

(2014) 02 KAR CK 0099

In the Karnataka High Court

Case No : Writ Petition No. 100911 of 2014 (GM-CPC)

Sanjeevappa Mallappa Kundur

APPELLANT

Vs

Bharateeya Adima Jati Sevaka Sangh

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

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

Citation : (2014) 4 KarLJ 498

Hon'ble Judges : B. Sreenivas Gowda, J

Bench : Single Bench

Advocate : V.P. Kulkarni, Advocate for the Appellant; F.V. Patil, Advocate for the Respondent

Judgement

B. Sreenivase Gowda, J.—The plaintiff in O.S. No. 298 of 2013 on the file of I Additional Judicial Magistrate First Class, Ranebennur has filed this writ petition seeking to quash the order Annexure-J, dated 4-1-2014 passed in MA No. 19 of 2013 by the Principal Civil Judge, Ranebennur in allowing the said appeal and setting aside the order of temporary injunction granted by the Trial Court in favour of the petitioner. The petitioner has filed O.S. No. 298 of 2013 against the respondent for declaration and consequential relief of permanent injunction. Along with the suit, he filed an application under Order 39, Rules 1 and 2 of the Civil Procedure Code, 1908, seeking an order of temporary injunction restraining the defendant/respondent herein from interfering with his possession and enjoyment over the suit property. The Trial Court allowed the application and granted an order of temporary injunction as prayed for. Defendant/respondent aggrieved by the said order of Trial Court challenged the same by preferring MA No. 19 of 2013 before the Principal Civil Judge, Ranebennur. The lower Appellate Court, allowed the appeal and modified the order of temporary injunction granted by the Trial Court and permitted the defendant to carry on the construction work as prayed subject to the condition that in case the plaintiff succeeds in the suit, defendant shall hand over the vacant possession of such area to the plaintiff at his own cost.

2. At the instance of both the parties, this Court, by order dated 20-2-2014 appointed the ADLR, Haveri as Court Commissioner to measure the total extent of land belonging to Murugendrappa, the common vendor of the parties to the suit, the extent of land purchased by the plaintiff/petitioner and the extent of land purchased by defendant/respondent with respect to their sale deeds and demarcate the boundaries with a sketch with the assistance of the City Surveyor, Ranebennur and submit his report and sketch.

3. Accordingly, the Court Commissioner submitted his report along with the sketch by demarcating the suit property purchased by the plaintiff by letters ABCD and the property purchased by the respondent/defendant by letters PQRS and the disputed area by letters ARSD. Of course there is little mistake in demarcating the disputed area. The report and the sketch of the Commissioner are taken on record.

4. The learned Counsel appearing for the petitioner after going through the report and the sketch submits, the petitioner will be satisfied if the defendant is permitted to put up construction leaving the area marked by letters "ABCD" in the report and the sketch of the Commissioner.

5. Learned Counsel for respondent/defendant submits, respondent will be satisfied if they are permitted to put up construction by leaving the area marked by letters "ABCD" in the sketch and the report of the Commissioner.

6. Learned Counsel for the parties pray the Court to dispose of the writ petition by modifying the impugned order suitably.

7. Accordingly, the writ petition is allowed. Impugned order dated 4-1-2014 passed in MA No. 19 of 2013 vide Annexure-J by the Principal Civil Judge, Ranebennur is modified as under:

The defendant/respondent is hereby permitted to put up construction leaving the area marked by letters "ABCD" in the report and the sketch of the Commissioner. The report and the sketch of the Commissioner are ordered to be treated as part of record.

It is made clear that, the order passed by this Court is only a temporary arrangement till the disposal of the suit O.S. No. 298 of 2013 as such, the Trial Court is directed to dispose of the suit on merits and in accordance with law as expeditiously as possible at any rate within one year from the date of receipt of a copy of this order without being influenced by the observation made in this order. Both the parties shall co-operate for disposal of the case by the Trial Court.