

(2014) 02 KAR CK 0192

In the Karnataka High Court

Case No : Writ Petition No. 662 of 2014 (GM-CPC)

Nanjegowda and Others

APPELLANT

Vs

C.M. Rangegowda and Others

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2014) 2 AKR 118 : (2014) 2 KCCR 1585

Hon'ble Judges : H. Billappa, J

Bench : Single Bench

Advocate : Shrikara P.K, Advocate for the Appellant; A.S. Mahesha, Advocate for the Respondent

Final Decision : Dismissed

Judgement

H. Billappa, J.—Respondents-1(a) to (g) and the respondent No. 3 are only formal parties. The second respondent is the contesting respondent. Therefore, the matter is heard on merits. In this writ petition under Article 227 of the Constitution of India, the petitioners have called in question, the order dated 28-13-2013, passed by the trial court in O.S. No. 146/2007 on I.A. No. 25 vide Annexure-A.

2. By the impugned order at Annexure-A, the trial court has rejected I.A. No. 25 filed by the petitioner for appointment of the Court Commissioner to make scientific investigation in respect of the sale deed dated 6-2-1981.

3. Aggrieved by that, the petitioner has filed this writ petition.

4. Briefly stated the facts are:

The petitioners have filed suit in O.S. No. 146/2007 for redemption of the mortgage dated 21-11-1974. The parties have led their evidence. Thereafter, the petitioners have filed I.A. No. 25 praying to appoint the Court Commissioner for scientific investigation in respect of the sale deed dated 6-2-1981. The trial court

by its order dated 28-11-2013 has rejected the application. Therefore, this writ petition.

5. The learned counsel for the petitioners contended that the impugned order cannot be sustained in law. He also submitted that the petitioners have denied the execution of the sale deed dated 6-2-1981. Therefore, it was necessary to appoint the Court Commissioner for expert's opinion. The trial court has erred while rejecting I.A. No. 25. Therefore, the impugned order cannot be sustained in law.

6. As against this, the learned counsel for the second respondent submitted that the impugned order does not call for interference. He also submitted that the petitioners have suffered a finding in O.S. No. 432/1992 and O.S. No. 201/1997 that the sale deed dated 6.2.1981 is valid and binding on the petitioners. Therefore, it was unnecessary to appoint the Court Commissioner. The Trial Court has rightly rejected the application. Therefore, the impugned order does not call for interference.

7. I have carefully considered the submissions made by the learned counsel for the parties.

8. The point that arises for my consideration is, whether the impugned order calls for interference? It is relevant to note, the suit in O.S. 146/2007 has been filed by the petitioners for redemption of the mortgage dated 21-11-1974. The petitioner No. 3 herein had filed suit in O.S. No. 432/1992 for declaration, partition and mesne profits, in the said suit, one of the issues was whether the sale deed dated 6-2-1981 is binding on the petitioner No. 3. The trial court has held that the sale deed is valid and binding on the petitioner No. 3. In the said suit, the petitioners 1 and 2 were defendants 3 and 4. A clear finding has been recorded in O.S. No. 432/92 and O.S. No. 201/97 that the sale deed dated 6-2-1981 is valid. The present suit is only for redemption of the mortgage dated 21.11.1974. Therefore, the impugned order does not call for interference. There is no merit in this writ petition and therefore, it is liable to be dismissed.

Accordingly, the writ petition is dismissed.