

Muniswamappa Vs. Nagamma

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Court : Karnataka

Decided On : Jun-25-1987

Reported in : ILR1987KAR2280

Judge : Navadgi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125, 126 and 127;
Code of Civil Procedure (CPC) - Order 1, Rule 10

Appeal No. : Crl. R. P. No. 242 of 1985

Appellant : Muniswamappa

Respondent : Nagamma

Advocate for Def. : K.R. Venkatesh Gowda, Adv.

Advocate for Pet/Ap. : V.G. Dharmakumar, Adv. for ;V.K. Govindarajulu, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Navadgi, J.

1. In this Revision Petition filed under Section 401 of the Code of Criminal Procedure (the Code for short), the five petitioners, who have been ordered to be

impleaded as respondents Nos. 2 to 6 in C. Misc No 141/81 on the file of the Metropolitan Magistrate, V Court, Bangalore City, Bangalore, have challenged the order dated 2-2-1985 made by the Learned Metropolitan Magistrate allowing the application (I.A.I) to implead them in C. Misc. No. 141/81.

2. The facts relevant to dispose of the Petition are these : Nagamma the respondent, the mother of petitioners 1 to 5 has filed an application before the Learned Magistrate on 17-9-1981 claiming maintenance allowance from her husband Kadirappa, who is not impleaded in the present Revision Petition. The respondent examined herself on 27-11-1982 in support of the claim and adduced the evidence of one witness on 19-3-1983. Kadirappa, the husband of respondent, was examined on two dates, i.e., on 19-3-1983 and 2-8-1983. The Learned Magistrate thereafter came to post the matter to hear arguments. When the matter was at the stage of hearing arguments, the respondent filed an application (I.A.I.) (on 29-9-1984) to implead the petitioners as respondents to her application for maintenance. The Learned Magistrate furnished copy of the application numbered by him as I.A.I. to the husband of respondent. He filed objections. After hearing, the Learned Magistrate came to pass the order dated 2-2-1985 assailed in this Petition.

3. The respondent came to file I.A.I on the ground that after she filed the application for maintenance, there was a division in the joint family of her husband and her sons and that as a result thereof, her sons-the petitioners were taking the income of the properties. The husband of the respondent opposed I.A.I. on the ground that it was not maintainable under the provisions of the Code. The Learned Magistrate held that in the absence of a procedure prescribed in the Code for maintenance applications, in such a situation that had arisen in the case, the parties can resort to the provisions contained in the Code of Civil Procedure. Reading the facts and taking into consideration the principles that govern the amendment of the pleadings and impleading of the parties in civil matters, the Learned Magistrate held that it would be reasonable and expedient to allow the application, I.A.I.

4. It was stated before me and it is borne out by the record that the learned Magistrate before proceeding to consider the application for impleading filed by the respondent, did not issue notice of the same to the petitioners-- proposed to be impleaded as respondents to the maintenance application. The course adopted by the Learned Magistrate was in violation of the principles of natural justice and on this sole ground, the order impugned in this Revision Petition is liable to be set aside.

5. Chapter IX of the Code deals with the maintenance of wives, children and parents. It comprises three sections, namely, Sections 125, 126 and 127. This self-contained Code provides speedy and expeditious remedy for the grant of maintenance to wives, children and parents. Section 125 of the Code enumerates the conditions under which the relief of maintenance can be granted. Section 126 deals with the procedure, while Section 127 relates to the alteration in the quantum of maintenance to suit the changed conditions and circumstances.

6. The provisions contained in these Sections and Section 125 are enacted to fulfil a social purpose. The object is to compel a man to perform the moral obligation which he owes to the community in respect of his wife, children and parents. These provisions, by providing a simple and speedy remedy, seek to ensure that the neglected wife and children are not left, starved and destitute in the society and thereby driven to lead the life of vagrancy, immorality and crime for their subsistence.

7. In *Ramesh Chander v. Veena*, : 1979 CriLJ3 while considering the scope of Section 125 of the Code, the Supreme Court observed :

'This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 49. We have no doubt that Sections of statutes calling for construction by Courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional sympathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause - the cause of the derelicts.'

8. The proceedings instituted under Section 125 of the Code, though of a civil nature, are governed by the Code. The remedy provided is a summary one.
9. In *Arjun Shankar Naik, v. Sumitra*, AIR 1970 Goa, Daman and Diu 140 while considering the nature, of the proceedings under Section 488 of the Code of Criminal Procedure, 1898, it has been held that the proceedings are of a civil nature, but governed by the provisions of the Code of Criminal Procedure; that a person against whom a case is filed under Section 488, Cr.P.C. 1898, is not an accused; and that the application for maintenance is not a complaint.
10. In *Smt. Harbhajan Kaur, v. Major Sant Singh*, : AIR1969 Delhi298 it has been held that the proceedings under Section 488 of the Code of Criminal Procedure, 1898, are criminal proceedings and not civil proceedings.
11. Sections 125 to 127, as an integrated Code, specifically cover the claim for maintenance including the procedure and Section 16 lays down the procedure to be followed in the proceedings instituted under Section 125. It appears to me, it would not be correct in the absence of a specific, express or implied provision to incorporate the analogous provisions contained in the Code of Civil Procedure and apply them to the proceedings instituted under Section 125 of the Code. An application under Section 125 has to be decided in accordance with the procedure laid down in Chapter IX of the Code. The provisions of the Code of Civil Procedure cannot be made applicable.
12. That being so, the view of the learned Magistrate that in the absence of specific provisions in the Code, the parties to the maintenance proceedings can have resort to the provisions of the Code of Civil Procedure, cannot be upheld. As held by me earlier, the proceedings are not civil proceedings so as to attract the provisions contained in the Code of Civil Procedure. I, therefore, hold that the provisions contained in Order 1 Rule 10 of the Code of Civil Procedure that relate to impleading of parties to a civil suit cannot apply to an application filed under Section 125 of the Code.
13. In *Appichi Goundan, v. Kuthnjammal*, AIR 1925 Madras 440 the Magistrate had appointed a guardian ad litem for a lunatic in a proceeding under Section 488

Cr.P.C. 1898. The Madras High Court held that though the proceedings may be quasi-civil but also criminal, they are wholly governed by the provisions of the Code of Criminal Procedure alone and that the Magistrate had no power under the Code of Criminal Procedure 1898 to appoint a guardian as appointed by him.

14. The order dated 2-2-1985 is the one passed by the learned Magistrate without jurisdiction. Therefore, it is liable to be set aside.

15. For the reasons stated above, I allow the Revision Petition. The order dated 2-7-1985 made by the learned Metropolitan Magistrate, VCourt, Bangalore City, Bangalore in C.Misc.No. 141/81 on his file is hereby set aside.

16. It is disturbing to note that the application for maintenance filed by the respondent as far back as 17-9-1981, though ripe for disposal, could not be disposed of till today because of her application to implead the petitioners - her sons as party respondents to the application. I was informed that the respondent and her husband are aged 60 and 75 years respectively. The ends of justice clearly demand the disposal of C.Misc.No. 141/81 with utmost expedition. I hereby direct the learned Magistrate to dispose of the matter, giving it top priority, before the end of July, 1987.

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