

(2015) 07 KAR CK 0357

In the Karnataka High Court

Case No : Writ Petition No. 104142 of 2015 [GM-CPC]

Basanagouda Hanamantagouda Soratur

APPELLANT

Vs

Tirukappa and Others

RESPONDENT

Date of Decision : 27-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1, Order 43 Rule 2, 151

Citation : (2015) 07 KAR CK 0357

Hon'ble Judges : B. Veerappa, J

Bench : Single Bench

Advocate : S.G. Kadadakatti, for the Appellant; Avinash Banakar, Advocates for the Respondent

Final Decision : Allowed

Judgement

B. Veerappa, J—The plaintiff in O.S. No. 157/2013 has filed the above writ petition against the impugned order dated 03.03.2015 made in M.A. No. 19/2014 on the file of the Senior Civil Judge and JMFC, Hirekerur, allowing the appeal in part and directing the parties to maintain status quo, in respect of the possession of the suit schedule property, as on the date of the order, until the disposal of the suit on merits and directing the trial court for disposal of the suit, as expeditiously.

2. The petitioner, who is the plaintiff in the trial court, filed O.S. No. 157/2013 against the respondents/defendants for declaration and permanent injunction in respect of the suit schedule property bearing R.S. No. 114/1A measuring 5 acres and 2 guntas out of which 2 acres 37 guntas, more-fully described in the schedule, contending that he is the owner in possession and enjoyment of the suit schedule property by virtue of the order passed by the Land Tribunal dated 23.04.1977 and the same is depicted in the RTC for the year 2012-13, etc.

3. The defendants filed written statement and denied the entire plaint averments and contended that the defendants" have purchased the suit schedule property

from the plaintiff in the year 1987 for consideration of Rs. 42,000/- and they are in possession and enjoyment of the same. Therefore, they sought for dismissal of the suit.

4. During the pendency of the suit, the plaintiff filed IA No. 1 under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (for short "CPC") and for grant of temporary injunction contending that he is in possession and enjoyment of the suit schedule property.

5. The trial court, considering the entire material on record, by its order dated 03.04.2014, has allowed the application filed by the plaintiff under Order XXXIX Rules 1 and 2 of CPC and granted injunction restraining the defendants, their men, agents or anybody claiming under them from interfering with the peaceful possession and enjoyment of the suit schedule property of plaintiff, in any manner till the disposal of the suit.

6. Against the said order, the defendants filed an appeal in M.A. No. 19/2014 Under Order XLIII Rules 1 and 2 of CPC, on the file of the Senior Civil Judge and JMFC, Hirekerur, who after hearing both the parties by the impugned order dated 03.03.2015 has allowed the application I.A. No. 1 under Order XXXIX Rules 1 and 2 of CPC in part and directed both the parties to maintain status quo in respect of the property in question, till the disposal of the suit on merits.

7. Aggrieved by the said order, the present writ petition is filed by the plaintiff.

8. I have heard the learned counsel for the parties to the lis.

9. Sri. S.G. Kadadakatti, learned counsel for the petitioner, has vehemently contended that the impugned order passed by the lower appellate court reversing the discretionary order passed by the trial court is contrary to law and facts and circumstances of the case. The appellate court failed to appreciate the fact that the Land Tribunal had granted occupancy rights in favour of the petitioner and the said order has not been challenged by anybody and it has become final and conclusive and the RTC and other revenue records clearly indicates that the petitioner is in possession and enjoyment of the same as on the date of the suit and he has also relied upon the dictum of the Hon'ble Supreme Court in the case of Kishore Kumar Khaitan and Another Vs. Praveen Kumar Singh, AIR 2006 SC 1474 : (2006) 101 CLT 659 : (2006) 3 CTC 185 : (2006) 2 JT 351 : (2006) 2 SCALE 304 : (2006) 3 SCC 312 : (2006) AIRSCW 1077 : (2006) 2 Supreme 75 and contended that the appellate court either has to allow the appeal or dismiss it, but directing the parties to maintain status quo is not proper, etc. Therefore, he sought to set aside the impugned order by passing by the lower appellate court.

10. Per contra, Sri. Avinash Banakar, learned counsel for respondent No. 1/ caveator, sought to justify the impugned order and contended that he is in possession of the suit schedule property as a owner and the same has been purchased from the plaintiff in the year 1977. Therefore, he sought for dismissal

of the writ petition.

11. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the material on record.

12. The admitted facts are that the present petitioner who is the plaintiff in the trial court filed the suit for declaration and permanent injunction on the basis of the order passed by the land Tribunal dated 23.04.1977 granting occupancy rights in his favour and on the basis of the order of the Land Tribunal, all the revenue entries were entered in his name, to show that he is the owner in possession of the suit schedule property as on the date of filing of the suit.

