
(2015) 03 KAR CK 0160
In the Karnataka High Court
Case No : M.F.A. No. 1642/2015 (CPC)

S.K. Guharoy

APPELLANT

Vs

P. Ramamurthy and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1(r)

Citation : (2015) 03 KAR CK 0160

Hon'ble Judges : A.V. Chandrashekara, J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.V. Chandrashekara, J.—The present appeal is filed under Order XLIII Rule 1(r), C.P.C. challenging the dismissal of I.A. I filed under Order XXXIX Rules 111 and 2, C.P.C. in a case in O.S. 9527/14 vide order dated 11.12.2014.

2. The petitioner has appeared in person and submitted his arguments. He is aggrieved by the order dated 11.12.2014 passed by the XVIII Additional City Civil Judge, Bengaluru, by which his application under Order XXXIX Rules 111 and 2, C.P.C. has been dismissed. Respondents 1 to 3 are defendants 1 to 3 in the said suit. Parties will be referred to as plaintiff and defendants as per their ranking before the trial court.

3. The plaintiff has filed the suit for the relief of permanent injunction. It is his case that being a doctor, he is doing consultancy in room Nos. 1 and 3 in Medicstar Hospital, Bengaluru. He had filed an application seeking the relief of temporary injunction restraining the defendants from interfering with his practice as consultant in the said hospital. The said application has been dismissed after contest.

4. It is his case that he is a senior consultant in the field of cardiology and diabetology and runs a consultancy clinic at Hennur for the past 12 years. In the

month of March 2014, defendants approached him to look after the consultancy and administration of the hospital as Chief Executive Officer (CEO) owned by the 1st defendant. According to him, defendants 2 and 3 visited the hospital and decided to take management of the hospital on lease and in that regard, a Memorandum of Understanding (MoU) was entered into between defendants 2 and 3 on the one hand and the 1st defendant on the other hand, in his presence.

5. The plaintiff is stated to be doing consultancy work since May 2014 in the said hospital and looking after the development of the hospital. Apart from this, he is stated to have invested about Rs. 10-12 lakhs to cater to the needs of patients in the hospital. According to him, some misunderstanding cropped up between the defendants inter se in the month of October 2014 and the 1st defendant instructed his staff not to provide the keys of rooms and basic facilities to him. As such he had to lodge a complaint to the police and the police had warned the defendants. In spite of the same, defendants attempted to dispossess him from the hospital. It is in this regard he had sought the relief of temporary injunction against interference.

6. The 1st defendant has filed a detailed written statement denying all material averments and the same is treated as objections to I.A.I. The case of the 1st defendant is that he is a respected medical practitioner in the locality for the past 40 years and has invested a huge amount of his own and also by obtaining loan. Due to old age, he had given an advertisement in THE DECCAN HERALD on 23.3.2014 and 28.9.2014 to lease out the hospital. The plaintiff was not known to him and represented that he had good contacts with many doctors and was capable of bringing doctors of various fields to run the hospital, provided he was given some commission for the services rendered. Defendants 2 and 3 visited the hospital and ascertained the facilities available and agreed to take the hospital for rupees two crores.

7. On 24.6.2014, a MoU was entered into between the 1st defendant and defendants 2 and 3 and Rs. 10,00,000/- was paid by them as advance and they agreed to pay the balance amount on or before 31.3.2015. On 5.9.2014, the 2nd defendant expressed his inability to pay the remaining Rs. 1,90,00,000/- due to financial crunch and as such the MoU dated 24.6.2014 was cancelled. The 1st defendant, it is alleged, had never handed over the hospital either to the plaintiff or defendants 2 and 3, and the plaintiff was never the CEO of the hospital. He had acted only as an agent between defendants 2 and 3 and the plaintiff in respect of leasing the hospital for which he has received Rs. 1,00,000/- as commission. The entire averments in the plaint are stated to be false and frivolous.

8. The learned judge has framed the following points for consideration as found in page 5 of the impugned order:

1) Whether the plaintiff has made out a prima facie case for grant of temporary injunction as prayed in I.A.I.?

2) Whether the 1st defendant made out a ground to vacate the order of status quo passed on 11.12.2014?

3) In whose favour balance of convenience lies?

4) Whether the plaintiff will be put to irreparable loss and hardship if an order of ad-interim injunction is vacated?

After analyzing the materials placed on record, the learned judge has dismissed the application and answered point Nos. (1) and (4) in the negative, point No. (2) in the affirmative and point No. (3) in favour of the 1st defendant. It is this order which is called in question in this appeal on various grounds as set out in the appeal memo.

9. Existence of a prima facie case is a harbinger to investigate other points in an application under Order XXXIX Rules 1 and 2, C.P.C. Even if the appellate court were to come to a different conclusion from that of the one arrived at by the trial court, the same cannot be substituted or altered, unless it suffers from perversity or absurdity. Perversity or absurdity can be inferred provided the material documents having a bearing on the case are either ignored or the law is misapplied to the facts of the case.

10. The subject matter of the suit is consultancy room Nos. 1 and 3 of Medicstar Hospital, Shivajinagar, Bengaluru. The plaintiff is expected to make out a existence of a prima facie case. He has furnished a copy of the legal notice dated 27.8.2014 issued by him to the 2nd defendant and a copy of notice dated 27.9.2014 issued by him as also copy of the complaint given to the police. He is not a party to the MoU that took place between the 1st defendant on one hand and other defendants on the other hand. The said MoU has been cancelled and it is no more in existence.

11. The 1st defendant is the absolute owner of the hospital. No explanation is given by the plaintiff in respect of the cancellation of MoU. The plaintiff has no role to play on the basis of the agreement entered into between defendants 1 to 3 inter se. Mere issuing legal notice would not clothe him with rights. A copy of the complaint dated 3.10.2014 and the F.I.R. would show that the plaintiff is not in possession and enjoyment of the premises as consultant or CEO. The complaint discloses that he was not allowed by the defendants to go to the hospital. Nothing is placed on record to show that he had entered the hospital and continued as consultant or as CEO. The documents filed by the plaintiff and the averments made in the plaint have been emphatically denied by the defendant.

12. After analyzing the entire materials placed on record, the learned judge has come to the conclusion that more hardship and inconvenience would be caused to the 1st defendant than to the plaintiff in the event of granting temporary injunction. The learned judge has adopted right approach to the real state of affairs. No perversity or illegality is found in the impugned order.

13. There is no reason to interfere with the conclusion arrived at by the trial court on the basis of the materials placed on record. It is not the case of the plaintiff that certain documents have been ignored or law has been misapplied. In this view of the matter, the appeal is liable to be dismissed as unfit for admission.

14. In the result, I pass the following order:

ORDER

The appeal is dismissed as unfit for admission. Parties to bear their own costs.