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Ranganna Vs. Chikkanna

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Court : Karnataka

Decided On : Oct-11-1995

Reported in : ILR1996KAR491; 1996(5)KarLJ325

Judge : Hari Nath Tilhari, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 92 and 115

Appeal No. : C.R.P. No. 2420 of 1995

Appellant : Ranganna

Respondent : Chikkanna

Advocate for Def. : V.S. Gunjal, Adv. for R-1 to R-13

Advocate for Pet/Ap. : B. Veerabhadrappa, Adv.

Disposition : Revision dismissed

Judgement :
ORDER

Hari Nath Tilhari, J.

1. This Revision Petition under Section 115 of the Code of Civil Procedure, has been preferred by the defendants challenging the order dated: 7.7.1995, whereby, the Trial Court has granted the leave to file the suit under Section 92 of the Code

of Civil Procedure, for short, 'Code' after having heard the Counsel for the applicants -respondents. The order dated 7.7.95, reads as under:

'Perused the petition, heard the Counsel. Permitted to sue and office to register the suit and post the same at 3 P.M. today.'

2. The suit was numbered as O.S. No. 1/1995, The learned Additional District Judge, Tumkur, disposed of I.As. I & II, that is, application - I.A.I under Order 1 Rule 8 of the Code and application -I.A.II under Order 39 Rules 1 and 2 read with Section 24 of the Code and granted an exparte injunction order which reads as under:

'Perused the documents filed along with the plaint and heard the Counsel for the plaintiffs.

Defendants 2 and 3 or anybody claiming under them are restrained from drawing the amounts collected in Hundies and also operating the account held in Indian Overseas Bank, Madhugiri, as sought for in I.A.II as any delay in granting the above said order may render I All infructuous.

Accordingly, I.A.No. 2 is allowed against defendant Nos. 2 and 3. Plaintiff to comply under Order 39 Rule 3.

Issue summons to defendants. Issue notice of I.As. Call on 17.10.1995.'

3. The defendants having felt aggrieved, as mentioned earlier, filed this Revision Petition by which they have challenged the order granting leave to sue under Section 92 of the Code. But, the learned Counsel for the defendants has clarified that now the order that is challenged in the Revision is order dated 7.7.1995, granting the leave and that the interim exparte injunction has not been challenged in this Revision.

4. Appearance has been put up by Sri V.S. Gunjal on behalf of all the 13 respondents. I have heard the learned Counsel for the petitioners - Sri B. Veerabhadrappa and Sri V.S. Gunjal for respondents at length. The learned Counsel for the petitioners-defendants Sri Veerabhadrappa, submitted that the

order dated 7.7.1995, whereby, the leave to sue has been granted under Section 92 of the Code suffers from illegality and error of jurisdiction. The learned Counsel for the petitioners further submitted that the leave which has been granted under Section 92 of the Code has been granted without any notice being given, to the Revisionists -defendants, for hearing or to have their say. That in view of the principles of Natural Justice, the Court below ought to have given an opportunity to have their say in the matter. That the learned Counsel for the Revisionists also invited my attention to a Decision of this Court En the case of THE CHURCH OF SOUTH INDIA TRUST ASSOCIATION v. REV. D.I. ANAND, 1980(2) KLJ 469 in which it has been laid down that an order made without notice to the opponents and without giving reasons is illegal and is liable to be revised. In it, it has also been laid down that an order granting application seeking leave under Section 92 of the Code is a judicial order and is revisable. The learned Counsel further tried to drive and take certain assistance from the Decision of the Supreme Court in the case of R.M. NARAYANA CHETTIAR v. N. LAKSHMI CHETTIAR, : AIR 1991 SC221 and specially or particularly the observations, where it has been said that as a Rule of Caution, Court should normally give notice to defendants before granting leave under Section 92 to institute a suit, and submitted that the order granting leave to sue is illegal and bad in law and therefore, institution of suit is also bad and as such, the order suffers from illegality or irregularity in passing the order. The contention made on behalf of the Revisionists - defendants have been opposed on behalf of the opposite parties by Sri V.S. Gunjal, learned Counsel by submitting that giving of notice before granting leave was only a Rule of Caution, It is not a Statutory Rule framed under the Code, either under any of the provisions of Sections contained in the Code or under any of the provisions contained in various orders. Sri Gunjal further, submitted that if as a matter of caution, it has been so provided, in some cases ordinarily as a matter of course, the notice should be given, but, that does not make that Rule of Caution, as a Statutory Rule under the provisions of the Code. That jurisdiction of the Court under Section 115 C.P.C. is very limited and is circumscribed by the conditions specified in the Section and in the present case, really, when there is no Statutory Rule or statutory provision which may be commanding and directing the issuance of notice, the order impugned cannot be said to be emanating from any illegality or

