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Court : Karnataka

Decided On : Jul-29-1993

Reported in : ILR1993KAR3375; 1993(3)KarLJ309

Judge : Krishnan, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 22, Rule 4(1) and Rule 4(3)

Appeal No. : C.R.P. No. 2928 of 1991

Appellant : Krishnappa

Respondent : Yeshodamma

Advocate for Def. : P. Krishnappa, Adv. for R1(a) to (e) and ;R. Narayanappa, Adv. for R-2

Advocate for Pet/Ap. : V. Tarakaram, Adv.

Disposition : Revision petition allowed

Judgement :

ORDER

Krishnan, J.

1. The Revision petitioner was plaintiff in Original Suit No. 557 of 1980 on the file of the City Civil Judge, Bangalore City. That was asuit filed by him for specific

performance of an agreement to sell in his favour and alternatively for refund of the amount. During the pendency of the suit the first defendant died and plaintiff filed an application under Order 22 Rule 4 C.P.C. for bringing on record the legal representatives of the first defendant. That application was allowed on 25.3.1988. The case appears to have been posted to 6.4.1988 and from that dated to 7.4.1988. The learned Civil Judge held that the plaintiff had failed to implead the legal representatives ordered to be brought on record as per orders on I.A.No. 21 passed on 21.3,1988 and the effect of not carrying out the amendment in the plaint must be taken as the failure on the part of the plaintiff to bring the legal representatives of deceased defendant-1 on record and therefore the suit as against the 1st defendant must be taken as having abated and it was further held that the suit against the 2nd defendant alone could not be prosecuted in the absence of the legal representatives of the 1st defendant and therefore he held by the impugned order that the entire suit had abated. It is the legality and correctness of this order of the learned City Civil Judge that have been questioned by the plaintiff in the course of the Revision Petition.

2. It was contended on behalf of the Revision petitioner that the substitution of the legal representatives of the deceased first defendant as per orders passed on I.A.No. 21 ought to be made by the Court and in fact the order sheet indicates that they have been so brought on record and on the ground that plaintiff had not made suitable amendments in the plaint there was no scope for the Court to hold that the suit against the first defendant had abated.

3. A Division Bench of the Bombay High Court in H.H. DARBAR ALABHAI VAJSURBHAI and Ors. v. BHURA BHAYA, AIR 1937 Bombay 401 and Ors., has taken the view that taking of necessary steps to carry out the Court's order for the substitution of the names of the heirs of the deceased respondents in the records of the Court in terms of its order was a ministerial function which the Court's establishment is charged to perform and it was no part of the appellant's duty to take necessary steps in that regard. It has also been pointed out that if it is not performed or neglected, the fault will not lie with the appellants. Following this Decision this Court in KARIYAPPA v. PATEL RUDRAPPA, 1975(2) KLJ 278 has held that when once the order is made under Order 22 Rule 4 C.P.C. the same

should be given effect to by recording necessary names in the cause title of the pleadings and it might be done either by the party who obtained the order or by the office of the Court. This is obvious from the language of Order 22 Rule 4(1) C.P.C. which reads as hereunder;

'4.(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.'

Further it may also be noted that no time limit as such was prescribed by the Court calling upon the plaintiff to amend the plaint pursuant to the said order nor is there any provision in Order 22 mandating the party who has obtained the order to effect the necessary amendments in the plaint within any prescribed time. Therefore, it is clear that there was no scope for the Court to have proceeded to hold that the plaintiff had failed to bring on record the legal representatives of deceased defendant No. 1.

3. The learned Civil Judge has jumped to another strange conclusion viz., that the effect of the names of legal representatives having not been mentioned in the plaint pursuant to the aforesaid order, results in abatement of the suit. Order 22 Rule 4(3) provides that the suit abates as against deceased defendant where within the time limit prescribed, no application is made under Sub-rule (1). In the present case, it is nobody's case that the application to bring on record the legal representatives of deceased defendant-1 was not made within the time prescribed by law. In fact, he has filed the application within such time and the Court has also passed an order allowing the said application. If that be so, there could hardly be any scope for the Court to have held that the suit as against defendant-1 had abated within the meaning of Order 22 Rule 4 C.P.C. Hence, it is clear that the order of the learned Civil Judge that the failure on the part of the plaintiff to carry out the amendment as per orders passed on I.A.No. 21 had resulted in abatement of the suit as against defendant-1, cannot be sustained and has to be set aside.

4. In the result, the order passed by the learned City Civil Judge on 7.4.1988 holding that the suit against defendant-1 had abated and the further order that the entire suit had abated are set aside and the lower Court shall permit the plaintiff to amend the plaint in accordance with the order passed on I.A.No. 21 and take further proceedings in the suit.

5. Accordingly, the Revision Petition is allowed.

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