

(2024) 08 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition No. 19911 Of 2024 (GM-CPC)

H.S. Rafeeq Ahmed & Others

APPELLANT

Vs

Shivarathna & Others

RESPONDENT

Date of Decision : 02-08-2024

Acts Referred:

Code Of Civil Procedure, 1908 — Order 8 Rule 1

Citation : (2024) 08 KAR CK 0010

Hon'ble Judges : R Devdas, J

Bench : Single Bench

Advocate : Manjunatha S.V, Om Kumar R

Final Decision : Allowed

Judgement

R Devdas, J

1. The petitioners, who are defendants No.1 and 4 to 7 in the suit are before this Court aggrieved of the rejections of the Interlocutory Application filed by the petitioners seeking permission to file written statement and to go on with the proceedings.

2. It is clear from the impugned order and the submissions made by the learned counsel at the Bar that the Trial Court has rejected the Application on the ground that the Application is filed at the fag end of the proceedings viz., when the matter has been posted for judgment. However, on hearing the learned counsel for the petitioners this Court finds that in the suit filed at the hands of respondent No.1 herein/plaintiff seeking the Permanent Injunction against the defendants, respondent No.1-Sri.H.S. Raffeq Ahmed and others have been arraigned as the defendants.

3. It is the contention of defendant No.1/ petitioner No.1 herein that he is the Secretary of the Pyaragan Educational Society and the said Society has purchased 4 Acres of land in old Sy.No.91/A Re.Sy.Nos.2/1, 2/9 situated at Kadadanakunte Village, Kasaba Hobli, Shidlaghatta Taluk under a registered sale

deed dated 16.12.1979. It is stated in the written statement filed along with the Application that one Sri.K.Munivenkatappa was the owner of the 7 Acres and 39 Guntas of land in the said survey number. After his demise there was a partition in the family and 2 Acres each fell to the share of Sri.K.M.Ramachandrappa and Sri. Ramanjinappa. The Pyaragan Educational Trust has purchased 4 Acres of land from the said Sri.K.Ramachandrappa and Sri.Ramanjinappa. Initially, there was some problem faced by the Trust in getting the Khata registered in the revenue records. However, subsequently, the name of the purchaser has been registered in the Khata.

4. Having regard to the contentions sought to be raised in the written statement, this Court is of the considered opinion that the although the Application has been filed very belatedly, nevertheless, having regard to the judgment of the Hon'ble Supreme Court in the case of Sylam Advocates Bar Association vs. Union of India, (2005)6 SCC 344 which was consequently, followed in the case of Zolba vs. Keshao and others, (2008)11 SCC 769, wherein it was held that the provisions including the proviso to Order VIII Rule 1 of the CPC are not mandatory but directory in nature and it would be open to the Court to permit the defendant to file written statement even after the expiry of the statutory period, in the exceptional cases, this Court is of the considered opinion that since defendant No.1 is claiming that an Educational Trust viz., Pyaragan Educational Society has purchased 4 Acres of land in Sy.No.91/A, Re.Sy.Nos.2/1 and 2/9 and the survey number mentioned in the suit schedule is also Sy.No.2/9, an opportunity should be given to the petitioners herein to file written statement and go on with the matter.

5. Consequently, this Court proceeds to pass the following:

ORDER

- i. The writ petition is allowed while imposing the cost of Rs.5,000/- (Rupees Five Thousand only) on the petitioners payable to the plaintiff before the Trial Court.
- ii. I.A.No.XX filed in O.S.No.29/2020 on the file of Principal Civil Judge and JMFC., Shidlaghatta, is hereby allowed.
- iii. The written statement filed by defendant Nos.1 and 4 to 7 is taken on record. However, the said defendant Nos.1 and 4 to 7 are hereby directed to lead evidence and enable cross-examination at the hands of the plaintiff. If an application is filed by the said defendants to permit cross-examination of the plaintiff's witnesses, the same shall be allowed and cross-examination shall also be concluded.
- iv. Issues shall also to be framed accordingly, and the entire proceedings shall be concluded within a period of two months from 12th of August 2024.
- v. The parties are hereby directed to be present before the Principal Civil Judge and JMFC., Shidlaghatta, on 12th of August, 2024, without waiting for further notice.

vi. The suit shall be disposed of within a period of two months from today.