

(2018) 03 KAR CK 0025

In the Karnataka High Court

Case No : Regular Second Appeal No.436 of 2012

Smt. Jayamma and Ors @APPELLANT@Hash Sri. Gangaswamy and Ors

Date of Decision : 20-03-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 100, Order 39 Rule 2A

Citation : (2018) 03 KAR CK 0025

Hon'ble Judges : SREENIVAS HARISH KUMAR, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This RSA coming on for Orders on I.A.1/15, the Court made the following :

ORDER ON I.A.I/2015

On 6.11.2012, an order was passed directing the parties to maintain status quo. Complaining willful disobedience of this order by the appellants, the respondents have made an application, I.A.I/15 under Order 39 Rule 2A CPC to punish the appellants.

2. The application is supported by an affidavit of 1st respondent. He states that the order of status quo binds both the parties to the appeal, that the appellants wilfully disobeyed the interim order obtained by them by entering into a partition on 27.07.2013 through a registered instrument and that the appellant No.3 executed a registered sale deed in favour of K.N. Vanajakshi on 02.12.2013. He also states both these transactions were made deliberately after this court granted an interim order on 06.11.2012. He has produced certified copies of these two transactions.

3. The appellants have filed statement of objections contending that the interim order did not prohibit alienation and therefore they have not violated the interim order.

4. Since, an enquiry on this application was required, the Registrar (Judicial) was directed to record evidence of the witnesses. Accordingly he

examined two witnesses, PW-1 i.e., the respondent No.1, and RW1 â?" appellant No.3. PW-1 produced three documents Ex.P.1 to P.3. Ex.P.1 is the

copy of registered partition deed dated 27.07.2013, Ex.P.2 is the copy of sale deed dated 30.11.2013 and Ex.P.3 is a xerox copy of memo filed in

F.D.P.1/12.

5. I have heard the learned counsel for parties on this application.

6. The counsel for applicants argued that the two transactions under Ex.P.1 and Ex.P.2 show deliberate and willful violation of the order of status quo

passed by this court. RW1 has clearly admitted in the cross examination that he had knowledge of the order, and if the appellants would partition the

suit property and one of them would sell his share to one Smt. Vanajakshi as per Ex.P.2, it was nothing but wilful violation of the order of this court.

They are the contemnors, and need to be punished.

7. The learned counsel for the appellants submitted that the status quo was with respect to preserving the nature of the land. Even today its nature is

not changed. The interim order did not restrict effecting partition and alienation. Therefore there is no violation of the order of this court. The

respondents have deliberately filed the application under Order 39 Rule 2A CPC to trouble and harass the appellants. The application deserves

dismissal.

8. It is found from the oral evidence of witnesses that PW1 states about partition and execution of sale deed, after passing of the order of status quo.

It is elicited from him in the cross examination that status quo means that things should be maintained as they are.

9. Oral evidence of RW-1 is very important because it is against him that imputation of disobedience of interim order is levelled. The answer that he

has given in the cross examination shows that he understood the status quo order in such a way as to maintain the subject matter of the suit as it was

at the time of passing the order. He has answered that when the order was passed, the subject matter of the suit was an agricultural land, and even

now it is agricultural land only. It is also his another answer that he had no idea that the property should not be sold and that they (he and other

appellants) thought that the land should be maintained as it was.

10. From the oral evidence, it becomes evident that the parties have understood the order that suits to their need and convenience. There is miscomprehension and misconception of the order. If the respondents have understood the order as it requires preservation of the nature of property including prohibition to alienate, the appellants have taken it other way that there was no prohibition for effecting partition and selling. They are not to be blamed.

11. It has become ineffective to proceed under Order 39 Rule 2A CPC because of want of clarity and certainty in the order. An order of status quo should not be passed for mere asking. Before passing an order of status quo, it is very essential that the status of the property on that day must be ascertained from the parties. Whenever a party putforths a request for status quo order, it is very much necessary that such party should appraise the court of the situation or the circumstance necessitating an order of status quo to be passed. If either side parties are before the court, no status quo order shall be passed unless the parties agree to a particular status. From the submission made by the parties or on their behalf, the court must record the position or status to be maintained. If necessary photograph showing the position and signed by the parties may be placed on record. If injunction order is found to be more effective than status quo order, it is better to issue injunction than passing status quo order.

12. Therefore, the order of status quo is found to be capable of interpretation by the parties; it is uncertain to bind a party to a particular status. Since the action to be taken under Order 39 Rule 2A CPC is punitive, it is necessary that wilful disobedience must be proved by the applicant. In the case on hand, because of miscomprehension of the order by the appellants, it is difficult to say that partition of the property among themselves, and one of them selling it subsequently amounts to violation of status quo order. I.A.No.I/2015 is therefore dismissed.