13. Annexure "C" is the order passed by the Land Tribunal dated 23.04.1977 granting occupancy rights in respect of Sy. No. 114A measuring 5 acres 2 guntas and another survey number, and the said order has become final and conclusive. On the basis of the same, the name of the petitioner was mutated and the same reflects in the RTC for the year 2012-13, both in column Nos. 9 and 12(2). The petitioner has also produced Form No. 10 to show that the authorities have given possession to him and he is in possession. Annexure "E" is the mutation entry made in favour of the plaintiff and others, in respect of the property in question.

14. Based on the said documents, while considering the material documents, the trial court recorded a finding that the plaintiff has established prima facie case and the balance of convenience lies in his favour and hardship will be caused to the plaintiff if the temporary injunction is not granted. Therefore, the trial court, in its discretion, has granted temporary injunction, restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule property and also recorded a finding that the Tippani relied upon by the defendants has no sanctity in the eyes of law. The said aspect of the matter also cannot be ventured at this stage of the proceedings and hence, the trial court granted temporary injunction.

15. The lower appellate court while reversing the discretionary order passed by the trial court has recorded a finding that much more prima facie case and balance of convenience is undoubtedly, in favour of the plaintiff rather than the defendants but, unless the aforesaid crucial aspects are being adjudicated after adducing the evidence during the trial, it cannot be absolutely stated that, the plaintiff is in absolute possession over the suit schedule property because, the reliefs sought for in the instant IA No. 1 and the main relief sought for in the suit are one and the same. Therefore, the lower appellate court directed both parties to maintain status quo.

16. The Apex Court, while considering the provisions of Order XXXIX Rules 1 and 2 of CPC, in the case of KISHORE KUMAR KHAITAN Vs. PRAVEEN KUMAR SINGH, stated supra, has held as under:

"... It is necessary to notice at this stage that in an original suit of this nature, it was not appropriate for the Additional District Judge to pass an order directing

the parties to maintain status quo, without indicating what the status quo was. If he was satisfied that the appellant before him had made out a prima facie case for an ad interim ex parte injunction and the balance of convenience justified the grant of such an injunction, it was for him to have passed such an order of injunction. But, simply directing the parties to maintain status quo without indicating what the status quo was, is not an order that should be passed at the initial stage of a litigation, especially when one court had found no reason to grant an ex parte order of injunction and the appellate court was dealing with only the limited question whether an ad interim order of injunction should or should not have been granted by the trial court, since the appeal was only against the refusal of an ad interim ex parte order of injunction and the main application for injunction pending suit, was still pending before the trial court itself. Therefore, we are prima facie of the view that the Additional District Judge ought not to have passed an equivocal order like the one passed in the circumstances of the case. But of course, that aspect has relevance only to the extent that before ordering an interim mandatory injunction or refusing it, the court has first to consider whether the plaintiff has proved that he was in possession on the date of suit and on the date of the order and he had been dispossessed the next day. Unless a clear prima facie finding that the plaintiff was in possession on those dates is entered, an order for interim mandatory injunction could not have been passed and any such order passed would be one without jurisdiction. ..."

17. The trial court, in exercise of its discretionary power, based on the order passed by the Land Tribunal, RTC, Mutation entries and Form No. 10 and also the notices and award passed by the Land Acquisition Officer, in respect of the possession of the property, came to the definite conclusion that the plaintiff has made out a prima facie case for grant of temporary injunction. The lower appellate court while modifying the order of the trial court has not considered all these material documents, to come to the conclusion to direct parties to maintain status quo. Therefore, the appellate court has committed a grave error in reversing the discretionary order passed by the trial court, without considering the material documents, except the Tippani.

18. From the records and Tippani, the name of the plaintiff is not forthcoming. On the basis of the Tippani, learned counsel for the respondents contended that the plaintiff after executing the registered sale deed in favour of the defendants in the year 1987, he has not produced any material documents before this Court or before the trial court and it is not the ground raised by the appellate court while passing the impugned order; if the defendants are claiming their possession based on the registered sale deed, they have to establish it during the course of the trial. Therefore, the impugned order passed by the lower appellate court is perverse, contrary to law and facts and circumstances of the case.

19. In view of the aforesaid reasons, the writ petition is allowed.

The impugned order passed by the lower appellate court dated 03.03.2015 made in M.A. No. 19/2014 on the file of the Senior Civil Judge and JMFC, Hirekerur, is quashed, restoring the order passed by the Civil Judge and JMFC, Hirekerur, on I.A. No. 1 made in O.S. No. 157/2013, granting temporary injunction till the disposal of the suit.