

Ram Vs. Murlidhar and ors.

Ram Vs. Murlidhar and ors.

SooperKanoon Citation : sooperkanoon.com/388675

Court : Karnataka

Decided On : Oct-29-2007

Reported in : 2008(2)KarLJ141; 2008(1)KCCR218; 2008(1)AIRKarR412; AIR2008NOC629; 2008(2)ICC852; 2008AIHC1391(Kar)

Judge : D.V. Shylendra Kumar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9 and 115 - Order 7, Rule 11; [Karnataka Societies Registration Act, 1960](#) - Sections 13, 14, 25 and 35

Appeal No. : Civil Revision Petition No. 344 of 2007

Appellant : Ram

Respondent : Murlidhar and ors.

Advocate for Def. : Pramod P. Kulkarni, Adv. for Respondent Nos. 1 to 7

Advocate for Pet/Ap. : Ameet Kumar Deshpande, Adv.

Judgement :

ORDER

D.V. Shylendra Kumar, J.

1. This civil revision petition Under Section 115 of the Civil Procedure Code, 1908 is by the 2nd defendant in O.S. No. 85 of 2006 on the file of the I Additional Civil

Judge (Junior Division), Gulbarga being aggrieved by the order dated 6-1-2007, whereby, the learned Trial Judge has not passed a clear order on the application filed by the revision petitioner Under Order 7, Rule 11(d) of the CPC but has relegated deciding the application after recording the evidence of the parties.

2. Petitioner has pleaded that the learned Trial Judge could not have deferred passing an order on the application; that an application filed under Order 7, Rule 11(d) should be decided at the threshold as otherwise the very object and purpose of the provision will be defeated and that the learned Trial Judge ought to have allowed the application and returned the plaint.

3. I have heard Sri Ameet Kumar Deshpande, learned Counsel for the petitioner and Sri Pramod P. Kulkarni, learned Counsel for the respondents.

4. What is urged by Sri Ameet Kumar Deshpande, learned Counsel for the petitioner is that the learned Trial Judge has failed to see that the application was an opt one; that the Civil Court in fact could not have proceeded to entertain the suit in view of the provisions of Sections 13, 14 and 35 of the [Karnataka Societies Registration Act, 1960](#) and if so, there is no question of receiving evidence etc., for the purpose of answering the question.

4.1 Sri Pramod P. Kulkarni, learned Counsel for the respondents, on the other hand, submits that while Section 25 of the Act itself is not available to the plaintiffs in the suit as they do not even constitute the requisite number, even otherwise, the suit has to be tried by the Civil Court for the reason that the earlier direction that was issued by the Registrar under the provisions of this Act was not being implemented and that persons like the plaintiffs were left with no remedy and therefore, they were constrained to approach the Civil Court for relief.

4.2 While Sri Ameet Kumar Deshpande, learned Counsel for the petitioner would counter this submission by submitting that the Registrar has the power to dissolve the society itself and also to hold elections in the event of the members of the society not obeying the directions, a perusal of the plaint averments and the impugned order indicates that it is precisely for the reason that the direction issued by the Registrar was not being obeyed or complied, the plaintiffs were constrained

to approach the Civil Court.

5. An examination of the statutory provisions and the submissions made does indicate that the power of the Registrar to dissolve the society may not be a proper answer to the grievances and the complaints of the plaintiffs as the plaintiffs are not seeking for any dissolution of the society but for proper management.

6. It may be true that the question of mismanagement can be made a subject-matter before the Registrar under Section 25 of the Act, with regard to the follow up action on the directions or the report given by the Registrar, there being no precise provision under the Act, if any members of the society are aggrieved, they can certainly maintain a suit for such relief which are not expressly or impliedly provided for under the Act.

7. I am unable to accept the submission of Sri Ameet Kumar Deshpande, learned Counsel for the petitioner that dissolution of the society is an effective answer for all ills of the society or complaints of the members.

8. While the jurisdiction of the Civil Court is intact unless expressly or impliedly barred under Section 9 of the CPC, in the present case there is no express or implied bar on jurisdiction of Civil Court under the Karnataka Societies Registration Act. I do not find even an implied bar to the suit of the present nature and therefore, an application of the nature made by the present revision petitioner should not have been deferred as per the impugned order but should have been rejected.

9. While it is true that for the purpose of deciding the suit, parties are to let in evidence and particularly, for examining the allegation of fraud etc., the Trial Court may have to receive evidence to answer such questions, that is not necessary for the purpose of examination of an application under Order 7, Rule 11(d) of the CPC. This application has to be decided at the threshold and cannot be relegated to a later stage to the extent that the learned Trial Judge has relegated answering this question particularly, at a stage for receipt of evidence. Though to this extent, the petitioner can claim that the order is incorrect, the irony is that on a proper examination, the application itself gets rejected as observed above.

10. In the circumstances, the civil revision petition is disposed of setting aside the order impugned but rejecting the application filed by the petitioner under Order 7, Rule 11(d) of the CPC with a direction to the Trial Court to proceed further with the suit.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com