
(2010) 10 KAR CK 0118
In the Karnataka High Court
Case No : Writ Petition No. 31103 of 2010

Sri N.J. Nataraj

APPELLANT

Vs

Sri. N. Jagannatham and Others

RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:

Evidence Act, 1872 — Section 65 (c), 66

Citation : (2010) 10 KAR CK 0118

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : G.E. Nandish Gowda, for R.B. Sadasivappa, for the Appellant; A. Krishna Bhat, for R1 to R5, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—Petitioner/Plaintiff has instituted O.S. No. 26711/2007 in the City Civil Court, Bangalore, against the Defendants for the relief of partition and separate possession of Plaintiff's half share in the suit schedule property and to declare the settlement deed 04.06.2007, executed by the Defendants 1 & 2 in favour of Defendants 3 to 5 as a sham & void document and not binding on him and for consequential reliefs. Defendants 1 & 2 filed written statement on 05.11.2007. They also made a counterclaim seeking partition of movables of joint family properties. Issues were framed and suit was posted for trial. 4th Defendant/4th Respondent filed LA under Order VIII Rule 1A(1) & (3) read with Section 151 of CPC and Sections 65(c) & 66 of Evidence Act, to receive the listed documents therein on record to be marked as Defendants' exhibits. The Petitioner opposed the prayer in the said application by filing statement of objections on 04.08.2010. Upon consideration, the trial court has allowed the said application by its order dated 12.08.2010. This writ petition filed on 25.09.2010 is directed against the said order,

2. Respondents have filed statement of objections on 05.10.2010.

3. Heard the learned Counsel on both sides and perused the writ petition papers. The documents sought to be produced along with the aforesaid application are the following:

1. Notice Under Order 12 Rules 4 & 5 CPC dated 05.06.2008 got issued through Advocate for Defendants 3 to 5 by RPAD to the learned Advocate for Plaintiff, Sri R.P. Somashekhariah to admit the facts stated in the Notice with copy of postal receipt and Acknowledgement card;

2. Notice Under Order 12 Rule 8 CPC dated 22.01.2009 got issued through Advocate for Defendants 3 to 5 by RPAD to the learned Advocate for Plaintiff, Sri R.P. Somashekhariah to produce before this Hon''ble Court the documents stated in the Notice with copy of postal receipt and Acknowledgement card;

3. Notice Under Order 12 Rule 8 CPC dated 07.04.2009 issued by Defendants 1 & 2 by RP to the learned Advocate for Plaintiff, Sri R.P. Somashekhariah to produce before this Hon''ble Court the documents stated in the Notice with copy of postal receipt;

4. Sale deed dated 08.03.1982 by Narayana Jagannatham in favour of Narayana Ramaiah registered as No. 999/82-83 at Pages 252-253 in Vol. No. 1163 at the Office of Sub-registrar, Kadri Taluk for Rs. 3000

5. Sale deed dated 08.03.1982 by Narayana Jagannatham in favour of Narayana Ramaiah registered as No. 1000/82-83 at Pages 226-228 in Vol. No. 1164 at the Office of Sub-registrar. Kadri Taluk for Rs. 8000

4. Petitioner does not dispute the service of notices as at SI. Nos. 1 to 3 supra. The Petitioner having had the custody of said notices, could have produced the same in case there were any variance in the xerox copies that were produced along with the application. The Petitioner objects the production of xerox copies of the sale deeds dated 08.03.1982 referred at SI. Nos. 4 & 5. The contention of the Petitioner was that, the certified copies could have been obtained and produced.

5. Indisputedly, after the impugned order was passed, Defendants having obtained the certified copy of the sale deeds, have produced the same before the trial court. The said documents have been marked on 24.09.2010 as Ex.D-58 to Ex.D-63. This writ petition filed on 25.09.2010 without disclosing the event that has taken place on 24.09.2010 i.e., marking of five documents, is untenable.

6. The trial court having considered the claim made in the application and the objections of the Plaintiff, noticing the fact that the documents produced are not available on the record, has permitted the production of xerox copies to be used as secondary evidence. The impugned order, in the facts and circumstances of the case, does not suffer from any procedural impropriety or irrationality. The trial court has not committed any illegal act in allowing the application filed by the Defendants.

In view of the above, the writ petition is devoid of merit and shall stand dismissed.

The Respondents 1 & 2 are senior citizens. The suit is for relief of partition and separate possession. Defendants 1 & 2 have also made a counter-claim. In view of the provisions under the Karnataka (Case Flow Management in Sub-Ordinate Courts) Rules, 2005, keeping in view the nature of relief prayed in the suit and the fact that Defendants 1 & 2 are senior citizens, the trial court is directed to complete the trial and dispose of the suit as early as practicable and at any event, within a period of 6 months from the date a copy of this order is placed on its record.