

Renuka Lakshmi Granites, a Partnership Firm Regstd. Under the Indian Partnership Act, 1932 Rep. HereIn by Its Managing Partner Mrs. Annapoorna Chandrashekhara Vs. K.M. Rajashekhara Murthy S/O Sri Mahalingappa,

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Court : Karnataka

Decided On : Feb-05-2008

Reported in : ILR2008KAR2776; 2008(2)KCCR1234; 2008(3)AIRKarR390; 2008AIHC2586(Kar)

Judge : K. Ramanna, J.

Acts : Code of Civil Procedure (CPC) - Sections 16, 20 and 21(3)

Appeal No. : MFA No. 6734/2003

Appellant : Renuka Lakshmi Granites, a Partnership Firm Regstd. Under the Indian Partnership Act, 1932 Rep. Here

Respondent : K.M. Rajashekhara Murthy S/O Sri Mahalingappa,; Mr. K.M. Chandrashekar S/O. Sri Mahalingappa,; Sri G

Advocate for Def. : K.H. Somashekar, Adv. for Respondent No. 1,; B.V. Raman, Adv. for Respondent Nos. 2 and 3 and; R.K. Hathi, Adv. for Respondent No. 4

Advocate for Pet/Ap. : Raviverma Kumar, Sr. Counsel for; Ranganath P.H., Adv.

Disposition : Appeal allowed

Judgement :

K. Ramanna, J.

1. This appeal is filed by the appellant-plaintiff challenging the Order dated 4.7.2003 passed in O.S. No. 7762/2000 by the XXVII Addl. city Civil Judge, Bangalore whereby the said Court had held that it had no territorial jurisdiction to try the said suit and returned the plaint to the appellant-plaintiff for presenting it before the proper court.

2. For the sake of convenience, the parties are referred to in the rank assigned to them in the lower Court.

3. The case of the appellant-plaintiff is that it is a registered partnership firm which came into existence on 10.4.2000 and the same was registered in the Office of the Registrar of Firms, Bangalore on 24.4.2000. The business of the plaintiff-firm is quarrying and selling of rough granite blocks. The quarrying business was obtained by the first defendant from the fourth defendant in respect of land Sy. No. 14 of Malleharavu village, Molakalmuru Taluk, Chitradurga District for a period of five years with effect from 12.6.1996. It is the case of the appellant-plaintiff that the first respondent-defendant had executed irrevocable general power of attorney dated 6.5.1999 in favour of his brother K.M. Chandrashekar-2nd defendant herein, appointing him as

his power of attorney in respect of the said quarrying license. Subsequently one Annapurnamma, wife of Chandrashekar, one M.S. Govardhana and one K.M. Rajashekaramurthy-defendant No. 1 constituted partnership firm in the name and style of 'M/s. Renuka Lakshmi Granites' to carry on business of quarrying and selling rough granite. In the partnership deed it is mentioned that the contribution of third partner-defendant No. 1 shall be quarry lease bearing No. QL 182. It is also mentioned in that partnership deed that he is entitled to receive Rs. 1,00,000/- as consideration for the quarry lease. The partnership deed discloses that the 1st partner-Annapurnamma shall contribute Rs. 1,00,000/- and the second partner shall contribute Rs. 5000/- and that all the three partners shall share profit and loss at the ratio of 75, 1 and 251 respectively. It is the further case of the appellant-plaintiff that the first respondent-defendant No. 1 has revoked the general power of attorney executed in favour of his brother-respondent No. 2 and attempted to interfere with the business of the firm and also filed objections before defendant No. 4 for transfer of quarry license No. QL182 in favour of appellant-plaintiff M/s. Renuka Lakshmi Granites. Hence the firm represented by its managing partner Annapurnamma filed the suit seeking a declaration that the revocation of general power of attorney is infructuous during the subsistence of partnership and for further declaration that the plaintiff-firm is entitled to obtain quarrying license in its favour. So also several injunctive reliefs were sought against the respondents-defendants.

4. After appearance, defendant No. 1 has filed his written statement resisting the claim made by the appellant-plaintiff. At the time of arguments on IA. Nos. II and IV, learned Counsel for respondent No. 1-defendant No. 1 raised a question regarding territorial jurisdiction to try the suit. Even at the time of registering the suit, office has raised objection regarding territorial jurisdiction of the Court to try the said suit.

5. Heard the arguments of Sri Ravivarnusi Kumar, learned senior counsel for the appellant and learned Counsel for the respondents.

