

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 21st OF JANUARY 2003

BEFORE

THE HON'BLE MR JUSTICE H.N. NARAYAN

C.R.P NO.975/2001

BETWEEN:

S.N.Balakrishna,  
S/o Late M.S.Nagesh Rao,  
Major, Hindu, Retired  
VISL Officer,  
R/o Sri Vishwaguru Sannidhi,  
Behind Sri Raghavendra Swamy Mutt,  
Jannapura,  
Bhadravathi,

.. PETITIONER

(By Shri R.Gopal, Advocate)

AND:

1. G.V.Chandrappa,  
S/c G.V.Basappa,  
Major, Hindu,  
VISL Employee,  
Working in Blast Furnace  
Electrical Dept,  
Bhadravathi.

2. K.S.Sreenivasa Rao,  
S/o Late K.Subba Rao,  
Major, Hindu,  
Emp.No.099175/CC.2250,  
VIS Pland, Blast Furnace,  
Bhadravathi.

.. RESPONDENTS

(By Shri S.V.Prakash, Adv for R-1)

(By Shri Jagadeeshachari, Adv for R-2)

This CRP is filed u/s 115 of CPC against the order dated 19.2.2001 passed on IA No.5 in OS No.207/2000 on the file of the Civil Judge (Sr.Dn) & JMFC, Bhadravathi, allowing IA No.5 filed U/O 1 R 10(2) r/w Sec.151 CPC.

This CRP coming on for ADMISSION, this Day, the Court made the following:

O R D E R

Heard the learned Counsel for the petitioner.

2. The petitioner has filed a suit in O.S.No.207/2000 on the file of the Civil Judge (Sr.Dn) & JMFC, Bhadravathi. He has filed the said suit for recovery of Rs.3,08,000/-. The trial court has passed an order of attachment of properties belonging to the second respondent/defendant on an application made by the plaintiff. During the pendency of the suit, the applicant viz., the first respondent herein filed an application under Order 1 Rule 10 CPC requesting the Court to implead him as a proposed defendant. The claim of the applicant before the trial court was that he has also filed a suit claiming recovery of certain amount from the

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second respondent/defendant and also obtained an attachment of same property in his suit and therefore, he is a necessary party in this present suit. There is no doubt in this case that the trial court could not have given any relief in favour of the proposed defendant. He is neither a necessary party nor a proper party. Therefore, initially, the trial court has committed an error in allowing his application filed under Order 1 Rule 10 CPC.

3. Apart from these facts, it is submitted by the learned Counsels on both sides that the suit filed by the applicant/first respondent is now settled between the parties and the suit has been disposed of as out of court settlement was made. Therefore, there is no second attachment of the property in question passed by the trial court. The learned Counsel for the respondents has fairly submitted that the application filed by the first respondent before the Trial Court under Order 1 Rule 10 CPC is clearly not sustainable in view of the later development. However, on both counts, I am of the opinion that

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the impugned order is not sustainable in law.  
Revision petition is therefore, allowed. The  
impugned order of the trial court is set aside.

Sd/-  
Judge

Kc\*