

(2010) 10 KAR CK 0117
In the Karnataka High Court
Case No : Writ Petition No. 15271 of 2010

G. Sri Ramappa

APPELLANT

Vs

G. Munivenkataramappa, G. Narayanappa and Chandarappa

RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1R, 104

Citation : (2010) 10 KAR CK 0117

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

Bench : Single Bench

Advocate : Rajashekhar. K, for the Appellant; T. Srinivasan, for R1 to R3, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—Petitioner/Plaintiff has filed O.S. No. 99/2009 against respondents/Defendants in the Court of Civil Judge (Jr. Divn.,) Bangarpet, for the relief of permanent injunction and consequential reliefs in respect of suit schedule property. Defendants 2, 3 & 4 have filed separate written statements and counter claims. The Plaintiff has filed objections for the written statements and counter claims. Along with the plaint, the Plaintiff filed I.A. No. 2 under Order 39 Rule 1 & 2 CPC to grant an order of temporary injunction, restraining the Defendants from interfering with his possession and enjoyment of suit schedule property. The Defendants 2, 3 & 4 filed I.A Nos. 5, 6 & 7 respectively under Order 39 Rules 1 & 2 CPC seeking an order of temporary injunction, restraining the Plaintiff from interfering with the agricultural operations earned on in the written statement schedule properties. The trial court having found prima facie case, balance of convenience and irreparable loss & hardship being caused to the Plaintiff, allowed I.A. No. 2 and rejected I.A. Nos. 5, 6 & 7. Aggrieved, the Defendants filed appeal under Order 43 Rule 1(r) read with Section 104 CPC. The appellate court by judgment dated 29.03.2010 has allowed the appeal in part. The common order passed by the trial court, on I.As

2, 5 to 7 impugned before it, was set-aside and the parties to the suit have been directed to maintain status-quo in respect of the suit schedule and written statement schedule properties. Aggrieved, the Plaintiff has filed this writ petition.

2. Sri Rajashekhar. K, learned Counsel appearing for the Petitioner contends that, the court below has acted unjustly, erroneously and illegally in passing the impugned judgment, whereby it has set-aside the just and equitable order passed by the trial court. Learned Counsel submits that, the Petitioner was employed in BGML, had earnings of his own, out of which the suit schedule properties were purchased and that, he has been leaving separately from 23.06.1981 and the purchase of the suit properties were after his separation from the family and in the circumstances, the just and equitable order passed by the trial court ought not to have been interfered with, while passing the impugned judgment.

3. Sri T. Srinivasan, learned Counsel appearing for the respondents, on the other hand contended that, the trial court failed to notice the relevant aspects of the case and has misdirected itself, on account of which, the order allowing LA No. 2 and rejecting I.A. Nos. 5 to 7 was passed. Learned Counsel further submits that, in view of the material error and illegality committed by the trial court, an appeal was filed and that, the appellate court upon correct consideration of the record has passed the impugned judgment, which in the facts and circumstances of the case is justified and no interference is called for.

4. I have perused the writ petition papers.

5. The parties are brothers, being the children of Late Gopalappa. The Petitioner was the eldest son of Gopalappa. The Plaintiff claims that, he joined BGML on 25.10.1978 and he was looking after the Defendants, because they were minors. The suit property purchased was also during the minority of some of the Defendants. The Petitioner claims that, he started leaving separately from 1981 and there was a division of the properties. The Defendants have contended that, in the presence of panchayathdars and elders of their family, the joint family property i.e., the suit schedule properties were partitioned and palupatties dated 23.05.1998 was prepared, in terms of which, separate allotment as per the schedules A to F was made. According to them, another item of property situated at Thumatagere is yet to be partitioned and Plaintiff without any right, title and interest in the written statement schedule properties, attempted to interfere.

6. The court below, which is also a fact finding court, having noticed the case of the parties and the documents produced before it, has held that, the trial court has not correctly appreciated the circumstances of the case and the documents and its conclusion in granting order of injunction in favour of the Plaintiff was unjust and hence, has ordered for maintenance of status-quo, which would not cause any harm or injury to either of the parties.

7. Since the fact finding court after reference to the prima facie materials placed on record has passed an equitable order, I do not deem it appropriate to interfere

with the order, specially keeping in view the relationship between the parties. The trial of the suit is required to be expedited, so that the matter could be effectively decided.

In the result, the writ petition stands dismissed.

The pleadings being complete, the trial court is directed to try and dispose of the suit as early as practicable and at any event, within a period of 8 months from the date a copy of this judgment is placed on its record.

The trial court is directed to decide the suit, uninfluenced by any of the observations and findings recorded by the court below in the impugned judgment herein.

Contentions of both parties are kept open for consideration.

Return the LCR forthwith to the trial court.

Parties are directed to appear before the trial court on 30.10.2010 and receive further orders.