

(2013) 11 KAR CK 0164

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 8816 of 2008 (CPC)

Jagannath Shetty

APPELLANT

Vs

Smt. P. Damayanthi, Prakash Katariya, Rep. by their PA
Holder M.K. Gowtham Chand, V.S. Premachandra and V.S.
Narendra

RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

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

Citation : (2013) 11 KAR CK 0164

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Shankar Shetty, for the Appellant; P. Mahesha, Advocate for R-1 and R-2, for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—Defendant No. 3 is in appeal questioning the correctness and legality of order passed in O.S. No. 7346/2005 dated 29.05.2008 by III Addl. City Civil Judge, Bangalore City, allowing the application filed by plaintiffs under Order 39 Rules 1 ad Order 39 Rule 2 and restraining defendant No. 3/his agents from alienating or creating any kind of charge over suit schedule property pending disposal of suit. Heard Sri Shaker Shetty, learned counsel appearing for appellant (defendant No. 3) and Sri P. Mahesha, learned counsel appearing for respondent Nos. 1 and 2. Notice to respondent Nos. 3 and 4 has been held sufficient vide order dated 12.08.2011. Perused the order passed by Trial Court.

2. It is the contention of Sri Shaker Shetty, learned counsel appearing for defendant No. 3 that defendant Nos. 1 and 2 had executed an agreement of sale in favour of defendant No. 3 on 31.07.1979 agreeing to sell the suit schedule property and said agreement being a contingent contract, defendant No. 3 filed a suit in O.S. No. 6381/1995 seeking specific enforcement of agreement dated 31.07.1979 and had obtained an order of temporary injunction on 22.09.1995

restraining defendant Nos. 1 and 2 herein from alienating or encumbering suit schedule property and during the pendency of said suit defendant Nos. 1 and 2 have entered into an agreement to sell the suit schedule property to third parties and as such it is void ab-initio and even otherwise thereafter in the said suit namely O.S. No. 6381/1995 defendants have compromised the matter and had agreed to execute the sale deed and pursuant to same on 04.07.2005 they have executed a sale deed in favour of defendant No. 3 and as such, Trial Court could not have granted an order of temporary injunction against 3rd defendant particularly when suit itself was not maintainable. Hence, he seeks for allowing the appeal by setting aside the order dated 29.05.2008 passed by the Trial Court.

3. Per contra, Sri P. Mahesha, learned counsel appearing for plaintiffs would support the order passed by Trial Court contending inter-alia that it is an equitable order and in the present suit namely O.S. No. 7346/2005 plaintiffs have prayed for declaring judgment and decree passed in O.S. No. 6381/1995 as null and void and not binding on them and as such, considering the contentions of parties Trial Court has passed an order of temporary injunction restraining third defendant from alienating or creating charge over suit schedule property which is not harmful to third defendant in any manner whatsoever and hence he prays for dismissal of the appeal.

4. Having heard the learned Advocates appearing for the parties and on perusal of order passed by Trial Court, I am of the considered view that following point would arise for my consideration:

(1) Whether order of temporary injunction passed by the Trial Court calls for interference?

(2) What order?

5. Facts which are not in dispute can be crystalised as under and parties are referred to as per their rank before Trial Court:

Defendant Nos. 1 & 2 had entered into an agreement of sale on 31.07.1979 with defendant No. 3. A suit in O.S. No. 6381/1995 came to be filed by defendant No. 3 against defendant Nos. 1 and 2 seeking specific performance of agreement. During the pendency of said suit an application had been made in the said suit to restrain defendants therein, namely, defendant Nos. 1 and 2 herein from alienating or encumbering suit schedule property pending disposal of the suit. An order of injunction came to be passed on 22.09.1995 restraining defendants from alienating or encumbering the suit schedule property. Subsequently, suit has been compromised between to defendant No. 3 and defendant Nos. 1 & 2.

6. In the said suit an application in I.A. 4 was filed by present plaintiffs on 18.06.2003 to get themselves impleaded and it was being adjourned from time to time for being adjudicated by Trial Court. When the matter was listed for hearing on I.A. 4 on 06.06.2005 suit came to be transferred from Court No. 8 to Court No. 19. Parties to the suit namely plaintiffs and defendants have got the

case advanced without notice to proposed defendants (i.e., applicants in I.A. No. 4 plaintiffs herein) and who, were already on record by virtue of filing an application in I.A. 4 and taking a specific stand that defendant Nos. 1 and 2 had already entered into an agreement of sale dated 30.09.1996 with them and pursuant to same they had already conveyed the property on 02.11.1996 and 11.12.1996 namely ground floor and first floor respectively under two sale deeds. However, without notice to them matter has been got preponed by plaintiffs and defendants in O.S. No. 6381/1995 and they have filed compromise petition, which came to accepted by trial Court. These are undisputed facts.

