

(2020) 01 KAR CK 0027

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 6188 Of 2016 (CPC)

D.Mallikarjuna Purvimath And Ors

APPELLANT

Vs

Munibyaiah And Ors

RESPONDENT

Date of Decision : 13-01-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2

Citation : (2020) 01 KAR CK 0027

Hon'ble Judges : B M Shyam Prasad, J

Bench : Single Bench

Advocate : S.M. Chandrashekar, S.B.Mathapati, P.Chidananda

Final Decision : Disposed Of

Judgement

1. Heard Sri. S.M.Chandrashekar, learned Senior counsel for the appellants and Sri. P.Chidananda, learned counsel for the respondent Nos.1 to 4.

2. This appeal is filed by the defendants in O.S.No.266/2014 on the file of the Senior Civil Judge, Nelamangala (for short, 'civil Court'). The civil Court by its impugned order in O.S.No.266/2014 has allowed the applications (IA Nos.1 and 2) filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property and also alienating the suit schedule property.

3. After being heard for some time, the learned Senior counsel for the appellants as well as the learned counsel for the respondents submit that the appeal could be disposed off continuing the interim order of status quo granted by this Court on 07.10.2016 calling upon the civil Court to dispose of the suit in O.S.No.266/2014 as expeditiously as possible.

4. The learned Senior counsel also submits that given the nature of the property and that the appellants are claiming absolute ownership to the subject property under the sale deed dated 14.02.2014, liberty be reserved to the appellants to

move appropriate application in the suit if it becomes necessary for permission to develop the subject property on such terms as would be necessary with a further request that if such application is filed, the civil Court be called upon to dispose of the same without being influenced by any observations made in the impugned order.

5. This submission is also not contested by the learned counsel for the respondents, except stating that the respondents should have liberty of contesting such application on all grounds.

6. It is seen from the impugned order that the civil Court has proceeded to pass the impugned order in the premise that certain material facts are admitted but the learned Senior counsel for the appellants and the learned counsel for the respondents submit in unison that there is an obvious error in the civil Court making reference to the certain material facts as being admitted. It is also seen that certain contentions urged on behalf of both the appellants and the respondents have not been considered by the civil Court in the course of its impugned order.

7. In the light thereof, and in the facts and circumstances of the case, this Court is of the considered view that it would be just and reasonable to dispose of the appeal setting aside the impugned judgment and directing the parties, as submitted by the learned Senior counsel and the learned counsel for the respondents to maintain status quo both as regards nature and title to the subject property until the disposal of the suit with liberty to the appellants to make necessary application for permission to undertake development in the subject property while observing that if indeed such application is filed, the civil Court shall dispose of the application on its own merits. It is also observed that the respondents shall be entitled to contest such application on all grounds. Further, the civil Court is directed to expedite the disposal of the suit on merits as expeditiously as possible but within an outer limit of nine months from the date of receipt of certified copy of this order. Furthermore, both the parties are directed not to seek unnecessary adjournments.

The appeal is disposed of accordingly.

The office is directed to send back the records of the suit to the civil court forthwith.