

(2014) 10 KAR CK 0121

In the Karnataka High Court

Case No : Writ Petition No. 40239/2014 (GM-CPC)

Mubeen Taj

APPELLANT

Vs

The Chief Officer Town Panchayat

RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:

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

Citation : (2014) 10 KAR CK 0121

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Janardhana G., Advocate for the Appellant; A.V. Gangadharappa, Advocate for AVG. Assts, Advocate for the Respondent

Judgement

A.S. Bopanna, J.—The petitioners are before this Court assailing the order dated 26.06.2014 passed on I.A. No. 3 in O.S. No. 144/2014 and the judgment dated 15.07.2014 passed in M.A. No. 3/2014. The same are impugned at Annexures-R and T to the petition.

2. The petitioners herein are the plaintiffs in O.S. No. 144/2014. In a suit filed by them against the respondents herein, they have sought for a judgment and decree of permanent injunction to restrain the defendants from interfering with the suit schedule property. In the suit schedule property, they have described the measurement of the same as East to West 209 feet and North to South 23 feet with the boundaries as shown therein. In the pending suit, they have also filed an application under Order 39 Rule 1 and 2 of CPC seeking grant of temporary injunction. The trial Court on considering the rival contentions has dismissed the application by the order dated 26.06.2014 (Annexure-R) to the petition. The plaintiffs claiming to be aggrieved by the same had preferred an appeal before the Lower Appellate Court in M.A. No. 3/2014. The Lower Appellate Court after considering the rival contentions has dismissed the appeal. Against the concurrent order and judgment passed by the Courts below, the petitioners are before this Court assailing the same.

3. This Court at the first instance had granted an order of status-quo. The respondents have filed the application in I.A. No. 2/2014 seeking that the stay be vacated. It is in that view, the petition is listed for consideration of the application for vacating stay. However, since consideration of the application would amount to consideration of the petition itself, the same is taken up with the consent of the learned counsel for the parties and disposed of by this order.

4. Heard Sri Janardhan. G., learned counsel for the petitioners and Sri A.V. Gangadharappa, learned counsel for the respondents and perused the petition papers including the rejoinder which is filed today before this Court.

5. At the outset, as noticed, both the Courts have passed concurrent order and judgment on the interlocutory application relating to the prayer for temporary injunction by rejecting the same. Certainly, this Court would interfere if it is found that a concurrent error has been committed by the Courts below. Yet, this Court would have to keep in view that in the prima facie stage, when the Courts below have recorded certain findings, this Court would not advert to consider the correctness or otherwise of the same treating the case as a mini trial at this stage. Therefore, limiting to the aspect of temporary injunction as sought by the plaintiffs therein and the same being repelled by the respondents, the instant petition is considered.

6. On facts, learned counsel for the petitioners has taken me through the papers to contend that the predecessor of the petitioners had purchased the property which had fallen to the share of his vendor under a partition deed. The partition deed at Annexure-A is referred to. In that view, it is contended that the vendor of the predecessor of the petitioners was entitled to the total extent of the land measuring 209 feet x 287 feet. In that regard, it is pointed out that though at the first instance, the said Sri Jayaram, the vendor of the predecessor of the petitioners had executed three sale deeds, the total extent conveyed under the said documents is 209 feet x 264 feet. In that view, it is pointed out that since an extent of 23 feet x 209 feet had remained without proper documents being executed in favour of the predecessor of the petitioners, a gift deed was executed by Sri Jayaram on 11.10.2004 (Annexure-K). It is therefore contended that from all the said documents, the total extent of 209 feet x 287 feet has become the property belonging to the petitioners. It is further contended that on execution of the gift deed, the predecessor of the petitioners has secured the assessment to be made in respect of the suit schedule property during the year 2004 itself and thereafter has been in possession and enjoyment of the property.

7. In that view, it is contended that the respondents who had no manner of right whatsoever in respect of the suit schedule property had attempted to put up construction on the same and on the petitioners learning of the same, had filed the suit. It is his contention that both the Courts below have erred in not properly construing the partition deed under which the vendor of the predecessor of the petitioners had acquired the property and the gift deed that has been executed on 11.10.2004 which relates to the property that is presently in

dispute. It is therefore contended that the Courts below ought not to have discarded a registered document which had been placed before it at this prima facie stage and should not have doubted the said document. It is also his case that the Lower Appellate Court in fact while having taken note of the said document had lightly arrived at a conclusion that such document could not have been executed between the persons belonging to two different communities. Such conclusion in fact touches upon the very merit of the contention put forth in the suit and the same could not have been a consideration to be made at the prima facie stage. In that view, it is his case that when the documents are relied on by the plaintiffs and the defendant had not put forth any valid documents to claim ownership of the property to which the plaintiffs were claiming right, the Courts below were not justified.

