

(2011) 07 KAR CK 0017
In the Karnataka High Court
Case No : Misc. First Appeal No. 6656 of 2010

D. Narasimhalu Naidu @ D.N. Naidu

APPELLANT

Vs

Smt. Seema and Others

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Hindu Succession Act, 1956 — Section 6

Citation : (2011) 07 KAR CK 0017

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : D.R.P. Babu, for the Appellant; R. Keshava Murthy, for C/R1 and N. Vageesh, for C/R1 and R2, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—This appeal is by the 3rd Defendant in the suit, questioning an order of temporary injunction passed by the learned Trial Judge, whereby, the 4th Defendant -Spl.LAO, was restrained from disbursing the compensation amount for acquisition of the suit property in favour of the other Defendants. For convenience, the parties would be referred to with reference to their rank in the suit.

2. Material facts of the case for the purpose of consideration and disposal of this appeal are:

Plaintiffs/Respondents 3 and 2 herein, filed O.S.905/201C in the Court of Civil Judge (Sr. Dn.,) at Devanahalli to pass judgment and decree declaring that, they are jointly entitled for half share in the plaint schedule property and that, they are entitled for half share in the compensation awarded by the 4th Defendant/ Spl.LAO, K.I.A.D.B., and to restrain the 4th Defendant from disbursing the compensation amount for acquisition of the plaint schedule property in favour of any of the Defendants and for costs. The property shown in the schedule of the plaint is part and parcel of agricultural property bearing Sy. No. 6/330 measuring

2 acres situated as Singahalli village, Jala Hobli, Bangalore North Taluk. The case of the Plaintiffs in a nut shell is that, the propositus Chikkappaiah had two sons by name Ramakrishnappa (Defendant No. 1) and Venkatesh and they and Defendant No. 2 as the daughters and son respectively of Defendant No 1 and that they all constitute undivided joint Hindu family and the suit property is their joint family ancestral property, which fell to the share of Defendant 1 in a partition between himself and his brothers. It has been alleged that, Defendants 1 and 2 in collusion, have illegally alienated the suit property in favour of Defendant 3/Appellant, under a registered sale deed dated 16.4.2005, to deprive the Plaintiffs of their share. It has been contended that, they are not signatories to the said sale deed and the same is not binding on them. According to Plaintiffs, there is no partition between themselves and Defendants 1 and 2 in respect of the family properties and that there is no severance of status and that, they and Defendants 1 and 2 are in joint possession and enjoyment of the suit property, which was acquired by K.I.A.D.B.,. It has been further alleged that, 4th Defendant/Spl.LAO, in collusion with Defendants 1 to 3 is making hectic efforts to pay the compensation to them.

3. Defendants 1 and 2 have not filed written statement and have not contested the suit.

4. Defendant 3/Appellant filed written statement, wherein it has been contended that, the suit property is not an agricultural land, the same was converted for non-agricultural purpose on 8.2.2005 and that he purchased the suit property under a registered sale deed dated 16.4.2005, which was executed by the 1st Defendant along with his family properties as per the family tree produced by them and that the Plaintiffs are utter strangers to the suit property, since their names were not reflected in the family tree made available at the time of said sale of suit property in his favour. He has contended that, the suit property is the absolute property of the 1st Defendant, having been acquired by him pursuant to a partition effected amongst his brothers on 1.10.1989. According to him, other family members of 1st Defendant joined in conveying the suit property in his favour on 16.4.2005 and hence, the suit is not maintainable. It has been contended that, the Plaintiffs and the 1st and 2nd Defendants are not in possession of the suit property, the Court fee paid is insufficient and he sought for dismissal of the suit.

5. Plaintiffs filed I.A.1 under O.39 Rs. 1 and 2 Code of Civil Procedure, to pass an order of temporary injunction and to restrain Defendant 4/Spl.LAO, from disbursing the compensation amount in favour of any of the other Defendants. An application was filed by the Appellant under O.7 R.11 Code of Civil Procedure, for rejection of the plaint. It was contended by the Appellant that, after his purchase, the suit property was acquired by the K.I.A.D.B., and he alone is entitled to receive the compensation amount.

6. The Trial Court upon consideration of the rival contentions and perusal of the record, having found that, the Plaintiffs have made out prima facie case and the

balance of convenience having been found to be in their favour and having found that, the Plaintiffs would be put to irreparable loss and injury if an order of temporary injunction is not granted, allowed I.A.1 and passed the impugned order, whereby, the 4th Defendant was restrained from disbursing the compensation amount in favour of any of the Defendants.

