
(1996) 01 KAR CK 0043
In the Karnataka High Court
Case No : Civil Petition No. 649 of 1995

C. Sreenivasareddy

APPELLANT

Vs

K. Chinnappa

RESPONDENT

Date of Decision : 11-01-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 47 Rule 1

Citation : (1996) 3 KarLJ 96

Hon'ble Judges : Harinath Tilhari, J

Judgement

1. This is an application for review of my order in K. Chinnappa v C. Srinivas Reddy, 1996(1) Kar. L.J. 114, whereby I had held that the orders impugned in the case suffers from error of jurisdiction as well as illegal exercise of jurisdiction which has the effect of causing injury to the revisionist. The revision had to be allowed taking the view that in dealing with the question of grant of temporary mandatory injunction, the Trial Court had granted temporary injunction without applying its mind and without dealing with the question whether it has been proved and shown that the construction or fencing had been raised by the plaintiff during the pendency of the suit under the garb of temporary injunction order or whether the same has been in existence for 20 years or more as claimed by the plaintiff. I may also observe that under Order 39, C.P.C. the Court may not have the power to grant such mandatory injunction. That in cases where a case may not come under Order 39 of C.P.C. but there is the case of the exceptional nature, and not covered by Order 39, recourse to Section 151 is open. But ordinarily under the garb of temporary mandatory injunction, the Court cannot grant and Court should not have granted the relief which is of the final nature which could be granted only in a properly filed suit seeking such relief after having decided the case on merits on all issues. That unless the Court comes to the conclusion that the defendant who had been claiming certain rights or easement, etc. has shown his right and the Court comes to the conclusion that the right has been interfered with under the garb of temporary injunction order as claimed by the defendant, no such temporary injunction order of mandatory

nature as has been granted could have been granted or should have been granted.

2. As I had observed in my opinion, the Trial Court has no jurisdiction to grant the mandatory injunction in favour of the defendant directing the plaintiff to remove the fencing without decision of the dispute as to and whether fencing had been raised and put by the plaintiff under the garb of temporary injunction obtained, as alleged by dependent and if that has been so done, then it can be said that under Section 151, C.P.C. read with Section 144 that the Court could order removal otherwise not. I have observed that the Court below had never considered that aspect of the matter and had not recorded the finding that the fencing had been put during the pendency of the suit or under the garb of temporary injunction as alleged by dependent and had not decided the question. So the Court below had acted, illegally in granting the mandatory injunction in favour of defendant and the Appellate Court had also not considered that aspect of the matter while dismissing the appeal and for that reason, I had taken the view, the Court below committed jurisdictional error as without applying their mind initially to the basic questions it granted the mandatory injunction of the temporary nature though in effect it was tantamount to granting the principal and main relief or relief of principal nature to the defendant opposite party without trial or decision of respective claims in regard thereto.

3. When this has been the position, in my opinion, when I had allowed the revision application there did not occur any error or any error apparent on the face of record nor the learned Counsel for the applicant has been able to show the error apparent on the" face of record. A review application is maintainable on the ground of error apparent on the face of record. The error apparent on the face of record is not possible in case where two views are possible and where lengthy arguments had to be advanced in an attempt to show that there is error on the face of law. Here in this case, in my opinion, no error apparent had been shown. No case for review had been made.

Review application is hereby rejected.