7. There cannot be any dispute with regard to proposition that an equitable order of injunction would not be granted in favour of a person, who is at fault. In the instant suit prayer sought for by plaintiffs in the suit reads as under:

- a) declare that the plaintiffs are the absolute owners of the schedule property;
- b) direct the 3rd defendant, his agents, legal heirs, representatives, assignees, or anyone claiming under him to quit and vacate the schedule property and deliver the same to the plaintiffs;
- c) declare that the sale deed dated 4.7.2005 executed by the defendant Nos. 1 and 2 in favour of the 3rd defendant registered as document No. 191/05-06 at the office of the Sub-Registrar, Gandhinagar, Bangalore, based on Agreement to Sell dated 31.7.1979 and based on the compromise decree dated 27.5.2005 passed by the Hon'ble Court in O.S. No. 6381 of 1995, is null, void and not binding on the plaintiffs;
- d) consequential relief of permanent injunction restraining the defendants, their agents, men or anyone claiming under them from interfering with the possession of the plaintiffs in respect of the schedule property;

8. On the one hand defendant No. 3 claims title to the property based on the compromise entered into by him with defendant Nos. 1 and 2 in O.S. No. 6381/1995 based upon which a sale deed is said to have been executed by defendant Nos. 1 and 2 in favour of defendant No. 3 on 04.07.2005. On the other hand plaintiffs claim to have acquired title to suit schedule properties under a registered sale deeds dated 02.11.1996 and 11.12.1996. A specific plea has been raised by plaintiffs in this regard namely at paragraph 6 of present suit i.e., O.S. No. 7346/2005. In the suit filed by defendant No. 3 i.e., O.S. No. 6381/1995 plaintiffs herein had already entered appearance by filing an application in I.A. 4 seeking themselves to get impleaded as parties to the suit and had stated in their affidavit supporting the application about they having acquired title. Thus, plaintiffs herein were interested parties in the suit O.S. No. 6381/1995 which was filed by defendant No. 3 against defendant Nos. 1 and 2. Undisputedly, application filed by the present plaintiffs in O.S. No. 6381/1995 was not disposed of and without knowledge of the present plaintiffs (proposed parties to O.S. No. 6381/1995) suit O.S. No. 6381/1995 has been advanced from 06.06.2005 to 15.04.2005 and matter came to be settled by filing a compromise

and pursuant to such settlement arrived at between defendant No. 3 and defendant Nos. 1 and 2, sale deed had been obtained by defendant No. 3 on 04.07.2005. However, much prior to the said sale deed itself plaintiffs herein have acquired title to the suit schedule properties under sale deeds dated 02.11.1996 and 11.12.1996. It is after considering these pleadings and documents produced by the parties, Trial Court was of the considered view that it is a matter for trial and as such, has passed an order of temporary injunction restraining defendant No. 3 from alienating or encumbering the suit schedule property during the pendency of the suit. It is no doubt true that as rightly contended by Sri Shaker Shetty, learned counsel appearing for defendant No. 3 that alleged sale deed, which plaintiffs claim to have acquired title to suit schedule properties has been executed by only defendant No. 1 along with one Sri P. Chinnappa and Smt V.S. Vijayalakshmi. As to whether defendant No. 1 alone had title to the property or whether compromise could have been entered into between defendant No. 3 and defendant Nos. 1 & 2 in O.S. No. 6381/1995 during the pendency of application filed by plaintiffs namely I.A. 4 seeking for being impleaded in the said suit without their knowledge and whether Trial Court in O.S. No. 6381/1995 could have permitted tire parties to get the matter compromised or settled by preponing the case that too, without notice to proposed applicants who were already on record are all matters in the realm of Trial Court to be adjudicated after a full fledged trial. Any such exercise being undertaken by this Court at this stage would result in delving upon the merits of the case and it may prejudice either of the parties. Hence, I am of the considered view that order passed by the Trial Court does not suffer from any infirmity or calls for interference. It is an equitable order and neither of the parties would prejudiced or be at any hardship or any inconvenience whatsoever. Hence, I refrain from interfering with the said order. For the reasons aforestated following is passed:

ORDER

- i. Appeal is hereby dismissed.
- ii. Order of injunction dated 29.05.2008 passed by III Addl. City Civil Judge, Bangalore, in O.S. No. 7346/2005 is hereby affirmed. However, it would be necessary in the interest of parties to direct the Trial Court to dispose of the suit expeditiously at any rate within 6 months from the date of receipt of certified copy of this order since it is nine years old.
- iii. Ordered accordingly.
- iv. Parties to bear their respective costs.