

(2023) 05 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No. 7387 Of 2023 (GM-CPC)

Kempamma & Others

APPELLANT

Vs

Mahadevaiah & Others

RESPONDENT

Date of Decision : 09-05-2023

Acts Referred:

Code Of Civil Procedure Code, 1908 — Section 151

Citation : (2023) 05 KAR CK 0018

Hon'ble Judges : T G Shivashankare Gowda, J

Bench : Single Bench

Advocate : V. B. Siddaramaiah, Narendra, Siddamallappa P. M

Final Decision : Allowed

Judgement

T.G. Shivashankare Gowda, J

1. Heard Sri. V. B. Siddaramaiah, learned counsel for petitioners and Sri. Narendra, learned counsel for Sri. P. M. Siddamallappa, learned counsel for caveator respondent No.1.

2. The matter is slated for orders. With the consent of both the parties, the same is taken up for final disposal.

3. Writ petitioners are defendant Nos.2 and 3 before the trial Court. Ranks of the parties are referred as per the status of the trial Court.

4. It is the contention of the learned counsel for the petitioners that the suit is filed for partition against the defendants. The defendant Nos.2 and 3 have not led their evidence, seeking opportunity to lead evidence. An application seeking permission has been filed which came to be dismissed by the trial Court.

5. Per contra, Sri. Narendra learned counsel for respondent No.1 has submitted that the suit is of the year 2007, inspite of sufficient opportunity, defendant Nos.2 and 3 have not cross-examined the plaintiff and their witnesses and also not led their evidence. Hence, trial Court has rightly dismissed the application

and supported the impugned order.

6. I have given my anxious consideration to the materials placed before the Court. The suit is filed for partition and separate possession of the plaintiff's half share in the suit schedule property. The defendants have filed their written statements and contesting the suit on various grounds. The plaintiff has lead evidence on his side, the defendants have not cross-examined the witnesses for various reasons and also not lead their side of evidence. Application for recall of the order dated 16.03.2023 has been filed.

7. The opportunity being refused by the trial Court attributing malafide against defendant Nos.2 to 5. The reasons assigned by the trial Court are now creating new ground of appeal to the defendants. It is the cardinal principles that all the suit filed should be decided comprehensive and not on the technical grounds. Hence, if an opportunity is provided, it will meet the ends of justice for which the writ petitioners are required to compensate the plaintiff. Hence, writ petition deserves to be allowed. In the result, following:

ORDER

1. Writ petition is allowed.

2. The impugned order is set aside. Trial Court is directed to consider the application filed under Section 151 of CPC filed by the defendant Nos.2 and 3 for re-opening of case for adducing the evidence of defendant Nos.2, 3, 5 and 7, allow the application and permit the parties to lead the evidence.

3. The parties are directed to appear before the trial Court on 22.05.2023 without fail. The trial Court is directed to pass order on the application on 22.05.2023 itself and provide opportunity to both the parties to lead the evidence. Having regard to the facts and circumstances and the suit is of the year 2007, the trial Court is directed to dispose of the suit within a period of four months from the date of receipt of copy of this order.

4. Defendant Nos.2 and 3 are directed to pay cost of Rs.10,000/- to the plaintiff on 22.05.2023.