7. Sri D.R.P. Babu, learned Counsel for the Appellant contended that, the Trial Court acting arbitrarily, perversely and illegally has passed the impugned order, without noticing the fact that, the suit is not maintainable. Learned Counsel submitted that, the Trial Court has failed to consider that, even if the Plaintiffs are considered to be the daughters of the 1st Defendant, they can seek partition of the suit property u/s 6 of the Hindu Succession Act only after the death of their father, the kartha of the alleged joint family and during the life time of the 1st Defendant, the suit for partition is not maintainable. Learned Counsel further submitted that, the Trial Court has failed to consider the fact that, the suit property is no more an agricultural land, the same having been converted for non-agricultural - residential use in the year 2005 and the property having been acquired by K.I.A.D.B., and the possession of the acquired property having also been taken over. Learned Counsel submitted that, the Trial Court has failed to notice that, the claim of the Plaintiffs is only respect of their alleged half share in the suit property and hence, restraining of 4th Defendant from disbursing the entire compensation amount is highly arbitrary. Learned Counsel submits that, the impugned order being irrational, calls for interference.

8. Respondents 1 and 2/Plaintiffs though filed caveat and also entered appearance through their advocate, have remained absent. Though the matter was adjourned on more than one occasion, there is no appearance for Respondents 1 and 2. The other Respondents/Defendants being formal parties to the appeal and they having not questioned the impugned order nor opposed the Plaintiffs' case in the Trial Court, issue of notice of this appeal to the other Respondents being unnecessary was dispensed with.

9. I have perused the record.

10. The point for consideration is:

Whether the impugned order is arbitrary, perverse, capricious and illegal?

11. It is trite that, the Court in exercise of its discretion can pass an order of temporary injunction only when the following requirements are made out by the Plaintiff:

(a) Existence of a prima facie case as pleaded, necessitating protection of Plaintiff's rights by issue of an order of temporary injunction;

(b) When the need for protection of the Plaintiff's rights is compared with or weighed against the need for protection of the Defendant's rights or likely infringement of the Defendant's rights, the balance of convenience tilting in favour of the Plaintiff;

(c) Clearly possibility of irreparable injury being caused to the Plaintiff if the temporary injunction is not granted and

(d) being an equitable relief, the discretion to be exercised only when the Plaintiff's conduct is free from blame and approaches the Court with clean hands.

12. Indisputably, the suit property has been acquired by K.I.A.D.B., and compensation has been offered. The Plaintiffs admit the execution of the sale deed in respect of the suit property by their father and brother in favour of the 3rd Defendant/Appellant. Defendants 1 and 2 have not questioned the sale of the suit property by them under a registered sale deed 16.4.2005 in favour of the Appellant. The Plaintiffs have claimed half share in the suit property/ the compensation in respect of it offered by the 4th Defendant. In the circumstances, the Trial Court is not justified in allowing I.A.1 and restraining the 4th Defendant from disbursing the entire compensation amount. Even if it is taken that, the Plaintiffs have got prima facie case, the balance of convenience being in their favour and they being put to irreparable loss and injury if an order of temporary injunction is not granted, their claim being only to half share in the compensation payable in respect of the acquisition of suit property, the impugned order is arbitrary, perverse and illegal, since the Trial Court ought to have noticed the limited share which the Plaintiffs have claimed in the suit property and not the entire property/compensation payable in respect thereof.

13. Where the lower Court acts arbitrarily, capriciously or perversely in exercise of its discretion, the appellate Court will interfere. Exercise of discretion by granting temporary injunction when there is no material or refusing to grant temporary injunction by ignoring the relevant documents produced, are instances of action, which are termed as arbitrary, capricious or perverse. In the instant case, the Trial Court has acted mechanically in considering the case of the Plaintiffs and allowing I.A.1 and in passing the impugned order, without even noticing the limited claim of the Plaintiffs over the suit property/compensation payable in respect of the acquisition thereof.

14. In the circumstances, the impugned order requires to be modified. 4th Defendant is restrained from disbursing half of the compensation amount, till the suit is decided by the Trial Court. The amount which is directed not to be disbursed, be invested by the 4th/Spl. LAO, in Fixed Deposit in any nationalised bank initially for a period of 2 years and renewable thereafter for further period as per the orders that may be passed by the Trial Court. The Appellant to execute an indemnity bond and furnish a solvent surety to the satisfaction of the Trial Court for receiving of the compensation amount payable by the 4th Defendant/Spl. LAO in respect of the acquisition of the suit property. The amount invested in F.D. shall be subject to the result of suit.

In the result, the appeal is allowed and the impugned order is modified.

No costs.