material irregularity in exercise of jurisdiction vested in the Court under Section 92. Lastly, Sri Gunjal further submitted that even for a moment without conceding if it be taken that there is any irregularity, the order impugned cannot be reversed or set aside in exercise of revisional jurisdiction of this Court in view of Proviso to Section 115(1) of the Code as the Proviso to Clause (1) of Section 115 of the Code provides that no order shall be revised, varied or set aside unless it is covered by either Provisos (a) or (b) of Section 151 In the present case, it neither comes under Clause (a) nor Clause (b), as no material prejudice or injury can be said to have been caused thereby to the Revisionists - petitioners, as even it is always open to them to move application for revocation of that leave by placing the circumstances which defendants think are sufficient for revocation of that leave. Lastly, the learned Counsel for the respondents also placed reliance in this connection on the very Decision of their Lordships of the Supreme Court in the case of R.M. Narayana Chettiar v. N. Lakshmanan Chettiar.

5. Section 115 of the Code, as amended upto date limits the exercise of revisional power of this Court. For seeking the exercise of power or jurisdiction under Section 115 of Code following conditions have to be established by the applicants:

(a) That the order impugned means the case decided. (b) That the order impugned is not appealable to this Court or to any Court subordinate to this Court. (c) That the order impugned suffers from jurisdictional error such as exercise of jurisdiction not vested or refusing to exercise the jurisdiction vested or the Courts acting illegally or with material irregularity in exercise of jurisdiction while passing the impugned order and further (d) the party has to establish and prove that the case is one that comes within exceptions either (a) or (c) to the Proviso, because, as per Proviso to Section 115, irrespective of the case satisfying three earlier conditions, it is provided that the Court shall not reverse or modify the order impugned before it under revision nor shall vary, except in the cases, where either the order sought to be made in favour of the applicant in revision would finally dispose of the suit or proceedings either in whole or part or the order impugned if it is allowed to stand would occasion failure of justice or cause irreparable injury to the party against whom order impugned was made and who is approaching this High Court to seek relief under Section 115 of the Code.

6. In the present case, the learned Counsel for the petitioners, as mentioned earlier, has emphasised that the order impugned has been passed without notice to defendants. The learned Counsel emphasised that as order has been passed without notice to the defendants, it suffered from illegality. No doubt, in the case mentioned supra 1980(2) KAR.L.J. 469, the District Judge had passed the order in violation of principles of Natural Justice, that is, principles of audi alteram partem and rules requiring the reasons to be given in support of the order and this Court held that order impugned therein had been passed by the District Judge illegally and with material irregularity in exercise of its jurisdiction. The expressions 'acted illegally' and material irregularity have been defined in the context of Section 115 by Their Lordships of the Privy Council in the case of VENKATAGIRI IYENGAR v. HINDU RELIGIOUS AND ENDOWMENT BOARD, MADRAS, 76 IA 67 : AIR 1949 PC 156 as under:

'Section 115 applies only to cases in which no appeal lies and where the legislature has provided no right of appeal. The manifest intention is that the order of the Trial Court, right or wrong, shall be final. The section empowers the High Court to satisfy itself on three matters (a) that the order of the subordinate Court is within its jurisdiction (b) that the case is one in which Court ought to have exercised jurisdiction and (c) that in exercising the 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. If the High Court is satisfied upon these three matters, it has no power to interfere, because it differs however, profoundly from the conclusions of the subordinate Courts on the questions of facts and law.'

7. This Decision of the Privy Council has been quoted with approval later on by Their Lordships of the Supreme Court in the case of KESHAR DEO CHAMARIA v. RADHA KISSEN CHAMARIA, : [1953]4SCR136 , the Supreme Court after having referred to the observations of Hon'ble Bose, J,, in the case of NARAYANA v. SHETTY, AIR 1948 Nagpur 248 observed that the words 'illegally' and 'material irregularity' do not cover either error of fact or of law. They do not refer to the decision arrived at, but, it is in the manner in which it is reached. The errors

contemplated relate to material defects of procedure and not to errors of either law or fact.

8. The above quoted observations of Their Lordships of the Privy Council and Their Lordships of the Supreme Court clearly reveal that expressions illegality and breach of law relate to breach of provisions of law or Rules of procedure laid down in the form of statutory provisions like Sections or the Rules and not otherwise. That as regards the granting of the leave in the present case is concerned, it has been granted without notice to the defendants - Revisionists, it will be profitable to quote the observations made by Their Lordships of the Supreme Court, in the case of R.M. Narayana Chettiar v. N. Lakshmanan Cheltiar :

