

(2010) 06 KAR CK 0050

In the Karnataka High Court

Case No : Regular First Appeal No. 769 of 2007

M.N. Kaveramma and Another

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 08-06-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5

Citation : (2010) ILR (Kar) 3411 : (2010) 3 KCCR 2339

Hon'ble Judges : N. Ananda, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : Y.K. Narayana Sharma for Dharmashree Associates, for the Appellant; C. Krishnappa, for R6, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—This appeal is by the plaintiffs in the suit, who had sought for the following prayer in the suit before the learned Civil Judge, (Sr.Dn.), Madikeri.

A declaration to declare that the Schedule properties are the private properties of the plaintiffs and not public properties; declare that any marking made in the Map or Plan maintained by the Defendant No. 1 over the Schedule properties purporting to be paths or ways were not duly entered therein; declare that the order dated 18.01.1994 passed by the Defendant No. 3 in M.A.G. No. 245/1992-93 is without jurisdiction and is illegal and not enforceable in law; Permanent-Injunction restraining the Defendants, their men from enforcing the order dated 18.01.1994 passed by the Defendant No. 3 and restraining the Defendants, their men from interfering with Plaintiffs peaceful possession and enjoyment of the Schedule properties in pursuance of the Order dated 18.01.1994 passed by the Defendant No. 3.

As the suit came to be dismissed negating the claim of the plaintiffs, the present appeal.

2. Along with the appeal, the appellants had filed an application under Order 41 Rule 5 of CPC seeking for interim stay of not the judgment and decree impugned, but of an order, which had come to be passed initially by the 3rd respondent - Tahsildar in M.A.G. No. 245/1992-93 dated 18.01.1994 in a proceeding before him and this Court on such an application after admitting the matter on 5.04.2007 passed the following order, which reads thus:

Heard.

Admit.

Objections if any, by 10.4.2007.

It is submitted that the caveator has been served and remains absent.

Parties are directed to maintain status-quo as on the date of pronouncement of judgment and decree.

Emergent notice.

Call for records.

3. This appeal had come up for orders yesterday i.e., 07.06.2010 for passing orders on the memo filed for retirement by the learned Counsel who had filed power earlier and we noticing that Dharmashree Associates had filed power and the appellants are now represented by Sri Sachin and after noticing the nature of the order, the order appealed against and the kind of application that had been made, we expressed our surprise at the order of status quo that had come to be passed and therefore, directed the matter to be listed again today for considering as to whether such an interim order should be continued or otherwise.

4. It is for such purpose the matter is listed before the Court today.

5. Sri Narayana Sharma, learned Counsel has sought for permission to file power in the registry on behalf of the appellants on the submission that the Counsel is changed.

6. In the wake of such submission, we have permitted Sri Narayan Sharma, learned Counsel to file power in the registry and make submissions.

7. We have heard Sri Narayan Sharma, learned Counsel appearing for the appellants and Sri C. Krishnappa, learned Counsel appearing for the 6th respondent.

8. Sri Narayan Sharma, learned Counsel appearing for the appellants has vehemently submitted that such an order has been in vogue for the past more than three years, there is no need to discontinue the order, that it has served the purpose of the parties and is ready and willing to make submissions on the merits of the appeal.

9. Sri C. Krishnappa, learned Counsel for the 6th respondent has opposed the

same, countering the submissions of the learned Counsel for the appellants saying that the interim order has caused hardship to the respondents; they are obstructed from using existing pathway so also other villagers.

10. We have examined the prima facie merits of the matter also and we prima facie find that the appeal does not have much merit. Even the appellants did not enjoy the privilege of the interim order during the pendency of the suit to restrain the respondents from using pathway said to be existing in the lands of the appellants. O.S. No. 20/1995 was dismissed on 27.2.2007. The suit is dismissed on merits. The appellants, during pendency of suit did not have any interim order to prevent respondents from using the pathway.

11. The present appeal is a litigation, which is in continuation of O.S. No. 20/1995. The appellants were not successful before Revenue Authorities and before this Court in writ jurisdiction and could not get any order in their favour except the present interim order of status-quo in this appeal.

12. We find the status quo orders are ambiguous and obnoxious orders which creates more confusion and problems for the litigants than solving their problem or resolving their dispute! We are fully convinced the interim order of status quo that had been granted earlier on 5.4.2007 is not one to be continued any further. It is necessary for this Court to clarify the matter and put an end to the dispute between the parties by passing an appropriate order. But on the other hand in this case, we find that the order itself has given cause to a further dispute and controversy. Continuation of such interim order of status quo is definitely not only not appropriate but also not in the interest of the parties. In the circumstances, we dissolve the order of status quo and dismiss the application for stay.

13. The memo for retirement by Sri K.M. Nataraj, learned Counsel is ordered as the appellants are now represented by alternative counsel, Registry is directed not to show the name of Sri K.M. Nataraj as Counsel appearing for the appellants, any further.