

(2011) 01 KAR CK 0145
In the Karnataka High Court
Case No : Writ Petition No. 22384 of 2010

Dundegowda

APPELLANT

Vs

M.E. Suresh, Chikkannegowda and Chikkamoogegowda

RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Citation : (2011) 01 KAR CK 0145

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : T.N. Raghupathy and G. Jayashree, for the Appellant; H.C. Shivaramu, for R1 and R2 and R3 Served Unrepresented, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—Petitioner instituted O.S. No. 4/2000 on the file of the Civil Judge (Sr. Dn), Maddur for partition and separate possession arraigning as party - Defendants the Respondents herein. That suit when dismissed by judgment and decree dated 22.12.2007, was carried in R.A. No. 29/2008 before the Addl. District Judge, Mandya, whence by judgment and decree dated 8.12.2009, was allowed in part declaring the Petitioner to be entitled to 7/30th share in the suit Schedule "A" items 1 to 3 while confirming the judgment and decree of the Trial Court in respect, of suit Schedule "A" Items 4 to 11 and "B" schedule movables. The 1st Respondent and his siblings being brothers and sisters claiming right, title and interest in respect of suit Schedule "A" Item No. 7 in O.S. No. 4/2000 (R.A. No. 29/2008). instituted O.S. No. 36, 37, 38 and 39/2000 before the Civil Judge (Jr. Dn) & JMFC, Maddur together with an I.A. under Order 39 Rules 1 and 2 Code of Civil Procedure, in each of the suits. By common order dated 23.07.2005 Annexure-"E", the applications were allowed and the Petitioner restrained from interfering with the Plaintiffs peaceful possession and enjoyment, of the suit schedule property. That order when carried in M.A. No. 28, 29, 30 & 31/2006 whence by common order dated 9.3.2010 Annexure-"G" of the Civil Judge (Sr. Dn), Maddur. were dismissed,

confirming the orders of the Trial Court. Hence this writ petition in so far as it relates to M.A. No. 31 /2006 arising out of O.S. No. 38/2000.

2. Although learned Counsel for the Petitioner contends that R.S.A. No. 546/2010 filed against the judgment and decree dated 8.12.2009 in R.A. No. 29/2008 is admitted and pending, is candid in his submission that there is no interim order of stay or an order of temporary injunction in respect of the suit Schedule "A" items 4 to 11. There being no dispute that suit Schedule "A" Item No. 7 in O.S. No. 4/2000 is not subject matter of judgment and decree of the Trial Court, much less the First Appellate Court, the 1st Respondent M.E. Suresh, instituted O.S. No. 38/2000 and having made out a prima facie case and balance of convenience, secured an order of temporary injunction. In the fact situation, that order cannot be found fault with. Sequentially, the order passed in appeal cannot be said to be either illegal or arbitrary so as to call for interference.

Writ petition being without merit, is accordingly rejected.