

(2010) 04 KAR CK 0115
In the Karnataka High Court
Case No : M.F.A. No. 2485 of 2008

Sri Muniraju Reddy, Vimalamma, Prashanth V. and Pramod V.	APPELLANT
Vs	
Panyam Cements and Minerals Industries Ltd. and Salarpuria Projects Pvt. Ltd.	RESPONDENT

Date of Decision : 12-04-2010

Acts Referred:

Citation : (2010) 04 KAR CK 0115

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : H.R. Ananthakrishna Murthy and Asst, for the Appellant; H. Kumaraswamy, For R1, for the Respondent

Judgement

V. Jagannathan, J.—The plaintiffs in the suit O.S. No. 3008/07 have preferred this appeal aggrieved by the trial court rejecting the prayer of the plaintiffs for an order of injunction and to restrain the defendants from changing or altering the nature of the suit, schedule property. I.A. 1 and 5 were filed in this regard. The trial court dismissed both the I.As. property. I.A. 1 and 5 were filed in this regard. The trial court dismissed both the I.As.

2. Learned Counsel for the appellants submits that the trial court ought to have restrained the defendants from altering or changing the nature of suit schedule property pending disposal of the suit and the suit was filed by the appellants for declaration as well as for permanent injunction against the defendants in respect of the suit property measuring 15 guntas of land in Sy. No. 6/13 of Hongasandra village. Begur Hobli. Bangalore South Taluk. Further submission made is that the appellants are in possession of the suit schedule property and it is their further case that one Gurumurthappa. was the absolute owner of the suit schedule property and he executed a gift deed in favour of his sister Sunkamma in the year 1952 and after the death of Sunkamma. Abbaiah Reddy and Narayana Reddy succeeded to the suit property and they effected a partition between themselves and 15 guntas fell to the share of Abbaiah Reddy. The plaintiffs are

the descendants of Abbaiah Reddy and therefore they have filed the suit for the aforesaid relief of declaration and permanent injunction. Stating that the defendants have started putting up pillars in the suit, schedule property, the appellants sought for the relief of temporary injunction as well as restraining the defendants from altering or changing the nature of the suit schedule property and the trial court ought to have allowed the said I.As. but instead, the trial court took into account the documents produced by the defendants and the case of the plaintiffs has not been properly appreciated. As such, the impugned order be set aside and the relief sought be granted.

3. On the other hand, learned Counsel for the respondents defendants argued that by virtue of the gift deed executed by Thimmaiah. Gurumurthappa and Doddanna. the suit, item fell to Sunkamma, Abbaiah Reddy and Narayana Reddy and subsequently Abbaiah Reddy and Narayana Reddy's wife and children executed the agreement dated 12.12.1973 in favour of one Deccan Wires Limited for Rs. 15.000/- and thereafter the land was converted on 4.9.1976 and thereafter Deccan Wires Limited handed over this suit property to the 2nd defendant under Development. Agreement dated 15.10.05 and B.D.A also sanctioned the plan on 4.4.2006 and commencement certificate was also granted on 10.5.06, At present, construction has come up in the suit property and as such, taking into account all these factors, the trial court opined that balance of convenience lies in favour of the defendants and even otherwise, the trial court took care of the interest of the plaintiffs by observing in para. 19 of its order that any construction, change or alteration in respect of the suit schedule property by the defendants would be at the risk of the defendants and the defendants shall not be allowed to claim any equity. Therefore, the impugned order of the trial court is just and proper under the above circumstances.

4. Having thus heard both sides, in so far as the gift, deed upon which the plaintiffs' case rests is concerned, it is a matter for trial as to whether the plaintiffs succeeded to the suit property because submission of the learned Counsel for the respondents is that the other L.Rs of Abbaiah Reddy were not brought on record and under these circumstances it is for the trial court to examine all these aspects. At the same time, the defendants have put up construction in the suit schedule property and the trial court has also made it clear that, it goes without saying that if any construction is put up over the suit schedule property, or any change or alteration takes place, the defendants and persons concerned shall bear the consequences and they shall not be entitled to claim any equitable relief in such an event, In view of the aforesaid observations of the trial court. I am of the view that the suit itself can be disposed of at the earliest by giving a direction to the trial court in this regard and hence I pass the following order.

5. The trial court is directed to dispose of the suit itself within six months from the date of this order's receipt and any improvement, made by the defendants would not be claimed by them as an advantage to the defendants in view of the

trial court's observation that the defendants will not claim any equity in that regard. The observations made herein above shall not however affect the suit of the parties on merits.

The appeal stands disposed of accordingly.