

(2015) 01 KAR CK 0485

In the Karnataka High Court

Case No : Writ Petition No. 111972 of 2014 (GM-CPC)

Kamala and Others

APPELLANT

Vs

Jayapal and Others

RESPONDENT

Date of Decision : 31-01-2015

Acts Referred:

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

Citation : (2015) 2 KCCR 1921

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Hemant R. Chandangoudar, for the Appellant; K.V. Muppayanavar Math, Advocate for Dinesh M. Kulkarni, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.

1. Plaintiffs in O.S. No. 145/2014 being aggrieved by order of dismissal of application filed by them for temporary injunction to restrain the defendants from alienating and/or encumbering the suit schedule property, in any manner, whatsoever which resulted in dismissal of the application and same having been affirmed in M.A. No. 31/2014 vide judgment dated 15.10.2013 by the lower Appellate Court are before this Court seeking for quashing of these two orders at Annexure-G and Annexure-H respectively. I have heard the arguments of Sri Hemant R. Chandangoudar, learned Counsel appearing for the petitioners and Sri K.V. Muppayanavarmath, learned Counsel appearing on behalf of Sri Dinesh M. Kulkarni, for caveator/respondent Nos. 1, 2, 4 and 9. Perused the records.

2. Petitioners who are plaintiffs in O.S. No. 145/2014 have sought for partition and separate possession of half share in the suit schedule properties and also for declaration that judgment and decree passed in O.S. No. 14/1996 dated 04.03.1996 is not binding on them. In aid of main relief, an application IA-I was also filed under Order XXXIX, Rules 1 and 2 CPC to restrain the defendants from

alienating suit schedule properties till the disposal of the suit. Defendants appeared on service of suit summons, filed their written statement and also filed objections to IA-I and trial Court after considering the rival contentions has dismissed the application on the ground that plaintiffs are not having prima facie case, balance of convenience and held if an order of injunction is granted, defendants would be put to great hardship and inconvenience. It was also noticed by the trial Court that husband of 1st plaintiff and father of the remaining plaintiffs had executed registered release deed dated 27.09.1960 in favour of his father by relinquishing his right over the suit property and as such, there is no right vested with the plaintiffs over the suit schedule property. Said finding arrived at by the trial Court came to be affirmed by the lower Appellate Court while examining the correctness or otherwise of the order passed by the trial Court. Perusal of these impugned orders would clearly indicate that Sri Gangadhar Jakkannavar, husband of the 1st plaintiff and father of plaintiff Nos. 2 to 5 had executed a registered release deed dated 27.09.1960 in favour of his father and father of defendants relinquishing his right, title and interest over the joint family properties. It was also noticed by the trial Court as well as lower appellate Court that this fact had been suppressed by the plaintiffs. It has to be further noticed that 3rd defendant in the present suit had filed O.S. No. 14/1996 for partition and separate possession of his share in the suit schedule property and same came to be decreed by virtue of a compromise petition filed. When these proceedings took place, father of plaintiff Nos. 2 to 5 Sri Gangadhar Jakkannavar was very much alive and he did not challenge either the execution of the relinquishment deed/release deed executed by him during his lifetime nor did he challenge the compromise decree which came to be passed in O.S. No. 14/1996. On the other hand, defendants by virtue of they being the children of the second wife of Sri Tippanna Jakkannavar have been exercising their ownership over the suit schedule properties and the voluminous documents produced by them before the trial Court clearly indicated that they are in possession and enjoyment of the said property. Thus prima facie case and balance of convenience was in favour of the defendants and in view of there being a registered document, recitals found in the said document would prevail over any other material. Thus it came to be held that, if, an order of injunction is passed in favour of the plaintiffs, it would cause greater hardship and irreparable loss and injury to the defendants and not the plaintiffs. Taking these aspects into consideration amongst others, trial Court has rightly dismissed the application which order has been rightly affirmed by the appellate Court. There is no infirmity or illegality committed by the Courts below calling for exercise of supervisory jurisdiction to set aside the said orders.

For the aforesaid reasons, writ petition is hereby dismissed.

Ordered accordingly.