6. It is argued that an irrevocable power of attorney has been executed by defendant No. 1 in favour of defendant No. 2 after receiving consideration of Rs. 1,00,000/-. Thereafter suddenly without any notice defendant No. 1 got issued public notice cancelling the general power of attorney executed in favour of defendant No. 2 and attempted to interfere with the business of the plaintiff. It is argued that as per the terms and conditions of the partnership contract, the appellant-plaintiff is entitled to get the quarry lease transferred in its favour. Therefore the appellant filed an application before the authority defendant No. 4 seeking transfer the quarry lease in its favour, but the respondent No. 1 has filed untenable objections. Therefore appellant-plaintiff filed the instant case seeking enforcement of his rights and sought several injunctive relief's. But the court-below came to the wrong conclusion in holding that the City Civil Court at Bangalore has no territorial jurisdiction to entertain the suit, it is argued that the trial court failed to appreciate that the partnership firm is situated at Bangalore, carrying on business at Bangalore and that two of the defendants were also residents of Bangalore, it is argued that the suit was filed by the appellant on 23.11.2000. Respondent No. 1 appeared on 14.12.2000 and filed its objections and written statement on 15.12.2000. It is argued that the defendant has not taken such a contention either in the written statement or in the objections. Therefore subsequently they cannot contend that the suit is not maintainable on the point of jurisdiction. The suit filed by the appellant is only for managing the affairs of the firm. Therefore raising objection on the point of jurisdiction after several years cannot be maintained. It is argued that the subject-matter of the suit is the business of the firm and not the quarry comprising SY. No. 14. The cause of action to file suit arose at Bangalore. Therefore the trial court has jurisdiction to try the suit under Section 20 CPC. While arguing the case, learned Counsel for the appellant drew the attention of the court to Section 16 CPC. It is argued that though the trial Court has culled out the provisions of Section 16 CPC, failed to analyse and consider the proviso to Section 16 CPC. Therefore the suit is maintainable and the trial Court has jurisdiction to entertain the said suit. In support of all these contentions, learned Counsel for the appellant relied on the following decisions:

(a) 1962 Mysore Law Journal 1053 J.M. Sbetharama Setty v. Kamamma wherein this Court has held that:

In a suit filed in Bangalore for property situated at Tamilnadu State, this Court held that as long as the defendant was residing within the jurisdiction of Bangalore Court where the suit was instituted, the suit was maintainable in terms of Section 16(d) CPC.

(b) (Lakhara & Co. v. Shiyakaran Bhanwar Lal Kila) Wherein it has been held as follows:

Jurisdiction of court-Is mixed question of law and fact-cannot be decided at stage of deciding application for temporary injunction and for that only the averments in the plaint could be seen.

(c) Full Bench decision of the Supreme Court reported in : [1962]2SCR747 (Hira Lal Patni v. Sri Kali Nath) wherein it has been held as follows:

Objection regarding territorial jurisdiction does not go to root of jurisdiction-validity of decree cannot be challenged on that ground in execution proceedings-Judgment debtor held estopped from taking that objection in execution.

(d) 1995 (3) Kar.L.J. 512 (M.H. Ramakrishna v. Special Land Acquisition Officer, Nagamangala, Mandya District) wherein it has been held as follows:

Section 21(3) CPC says that no objection to the competence of the executing Court with regard to the local limits of the jurisdiction shall be allowed by any appellate or revision court, unless such objection was taken in the executing Court, at the earliest possible opportunity and unless there has been a consequent failure of justice.

Therefore it is submitted that when the respondent has not raised any objections earlier, raising an objection subsequently at the time of hearing on IAs is not at all maintainable and the same should be treated as waived.

7. On the other hand, learned Counsel for the respondent submitted that of course, the defendant has not raised any objection on the point of jurisdiction in his written statement or objections to I.A. but the office itself has raised an objection and the office objection was kept open. Therefore the respondent is entitled to raise objections subsequently. It is argued that the property is situated within the limits of Chitradurga District and defendant No. 1 executed general power of attorney in favour of defendant No. 2. Defendant No. 2 is not a partner of M/s. Renuka Lakshmi Granites. Therefore instead of filing the suit at Chitradurga District, he filed the suit at Bangalore. Therefore the trial Court is right in holding that it has no territorial jurisdiction and it was ordered to return the plaint. There is no incorrect or illegal or perverse finding in passing the order under challenge.

8. In support of his contention, learned Counsel relied on the decision rendered by the Supreme Court in : AIR2005SC4446 (Harshad Chiman Lal Modi v. DIF Universal Ltd. and Anr.) wherein it has been held as follows:

Property situated in Gurgaon (Haryana) - Defendants are having their Head office at Delhi - Agreement was entered into between parties at Delhi-payment was to be made at Delhi and some installments were also paid at Delhi-Court at Haryana has jurisdiction to try the suit.

9. Having heard the arguments of learned Counsel for both parties, now I proceed to see whether the impugned order passed by the Court-below holding it has no territorial jurisdiction to entertain the suit is in accordance with law?