8. Learned counsel for the respondents would however seek to sustain the order and judgment passed by the Courts below. It is his case that even if the partition deed is taken into consideration, the maximum that the predecessor of the petitioners could acquire is the extent of the property conveyed under three sale deeds. It is his case that when the predecessor of the petitioners himself had filed a suit in the year 2006, no reference whatsoever was made either to the gift deed or to the extent indicated in the gift deed and therefore, the petitioners who are seeking to succeed to the said property cannot claim a better right than what had been put forth in the earlier suit. In any event, it is his case that the Courts below at this prima facie stage have arrived at the conclusion that the petitioners have not made out a prima facie case and even otherwise, the balance of convenience and the irreparable injury aspect has also been considered by the Courts below. When such concurrent conclusion has been reached by the Courts below, this Court should be slow to interfere with such findings, is the contention.

9. In the light of the rival contentions, it is no doubt true, as already noticed, at this stage, neither the Courts below nor this Court will hold a mini trial. It is also true that the Courts below have not relied upon the gift deed on which the plaintiffs have placed reliance to claim right over the suit schedule property. Though certain observations have been made by the Courts below to discard the gift deed, at this stage, such observations can only be considered as the prima facie observations so far as it relates to the interlocutory application being considered. In that light, even though a registered gift deed has been relied upon by the petitioners to claim title to the property which is the subject matter of the present suit in O.S. No. 144/2014, in my opinion, what is of relevance is that the predecessor of the petitioners and petitioners No. 1 and 2 herein had instituted an earlier suit in O.S. No. 193/2006 against the very same defendant. The plaint in the said suit is available at Annexure-N. The schedule to the said suit would describe three items of the properties which had been sold by Sri Jayaram and others in favour of the predecessor of the petitioners and petitioners No. 1 and 2 herein. In the plaint also, there is no reference to the gift deed which is being presently relied upon. But while claiming right to the suit schedule property, it

has also been indicated in the plaint that the said property is enclosed by a compound wall on all sides. If this aspect of the matter is kept in view and if in the present circumstance the gift deed as relied on by the plaintiffs is taken note and it is also taken into consideration that at the first instance after the gift deed, tax assessment was made, there is no subsequent material to indicate that the tax in respect of the property which is the subject matter under the gift deed was being paid during every assessment year thereafter, the said document cannot be relied at this prima facie stage.

10. Hence, in such circumstance, when the predecessor of the petitioners and petitioners No. 1 and 2 themselves had made a different claim in the earlier suit and even though the earlier suit cannot be considered as a bar to the subsequent suit, the aspect relating to the claim as being made would be relevant to be taken note of at this stage. Therefore, in any event, it cannot be accepted at this stage that an indefeasible prima facie case has been made out by the petitioners though ultimately the plaintiffs based on the evidence that would be placed on record may put forth all aspects in the suit.

11. Further, the learned counsel for the petitioners while attacking the finding of the Courts below in permitting the respondents to proceed with the construction has placed reliance on the judgment of the Hon"ble Supreme Court in the case of Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass, wherein it is held that when there are serious disputes, the nature of the properties should not be allowed to be altered. The decision in the case of Venkat Reddy Vs. Budenna and Others, is also relied on by the learned counsel for the petitioners to contend that the relevant facts would have to be taken into consideration before the discretion is exercised in matters relating to the injunctions.

12. On the proposition of law as relied on, there can be no dispute whatsoever. It is no doubt true that it is desirable in most of the cases to retain the nature of the property as it exists as on the date of the suit. In the instant case, apart from noticing the nature of the claim that had been made by the purchaser in an earlier suit and the claim being presently made, what is also to be kept in view is that the respondent-Municipal authority had floated the tender with regard to the construction that is to be put up on the property and the contract has already been awarded as noticed by the Court below. Further the photographs which have been produced would also indicate that the construction has been commenced and the pillar has been put up. Therefore, at this stage, if the status-quo is ordered to be maintained as it is, it would neither benefit the petitioners nor the respondents. While on the other hand having already awarded the work and a contract having been entered into, the contractual rights between the respondent and the contractor would also come into play. Therefore, at this stage, when the prima facie case itself is not made out, the appropriate course would be to allow the construction to be completed since in any event such construction to be put up would ultimately remain subject to result and the case which would be put forth by the parties. Therefore, even on that ground, I do not

find any error that has been committed by the Courts below while considering the question of balance of convenience or with regard to the aspect relating to irreparable injury.

13. Therefore, in such circumstance, I see no reason to interfere with the order and judgment of the Courts below. However, it is clarified that any of the observations made by the Courts below or by this Court for the purpose of considering the interlocutory application relating to injunction shall be limited to that aspect of the matter and the same shall not weigh in the mind of the Courts below while considering the evidence that would be placed by the parties. The decision on merits shall be taken by the Court below based on the evidence that would be placed before the Court by the parties. Needless to mention that since at this stage there is challenge to the title, the petitioners may seek for appropriate reliefs before the Court below by making the suit a comprehensive one and if such request is made, the Court below would consider the same in accordance with law.

14. Further, considering the nature of dispute, it is also open for the parties to make a request before the Court below for early disposal of the suit and if such request is made, the Court below; depending on its Board may fix a time frame, secure the cooperation of the learned counsel for the parties and dispose of the suit itself in an expeditious manner.

In terms of the above, the petition stands disposed of.