

(2010) 04 KAR CK 0249

In the Karnataka High Court

Case No : Writ Petition No. 7227 of 2010

Sri Govinda Swamy, Since dead represented by (Smt. Shanthamma and Others) and Tippamma

APPELLANT

Vs

Smt. Kamalamma, Smt. Indramma and Smt. Sarojamma

RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Citation : (2010) 04 KAR CK 0249

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Meena Venugopal, for K.R. Chawla and Co, for the Appellant; S.N. Bhat, for C/R-1 to 3, for the Respondent

Judgement

B.S. Patil, J.—This writ petition is filed by the defendants in the Trial Court challenging the order of temporary injunction granted against

them not to alienate or encumber the suit schedule property.

2. Respondents herein have filed the suit for partition. Along with the plaint they have filed an application seeking temporary injunction to restrain

the defendants-petitioners herein from in any manner alienating or encumbering the suit schedule property. The Trial Court, upon hearing the parties

and on consideration of the materials on record, granted an order of temporary injunction. Aggrieved by the same, petitioners herein preferred

Miscellaneous Appeal in MA No. 18/2009. The said appeal has been dismissed by order dated 15.12.2009. Aggrieved by the same, petitioners

are before this Court in this writ petition.

3. Learned Counsel for the petitioners submits that Item No. 1 of Schedule "B" of the plaint schedule is a property which was leased in favour of

an Educational Institution prior to the institution of the suit and the lease period has expired during the pendency of the suit, resulting in the property

lying idle. It is further contended that this property requires repair as otherwise it will suffer damage. It is also contended that even Item No. 2 of

Schedule "B" which is a residential house with a commercial unit attached also requires repair and therefore the order passed granting temporary

injunction requires to be modified and interfered with. Several other contentions are also urged on merits.

4. Learned Counsel for the respondents strongly supports the findings recorded by both the Courts below with regard to the prima facie case

made out and the balance of convenience and as also the irreparable injury which would result to the plaintiffs, if no interim order of injunction was

granted.

5. Having heard the learned Counsel for the parties and on careful perusal of the materials on record, I find that both the Courts below have

concurrently found that the plaintiffs have made out a prima facie case and that the balance of convenience was in their favour and that the

properties which are the subject matter of partition are required to be maintained in status-quo as otherwise the interest of the plaintiffs will be

jeopardized. This Court in exercise of the writ jurisdiction cannot interfere with such findings arrived at by both the Courts below as there is no

apparent illegality or error of jurisdiction in the orders passed. However, having regard to the contentions raised by the learned Counsel for the

petitioners that the property described in Item No. 1 of Schedule "B" to the plaint Schedule was leased in favour of an Educational Institution and

upon the expiry of the lease period, the property is lying idle and further that the said property along with Item No. 2 which is a residential house

with commercial unit required repairs for being protected from any damage, I find it just and appropriate to reserve liberty to the petitioners to

apply to the Trial Court to seek necessary permission for leasing out Item No. 1 of Schedule "B" and for carrying out necessary repairs to Item

Nos. 1 and 2 of Schedule "B". If such an application is filed, the Trial Court is directed to consider and dispose of the same as expeditiously as

possible. I also find it just and appropriate to direct the Trial Court to expedite the suit and ensure that the suit itself is disposed of within a period

of eight months from the date of receipt of a copy of this order. Writ Petition is accordingly disposed of.