10. In the instant case, the plaintiff and some of the defendants are the residents of Bangalore. M/s. Renuka Lakshmi Granite is a partnership firm situated at Bangalore. Even respondent No. 2 and respondent No. 4 are residents of Bangalore, the respondent No. 1 is the Director of Mines & Geology before whom an application for transfer to quarry lease was made, is at Bangalore. The plaintiff filed the suit in Bangalore, though the property is situated at Chitradurga. In the prayer clause plaintiff seeks for the following reliefs:

a) granting an order of permanent injunction restraining the first defendant or his agents or servants or anybody claiming through or under him

from, interfering with the management and conduct of the partnership business of the plaintiff firm;

b) granting an order of permanent injunction restraining the first defendant or his agents or servants or anybody claiming through or under him from acting in any manner which is prejudicial to or adversely affecting the interest of the business of the plaintiff firm, and its other partners?

c) restraining the first defendant from violating the terms and conditions stipulated in the partnership contract which is prejudicial to the interest of the plaintiff firm;

d) restraining the first defendant from raising any objections before the fourth defendant in contravention with the interest of the plaintiff firm in the matter of transferring the quarry lease bearing No. QL.182 in favour of the plaintiff firm?

e) declaring that the revocation of the power of attorney executed by the 1st defendant in favour of the II defendant is infructuous in view of the subsistence of the plaintiff firm and further declare that the plaintiff firm is entitled to obtain transfer of the quarry lease bearing No. QL 182 in its favour from the fourth defendant;

f) direct the fourth defendant to act upon the application filed by the plaintiff firm dated 27.4.2000 for transfer of quarry lease bearing No. 132 in its favour?

g) restrain the first defendant from engaging third parties to carry on the quarry operations in respect of the quarry lease bearing No. QL 182 in contravention of the interest of the plaintiff firm?

h) directing the first defendant to pay the costs of this suit;

i) grant such further or other orders or reliefs as this Hon'ble court may grant under the facts and circumstances of the above case, in the interest of justice and equity.

Of course, after filing the suit the office has raised objection with regard to the territorial jurisdiction which was kept open. On appearance of defendant he filed written statement but he has not raised any objection regarding jurisdiction of the trial court to try the suit. It is argued by the counsel for the appellant that as the defendant has not raised any objection in his written statement, subsequently the defendant cannot be allowed to raise the said objection. In my opinion, when the office has already raised the said objection and it was kept open and that the defendant has though not raised the said objection in his written statement, has raised the said objection at the earliest, before settlement of issues and that the defendants be allowed to take the said objection, as such I did not find any force in the arguments of the appellant that the defendants cannot be permitted to raise such objection subsequently. Therefore the only question remained for my consideration is:

Whether the trial court has jurisdiction to try the suit filed by the plaintiff-appellant or not?

Before going into this question, it is necessary to call out Section 16 CPC which reads as follows:

Section 16: Suits to be instituted, where subject-matter situate - Subject to the pecuniary or other limitations prescribed by any law, suits-

(a) for the recovery of immovable property with or without rent or profits,

(b) for the partition of immovable property,

(c) for foreclosure, sale or redemption in the case of a mortgage or of charge upon immovable property,

(d) for the determination of any other right to or interest in immovable property,

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property

actually under distraint or attachment, shall he instituted in the court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain, relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

11. Proviso to Section 16 CPC declares that where the relief sought can be obtained through the personal obedience of the defendant, the suit can be instituted either in the court within whose jurisdiction the property is situated or in the court where the defendant actually or voluntarily resides, or carries on business, or personally works for gain.

12. Thus it is clear that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in rem still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso to Section 16 is an exception to the main part of the Section, and it is applied where the relief sought could entirely be obtained by personal obedience of the defendant.

13. In the instant case, the reliefs sought for by the plaintiff before the court-below could entirely be obtained by personal obedience of the defendant No. 1 and other defendants. Therefore the court-below has jurisdiction to try the suit filed by the plaintiff.

14. The trial court in paragraph 10 of the impugned order has culled out Section 16 CPC but has failed to consider proviso to Section 16 CPC. The trial Court admits that the cause of action to file suit arose within its jurisdiction. The court-below ought to have considered the proviso to Section 16 CPC but failed to do so. Further as per Section 20 CPC, suit may be instituted in a court within whose jurisdiction the defendant resides or carries on business or personally works for gain or cause of action totally or partly arises. Therefore in view of the fact that M/s. Renuka Lakshmi Granite is a partnership firm situated at Bangalore and the other defendants namely respondent No. 1 and respondent Mo. 4 are also residents of Bangalore, the appellant-plaintiff has rightly filed the suit in Bangalore and the courts at Bangalore have right to try the suit under Section 16(d) of CPC. No doubt Courts at Chitradurga had jurisdiction to try the instant suit but in view of Section 16(d) CPC read with proviso to Section 16 CPC and Section 20 CPC, the Courts at Bangalore also have jurisdiction to try the instant suit. Hence, the appeal is to be allowed by setting aside the impugned order passed by the trial court.

15. For the foregoing reasons, the appeal is allowed. The order under challenge dated 4.7.2003 passed in OS No. 7762/2000 by the XXVII Addl. city civil Judge, Bangalore is hereby set aside and. the trial Court is directed to dispose of the suit as expeditiously as possible.