

(2014) 10 KAR CK 0049

In the Karnataka High Court

Case No : Writ Petition No. 85686/2013 (GM-CPC)

Bangi Thippanna

APPELLANT

Vs

Bavikatti Nagamma

RESPONDENT

Date of Decision : 15-10-2014

Acts Referred:

Citation : (2014) 10 KAR CK 0049

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : T.M. Nadaf, Advocate for the Appellant; Sunitha P. Kalasoor,
Advocate for the Respondent

Judgement

S.N. Satyanarayana, J.—The defendants in O.S. No. 872/2012 pending on the file of the Second Additional Civil Judge (Jr. Dn.) Bellary have come up in this writ petition impugning the order dated 28.11.2013 passed in M.A. No. 74/2013 on the file of the First Additional Senior Civil Judge, Bellary.

2. Admittedly, the dispute in this proceedings is centered on the title and possession to the property bearing Sy. Nos. 783A, 783B and 1524/1 of Emmiganuru village of Bellary Taluk and District which all together measures to an extent of 4 acres. The case of the plaintiffs in the suit bearing O.S. No. 872/2012 is that the said land was purchased by the plaintiffs under a registered sale deed dated 16.07.1970 from the grand father of defendant Nos. 1 to 4. It is their contention that defendant Nos. 1 to 4 who have no manner of right, title and interest to the suit property, are trying to interfere with the possession and cultivation of the plaintiffs. Hence, the suit in O.S. No. 872/2012 is filed for the relief of declaration and injunction. In the said suit, it is also contended that taking advantage of the fact that the revenue entries of the aforesaid properties not being registered in the name of the plaintiffs pursuant to the sale deed dated 16.07.1970, the defendants effected partition of the said property in the year 1992 among themselves and subsequently got the katha of the suit property transferred in their name and by virtue of the said revenue entries, are trying to

interfere with their possession and enjoyment of the suit property. In the said suit two applications are filed in I.A. Nos. 2 and 3. I.A. No. 2 is filed seeking an order restraining the defendants from alienating the suit schedule property in favour of third party on the strength of the revenue entries made in their name. I.A. No. 3 is filed for the relief of temporary injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiffs.

3. It is seen that, both the applications are allowed. The defendants are not aggrieved by the order or temporary injunction granted on I.A. No. 2 restraining them from creating third party interest over the suit property. However, when it comes to the order passed on I.A. No. 3, i.e., application filed seeking temporary injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the cultivation of the property is concerned, the order of temporary injunction dated 06.09.2013 was challenged in M.A. No. 74/2013 on the file of the First Additional Civil Judge (Sr. Dn.) Bellary. It is seen that the said appeal filed by the defendant Nos. 1 to 4 came to be dismissed on merits by order dated 28.11.2013, which order is impugned in this proceedings on the ground that though the plaintiffs in the original suit who are respondents herein contend that they have purchased the property on 16.07.1970, they are not in possession and enjoyment of the property right from 1970, till the date of the filing of the suit. The possession and enjoyment of the said property continued with the grand father of the defendants. Subsequently after the death of their grand father and father, it has come to their share which they have divided in a family partition. The family partition has taken place in the year 1992 and subsequently the revenue entries for the said property is standing in the name of the defendants. As such they are entitled to be in possession and enjoyment of the property and the plaintiffs having not taken the possession of the property right from the date of the sale deed dated 16.07.1970 are not entitled to the order of temporary injunction.

4. It is seen that the order of temporary injunction on I.A. No. 3 is not passed exparte. It is subsequent to hearing the learned counsel appearing for the plaintiffs and as well as the defendants. The said order was passed on 06.09.2013 the subsequently, confirmed by the lower appellate Court in M.A. No. 74/2013. While doing so, both the Courts below have rightly observed that the title to the property continues with the plaintiffs in the original suit and there is nothing on record to demonstrate that the plaintiffs are not in possession of the suit schedule property except for the fact that revenue entries are standing in the name of the defendants in the original suit. Both the Courts below were of the opinion that, mere revenue entries would not entitle the defendants to deny the contentions of the plaintiffs regarding possession which is claimed under a registered sale deed executed by the grand father of the defendants which is not denied by them. In that view of the matter, both the Courts below have rightly appreciated the material available on record in coming to the conclusion that the plaintiffs in O.S. No. 872/2012 are entitled to the order of temporary injunction.

5. While arguing this matter, the learned counsel for the petitioners who are defendants in O.S. No. 872/2012 would also contend that, subsequently, they have filed a suit in O.S. No. 1057/2012 for the relief of permanent injunction and they were enjoying the order of status-quo. While hearing this matter, this Court also went through the order sheet maintained by the Court below in O.S. No. 1057/2012. On going through the same, it is seen that, an exparte order was passed subsequent to notice being served on the defendants in the said suit who are plaintiffs in O.S. No. 872/2012. The order dated 07.02.2013 would indicate that as on the date when the order was passed, the counsel for the defendants was not present, it is at the instance of the counsel for the plaintiffs, the order of status-quo was granted for the limited time till filing of the objections and written statement by the defendants, which they have filed on 04.03.2013. The order sheet would disclose that, subsequent to 04.03.2013, the order of status-quo was not continued. In that view of the matter, This Court find that there is no substance in the contention of the petitioners that they were enjoying the status-quo order in the suit filed by them in O.S. No. 1057/2012. In that view of the matter, as against the concurrent findings of both the Courts below, this Court find that no justifiable reasons to recall the order of temporary injunction granted in favour of the plaintiffs on I.A. No. 3 in O.S. No. 872/2012, which is confirmed by the lower appellate Court in M.A. No. 74/2013.

6. However, further to that, on the basis of the submission made by the learned counsel for the petitioners and as well as the respondents who are respectively plaintiffs in O.S. No. 1057/2012 and some of the respondents are plaintiffs in O.S. No. 872/2012, though the suit in O.S. No. 872/2012 is for declaration and injunction and O.S. No. 1057/2012 is only for the relief of permanent injunction, some of the issues which are likely to arise in both the suits are likely to be common, documents which are required to be relied upon by the parties are likely to be common and also the evidence that may be adduced in both the suits is likely to have bearing on another suit. Hence, this Court feel, it is just and proper to direct the Principal Civil Judge, Bellary to club O.S. No. 872/2012, which is pending on the file of the Additional Civil Judge (Jr. Dn.) & JMFC, Bellary to the Principal Civil Judge, Bellary along with O.S. No. 1057/2012 which is pending on the file of the very same Court and try both the suits together by framing common issues in the said suits.

With these observations, the writ petition is disposed of.