

(2023) 01 KAR CK 0050

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 392 Of 2023 (CPC)

M/S Amt Venture Township LLP

APPELLANT

Vs

G Purushotham Naidu & Others

RESPONDENT

Date of Decision : 25-01-2023

Acts Referred:

Code Of Civil Procedure Code, 1908 — Order 39 Rules 1, Order 39 Rules 2, Order 43 Rule 1(r)

Citation : (2023) 01 KAR CK 0050

Hon'ble Judges : H.T. Narendra Prasad, J

Bench : Single Bench

Advocate : Srivatsa, Venkatasatyanarayana

Final Decision : Allowed

Judgement

H.T. Narendra Prasad, J

1. This appeal is filed under Order 43 Rule 1(r) by the proposed defendant No.15 challenging the order dated 17.12.2022 whereby ex-parte temporary injunction has been granted directing the proposed defendant No.15 to maintain status-quo in respect of the plaint schedule property.

2. For the sake of convenience, the parties are referred to as per their rankings before the trial court.

3. The brief facts of the case are that the plaintiff filed a suit for specific performance of the contract. Along with the plaint, he has filed an application under Order 39 Rules 1 and 2 of Civil Procedure Code. During the pendency of consideration of the application, the plaintiff has filed IA for impleading the proposed defendant No.15 - the appellant herein, as party to the suit. Notice has been ordered on the impleading application. In the meantime, the trial court has passed the impugned order. Being aggrieved by the same, the proposed defendant No.15 is before this Court.

4. Sri Srivatsa S., the learned Senior Counsel appearing for the appellant has contended that IA No.2 has been filed for impleading the appellant herein as a party to the suit. Notice has been issued on application for impleading returnable by 13.01.2023. In the meanwhile, the plaintiff has preponed the case and before the proposed defendant No.15 was impleaded, he has obtained an interim order against the proposed defendant No.15. The impugned order is passed contrary to the provisions of law, without giving any opportunity to the appellant herein. Hence, he sought for allowing the appeal.

5. Per contra, Sri Venkatasatyanarayana, the learned counsel appearing for the plaintiff has contended that when the plaintiff has come to know that his vendor has executed the sale deed in favour of the proposed defendant No.15, apprehending that, taking advantage of the sale deed the proposed defendant No.15 may alienate the property and he may create third party interest, the plaintiff moved the matter for preponing and obtained ex-parte interim order. Hence, he sought for dismissal of the appeal.

6. Heard the learned counsel for the parties and perused the appeal papers.

7. It is not in dispute that the plaintiff has filed a suit for specific performance of contract in O.S.No.1142/2022 and he has also filed an application under Order 39 Rules 1 and 2. In the meantime, he has filed IA No.2 for impleading the appellant as proposed respondent No.15 on 30.09.2022. The trial court has issued notice on IA No.2 returnable by 13.01.2023. In the meantime, the matter has been preponed. The trial court has passed an order on 17.12.2022 directing the proposed defendant No.15 to maintain status-quo. Since the impugned order is passed without impleading the proposed defendant No.15 as a party and even though the date has been fixed on 13.01.2023, without notice to the proposed defendant No.15 the matter has been preponed and the interim order has been passed. Hence, the impugned order is unsustainable and liable to be set aside.

8. Accordingly, appeal is allowed. The order dated 17.12.2022 passed by the Senior Civil Judge and JMFC, Devanahalli on IA Nos. 3 and 4 in O.S.No.1142/2022 is set aside. Since the plaintiff has the apprehension that the proposed defendant No.15 may alienate the property and may change the nature of the land, the parties are directed to appear before the trial court on 31.01.2023 at 11.00 a.m. without any further notice. The trial court is directed to consider the application filed by the plaintiff under Order 39 Rules 1 and 2 of CPC. The plaintiff is directed to serve plaint copy and IA copies on the proposed defendant No.15, forthwith.

It is made clear that the trial court shall pass the order afresh, in accordance with law, without being influenced by the observations made in the course of this order.

In view of disposal of the main appeal, all pending applications stand disposed of.