

(2024) 08 KAR CK 0008

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4656 Of 2024 (CPC)

M/S Sri. Venkateshwara Builders & Others

APPELLANT

Vs

Nagaraja.G & Others

RESPONDENT

Date of Decision : 05-08-2024

Acts Referred:

Code Of Civil Procedure, 1908 — Order 9 Rule 9, Order 39 Rule 1, Order 39 Rule 2

Citation : (2024) 08 KAR CK 0008

Hon'ble Judges : Lalitha Kanneganti, J

Bench : Single Bench

Advocate : Manjunatha S.V

Final Decision : Disposed Of

Judgement

Lalitha Kanneganti, J

1. The present appeal is filed aggrieved by the order passed in I.A. filed under Order 39 Rule 1 and 2 of CPC by the plaintiff Nos.1 and 2 in O.S.No.324/2008 dated 20.04.2024 passed by the VII Additional Senior Civil Judge & JMFC, Bengaluru Rural District, Bengaluru, whereby the trial Court had granted injunction restraining defendant No.14 or anybody claiming under them from putting up any construction in any portion of item No.2 of the suit schedule property till pending disposal of the suit. Aggrieved thereby, defendant No.14 is before this Court.

2. The facts of the case are that the respondents herein had filed a suit for partition. The appellant herein is arrayed as defendant No.14, who is the purchaser of the joint family property and he was set ex-parte on 16.12.2018 and later on 20.04.2024, the present injunction order is granted in favour of the plaintiff.

3. Learned counsel appearing for the appellant/defendant No.14 submits that he has raised a huge structure and at this point of time, the injunction order would cause a lot of hardship to defendant No. 14 and as such, the same has to be set

aside.

4. It is also an undisputed fact that he has not approached the Court to set aside the order placing him ex-parte and without questioning the same, he has come before this Court seeking to set aside the injunction order.

5. In the considered opinion of this Court, the appellant cannot maintain this appeal, first he has to approach the trial Court and file an application to set aside that order where he has been placed as ex-parte.

6. In that view of the matter, as this Court is not interfering with the order that is passed by the trial Court, this Court is not proposing to issue notice to the respondents. However, the appellant is at liberty to file an appropriate application under Order 9 Rule 9 of CPC before the trial Court and the trial Court shall decide the said application within 15 days from the date of filing. Thereafter, the trial Court can deal with the application filed by defendant seeking to vacate the interim injunction granted and the same shall be disposed off within 15 days from there on.

ORDER

i. Accordingly, the appeal is disposed off.

ii. I.A.No.1/2024 is dismissed as not pressed.