115, then even if there be an error of fact or an error of law and this Court is not competent to interfere. This revision is without merits and has to be dismissed with costs. It is hereby dismissed with costs.

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