

(1998) 08 KAR CK 0015

In the Karnataka High Court

Case No : Civil Revision Petition No. 2863 of 1994

Giroji Rao alias Girmoji Rao

APPELLANT

Vs

Shivashankara Reddy and Another

RESPONDENT

Date of Decision : 18-08-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115, 115 (1)

Citation : (1999) 5 KarLJ 126

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri G. Papireddy, for the Appellant; Sri M.R. Achar, for the Respondent

Judgement

1. Heard the learned Counsel for the revision petitioner.
2. This revision is directed against the judgment and order dated 9-8-1994 passed by the Additional Civil Judge, Kolar, in Miscellaneous Appeal No. 11 of 1994 from the judgment and order dated 4-2-1994 on I.A. I under Order 39, Rules 1 and 2 of the CPC in O.S. No. 60 of 1993, setting aside the Trial Court's order granting the temporary injunction in favour of the plaintiff-revision petitioner and after setting aside the Trial Court's judgment, the lower Appellate Court rejected the application for temporary injunction. The Trial Court held the prime facie case to be in favour of the plaintiff as well as the balance of convenience to be in favour of the plaintiff-revision petitioner. But the lower Appellate Court on considering the matter held that there was no prima facie case for the plaintiff and he further found balance of convenience in favour of the defendant-appellant. The reason it has given is that the defendant 1 i.e., the respondent in the present revision claims to be a mortgagee in possession on the basis of mortgage-deed executed by Narayana Rao, son of Ranoji Rao. The lower Appellate Court opined that a person in possession as a mortgagee will be deprived of his possession if the injunction is granted, but if injunction is refused then whosoever is in possession will continue to be in possession of the

property. Therefore, it opined that no irreparable loss is going to be caused to the plaintiff if the relief is withheld and allowed the appeal setting aside the order of the Trial Court. Feeling aggrieved from the findings of the lower Appellate Court, the plaintiff has come up in revision.

3. I have Heard the learned Counsel for the parties.

4. On behalf of the revision petitioner i.e., the plaintiff, it has been urged that the plaintiff is claiming on the basis of a Will executed by Ranoji Rao and as such, he had got title and the mutation entries were in his favour and therefore the lower Appellate Court acted illegally in allowing the appeal and setting aside the injunction order. The learned Counsel contended that the finding of the Court below that there is no prima facie case in favour of the plaintiff-revision petitioner recorded by the lower Appellate Court is illegal. Learned Counsel contended that the Court below acted illegally in setting aside the order of temporary injunction granted by the Trial Court.

5. I have applied my mind to the contentions raised by the learned Counsel for the revision petitioner.

6. Jurisdiction of this Court u/s 115 of the CPC is confined to jurisdictional error coming under either of the clause (a), (b) or (c). Until such an error is shown, this Court has no jurisdiction to interfere with pure and simple error of fact or error of law. A Court having jurisdiction may commit an error of fact or law. Until such an error is shown to be covered within four corners of either of clause (a), (b) or (c), the Court has no power to proceed to consider the revision application. It has to be taken note of that even if some jurisdictional error is shown be of Courts acting illegally or irregularly, even then until and unless it is shown that the order impugned is of such a nature that if it is allowed to continue and stand, it will cause injustice to the party aggrieved or irreparable loss or injury to him, this Court as per proviso to Section 115(1) is ordained not to interfere with the order as well as not to reverse or set aside that order. Keeping these basic principles of law u/s 115 of the CPC when I examine this case, I find no good ground to interfere. No doubt, the Appellate Court erred in taking the view that there was no prima facie case and it has confused prima facie case with prima facie title. Prima facie case means that there are issues to be tried and points and pleas to be decided and determined by the Court. If there are points in the suit or pleas in the suit to be determined in between the parties, then there may be said to be prima facie case and the question of granting injunction may be considered only if the plaintiff is shown to be in possession of the property in dispute on the date of the suit. In the present case, plaintiff has based his claim on a Will. The execution of the Will has got to be established and proved by the plaintiff. Until execution of the Will is proved, it cannot be said that plaintiff has a title. But no doubt there may be a prima facie case for trial. As regards the possession, the Court below has considered this aspect. It has also recorded that Narayana Rao was one of the sons of Ranoji Rao who mortgaged the property in favour of the defendant-respondent 1 and the

mortgagee on the basis of mortgage claims to be in possession. The mortgagee being in possession, the effect of granting injunction order no doubt would be that the defendant even if in possession, may have to leave the possession or the plaintiff may assert on him to vacate even though injunction order may not be to the effect that he has to vacate the property. To avoid such contingencies, the lower Appellate Court committed no error in opining that this is not a fit case for grant of injunction order as balance of convenience is in favour of the defendant. It had opined that the plaintiff would not be subjected to any loss. In this view of the matter, the order of the lower Appellate Court cannot be termed or said to be suffering from any jurisdictional error.

7. Thus considered in my opinion, the revision is without merits. It is hereby dismissed. At the end of the decision, learned Counsel prayed that the Trial Court may be directed to decide the suit expeditiously. The learned Trial Court is expected to proceed with the trial of the suit and no unwarranted adjournments shall be granted to the parties which may delay.

8. Subject to the above observations, the revision is hereby dismissed. Parties to bear their own costs of the revision.