

(2011) 12 KAR CK 0168

In the Karnataka High Court

Case No : Writ Petition No. 12841 of 2011 (GM-CPC)

Sri. B. Makaiah

APPELLANT

Vs

Sri. C. Pothegowda, Sri C. Ramegowda Respondent Nos. 1
and 2 are, Smt. Channamma and I Lingaiah @ Vakilegowda

RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 131

Citation : (2011) 12 KAR CK 0168

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : P. Nataraju, for M/s. P. Nataraju Associates, for the Appellant; T.N. Raghupathy and G. Jayashree Advs., for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Mrs. Justice B.V. Nagarathna

1. This writ petition is directed against the order dated 8.2.2011 passed on I.A.No.16, which is an application filed u/s 131 of CPC seeking permission to cross-examine the 2nd defendant. The said application is filed by the 3rd defendant, who is the petitioner herein, in O.S.No.3/2007 pending on the file of the Senior Civil Judge, Kollegal. The said application has been dismissed. It is against the said order that this writ petition is filed.

2. I have heard the learned counsel for the petitioner and perused the material on record.

3. It is noted that respondent Nos.1 and 2 who are the plaintiffs in the said suit have filed the suit for declaration that they are the owners in possession and enjoyment of the Schedule-A and B properties and they have also sought for declaration that sale deed dated 28.3.2005 is null and void and other consequential reliefs.

4. The petitioner herein has filed his written statement on 24.3.2007. In the written statement, the petitioner has stated that he has purchased the suit schedule property from, the 2nd defendant, Thereafter, an application is filed seeking permission to cross-examine the 2nd defendant. The said application is dismissed.

5. Having regard to the fact that the petitioner, who is the 3rd defendant in the suit, has placed reliance on the sale made by the 2nd defendant in his favour for a valuable consideration pursuant to the Sale Deed dated 28.3.2005 in order to prove that he has purchased the A-Schedule properties, the said document has to be tendered in evidence. The contents of the document would have to be proved in accordance with law. For that purpose, cross-examination of 2nd defendant who is the vendor of the A-schedule properties in terms of that document would not arise, since the burden is cast on the petitioner herein to prove the said document in accordance with law. If the sale deed is proved in accordance with law then the same would prevail over any oral evidence. In that view of the matter, the trial Court was justified in dismissing the application. The said order would not call for any interference in this writ petition. The writ petition is therefore, rejected.