

Sangavva Vs. Jaherabi

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Court : Karnataka

Decided On : Dec-16-1994

Reported in : ILR1995KAR1808; 1995(4)KarLJ733

Judge : M.B. Vishwanath, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 17

Appeal No. : C.R.P. No. 3138 of 1993

Appellant : Sangavva

Respondent : Jaherabi

Advocate for Def. : S.B. Shahapur, Adv. for R-1 and R-2

Advocate for Pet/Ap. : S.P. Mudhol, Adv.

Disposition : Civil revision petition allowed

Judgement :

ORDER

Vishwanath J.

1. This Civil Revision Petition has been filed by defendant-3 in O.S.No. 231 of 1995 on the file of the Principal Munsiff, Bijapur.

2. The plaintiffs suit was for declaration of title to the suit property and for possession. The plaintiff claimed that the suit property was given to her by her husband (defendant-1). The case of defendant-2 was that she purchased the property from defendant-1 and sold it to defendant-3. Defendant-3 set up the defence that he has full title and is exclusively in possession.

3. Defendant-3 filed I.A.No. III under Order 6 Rule 17 C.P.C., before the Learned Munsiff and prayed for permission to take up one more stand on a new set of facts viz., he was a bona fide purchaser for value without notice of the plaintiff's title. The learned Munsiff rejected I.A.No. III and refused to allow the amendment.

4. Defendant-3 has challenged the order on I.A.No. III passed by the learned Munsiff,

5. It is obvious that defendant-3 prayed that he should be permitted to take up one more stand by way of defence for the same relief, on a different on the same set of facts. The learned Munsiff has failed to notice this fact. The learned Counsel for the respondents has relied on the Decision of this Court reported in : AIR1986 Kant109 Palthur Honnur Saheb v. Bopanna Annapurnamma. What was considered in this Decision is Section 16(c) of the Specific Relief Act. It is laid down by this Court relying on the Supreme Court authority that if lapse of time has barred the remedy, the Court should ordinarily refuse such amendment. That is not the position here.

6. The learned Counsel for the respondents also relied on the Decision of this Court reported in 1982(1) Kar.L.J. 517 Reddappa T. v. N.S. Prabhakar. What was laid down in this case is that an amendment which deprives the party of a legal right accrued to him, cannot be granted. In the instant case, no such legal right has accrued to the plaintiff. The two Authorities relied on by the learned Counsel for the respondents are clearly distinguishable and have no application to the present case. The learned Munsiff was wrong in not allowing the amendment. The amendment, if allowed, will not change the character of the suit. It will not in anyway prejudice the plaintiff. It is open to the plaintiff to show that the stand taken by the defendant-3 through the amendment is false. Further, even if it is shown that there is delay in filing I.A.No. III, that is not a ground to reject it.

7. For the aforesaid reasons, this Civil Revision Petition is allowed and the learned Munsiff shall permit defendant-3 to incorporate the amendment.

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