'A plain reading of Section 92 of the Code indicates that leave of the Court is a precondition or a condition precedent for the institution of a suit against a public trust for the reliefs set out in the said section; unless all the beneficiaries join in instituting the suit, if such a suit is instituted without leave, it would not be maintainable at all. Having in mind, the objectives underlying Section 92 and the language thereof, it appears to us that, as a rule of caution, the Court should normally, unless it is impracticable or inconvenient to do so, give a notice to the proposed defendants before granting leave under Section 92 to institute a suit. The defendants could bring to the notice of the Court for instance that the allegations made in the plaint are frivolous or reckless. Apart from this, they could, in a given case, point out that the persons who are applying for leave under Section 92 are doing so merely with a view to harass the trust or have such antecedents that it would be undesirable to grant leave to such persons. The desirability of such notice being given to the defendants, however, cannot be regarded as a statutory requirement to be complied with before leave under Section 92 can be granted as that would lead to unnecessary delay and, in a given case, cause considerable loss to the public trust. Such a construction of the provisions of Section 92 of the Code would render it difficult for the beneficiaries of a public trust to obtain urgent interim orders from the Court even though the circumstances might warrant such relief being granted.'

9. The above quoted paragraph from the Judgment of Their Lordships of the Supreme Court clearly lays it down that the Rule of Caution to the effect that the Court should normally give notice to defendants before granting the leave under the Section to institute the suit, though insistence is not always binding on the Court. Their Lordships further laid it down very clearly that desirability of such notice being given to defendants cannot be regarded a statutory requirement to be complied with before the leave under Section 92 can be granted and further observations of their Lordships are to the effect:

'If a suit is instituted on the basis of such leave granted without notice to defendants, suit would not thereby be rendered bad in law or non-maintainable. The grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law.'

10. These observations clearly reveal that whatever has been laid down under Rule of Caution cannot be regarded as Statutory Rule or Statutory provision unless it has been so enacted by the Legislature with reference to Section 92. When this Rule of Caution cannot be regarded as either Statutory Rule or Statutory provision, then, the order that has been passed granting leave even without notice cannot be taken to have been passed illegally or with material irregularity in exercise of jurisdiction, because illegality or material irregularity connote the idea of breach of provisions of Statutory Law or Statutory Rules. That being the position, it cannot be said that the order is one which has been passed illegally or with material irregularity in exercise of jurisdiction. The learned Counsel for the applicants insisted, the principles of Natural Justice have got the play. The question of principles of Natural Justice regarding notice would have been applicable, if it could have been shown and provided that by mere grant of leave to sue under Section 92 C.P.C., the right or interest of the defendants, is being adversely affected. No doubt, it is one of the well settled principles of law that when an order prejudicial to the person is passed affecting his right or interest, he should be given opportunity of hearing and showing cause that his right is being affected. But, no right of the petitioner is being prejudiced when during the trial of

the suit, material allegation of plaint case and defence case are to be examined, tried and determined after hearing the parties, in my opinion, no prejudice or injury has been caused by simple grant of leave to sue under Section 92 of the Code and so, there is no question of failure or violation of principles of Natural Justice. When I so observe, 1 find support from the observations of the Lordships of the Supreme Court in para 17 of K.M. Narayan Chettiar's case that grant of leave cannot be regarded as defeating or even seriously prejudicing any rights of the proposed defendants and it is always open to them to file an application for revocation of the leave which can be considered on merits according to law. This being the position of law, the order impugned cannot be said to have been causing injustice or injury to the rights of the defendants - applicants and it is open to them to move the Court below for revocation of the leave by placing relevant fact when it is being taken to be proper to challenge the plaint allegations as well, even if the leave should not be taken as granted the decree or recording any finding against the defendants. As I have mentioned earlier that it is observed by the Supreme Court that the leave so granted does not have the leave by placing relevant fact when it is being taken to be proper to challenge the plaint allegations as well, even if the leave is not challenged. Granting of leave should not be taken as granting the decree or recording any finding against the defendants. As I have mentioned earlier that it is observed by the Supreme Court that the leave so granted does not have the prejudicing of the rights if any of the applicants. That order impugned is not appealable and it does not suffer from any error of jurisdiction, illegality or material irregularity, and further, it cannot be reverted or varied under Section 115 of the Code, except, in cases mentioned in Clauses (a) or (b) to the Proviso. As it does not prejudicially affect nor defeat any rights of the proposed defendants or the Revisionists - petitioners, it cannot be said to occasion failure of Justice or to cause any irreparable injury to the defendants-petitioners, as none of the conditions either under (a) or (b) are shown to exist. Therefore in my opinion, this Court cannot interfere with the order impugned, under Section 115 of the Code.

11. In view of the above Supreme Court Decision, in my opinion, the earlier Decision of this Court referred to by the learned Counsel for the petitioners is of no assistance, subject to the above observations that it is always open to the petitioners - Revisionists to move for revocation of the leave. Thus considered, the

Revision Petition is misconceived and is hereby dismissed. No order as to cost.

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