

(2015) 11 KAR CK 0157

In the Karnataka High Court

Case No : Regular Second Appeal No. 7357/2012

Mustafa Khawajasab and Others

APPELLANT

Vs

Mahiboobsab Hasansab Rugi and Others

RESPONDENT

Date of Decision : 23-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2-A
Constitution of India, 1950 — Article 227
Karnataka Land Reforms Act, 1961 — Section 133, 48-C

Citation : (2015) 11 KAR CK 0157

Hon'ble Judges : A.N. Venugopal Gowda, J.

Bench : Single Bench

Advocate : Ameet Kumar Deshpande, Advocate, for the Appellant; Biradar V.M., Advocate, for the Respondent

Judgement

A.N. Venugopal Gowda, J.—The respondents along with three other persons instituted O.S. No. 279/1998, on 09.07.1998, in the Court of I Addl. Civil Judge (Jr.Dn.), Bijapur to pass a decree of permanent injunction restraining the defendants from taking up construction work in the suit schedule properties and further restrain the defendants from alienating the suit properties, pending disposal of tenancy dispute before the Land Tribunal at Bijapur i.e., in case No. KLR.SR-216. The suit was decreed in respect of plaintiff Nos. 2 and 5 and the defendants were restrained by passing a decree of permanent injunction from making any construction over the suit schedule "B" and "E" properties and from alienating the same till the land Tribunal decides the tenancy dispute between the parties i.e., in case No. KLR.SR-216. By passing a decree of mandatory injunction, the defendants were directed to remove the construction already made on the suit schedule "B" and "E" properties i.e., during the pendency of the suit, within a period of two months from the date the decree was passed. R.A. No. 48/2008 was filed by the defendants. In the said appeal, the III Addl. Senior Civil Judge, Bijapur passed a judgment dated 06.06.2012 and allowed the appeal in part. The impugned judgment was set aside in part. The decree passed

by the trial Judge for mandatory injunction to remove the construction made on the suit schedule "B" and "E" properties, during the pendency of the suit, was confirmed. Assailing the said decrees, the defendants/their L.Rs. have filed this second appeal.

2. The plaintiffs have not questioned the judgments and decrees passed by the Courts below, to the extent they are adverse to their interest.

3. Considering the rival contentions and the record of the suit and the impugned judgments, the substantial question of law which arises for determination is,

"Whether the suit is maintainable in view of the provisions under Section 133 R/w Section 48-C of the Karnataka Land Reforms Act?"

4. The Land Tribunal at Bijapur had passed an order dated 29.10.1981, which became the subject matter of consideration in W.P. No. 13015/1998. The writ petition was allowed and the Tribunal was directed to issue notice to all concerned parties and proceed further. Undisputedly, the Land Tribunal at Bijapur has not decided the matter in pursuance of the said order of remand.

5. Their being no dispute that the suit schedule property is a subject matter of consideration before the Land Tribunal at Bijapur, the relief, if any, of the nature sought in O.S. No. 279/1998, ought to have been sought before the Land Tribunal, by making application under Section 48-C of the Karnataka Land Reforms Act. Instead, the suit instituted being not maintainable, ought to have been dismissed. The appellate Judge, though found merit in the contention of the defendants that the suit is not maintainable, has committed an error in maintaining the decree of permanent injunction granted by the trial Judge. When the suit itself is not maintainable, question of passing any order on the ground that the construction was made during the pendency of the suit is illegal. The Court having no jurisdiction, in the absence of an application/petition filed under Order 39 Rule 2-A of CPC, has committed an error and illegality in passing the decree of mandatory injunction, which has been erroneously maintained in appeal, by the Court below. To the extent of challenge by the defendants, in this appeal i.e., the judgment and decree passed by the lower appellate Court is well founded.

Hence, the appeal is allowed and the impugned decree is set aside and O.S. No. 279/1998 on the file of I Addl. Civil Judge (Jr.Dn.), Bijapur being not maintainable, stands dismissed accordingly.

However, it is made clear that this judgment/decreed would not stand in the way of the land Tribunal, Bijapur deciding the matter in case No. KLR.SR-216, in accordance with law.

Consequently, I.A. 2/2012 filed for stay does not survive for consideration and is disposed of accordingly.

Contention of both parties with regard to merit or otherwise of the said case

pending before the Land Tribunal, Bijapur is left open.

The order of remand having been passed on 17.09.1998 in W.P. No. 13015/1998, this Court unable to understand the reason for not deciding of the case, till date, by the Land Tribunal, Bijapur. The Land Tribunal shall take expeditious steps to decide the said matter. If the matter is not decided with expedition and within a period of six months from today, it is open to either of the parties to seek directions by maintaining a petition under Article 227 of the Constitution of India.

Both parties to bear their respective costs, throughout.