
(2015) 03 KAR CK 0074
In the Karnataka High Court
Case No : Writ Appeal No. 3499/2014(LB-RES)

Sucharitha Shetty

APPELLANT

Vs

Shantha Shetty and Others

RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A
Constitution of India, 1950 — Article 226
Karnataka Land Revenue Act, 1964 — Section 96

Citation : (2015) 03 KAR CK 0074

Hon'ble Judges : P.B. Bajanthri, J.;K.L. Manjunath, J.

Bench : Division Bench

Advocate : Chandranath Ariga K., for the Appellant; Shashi Kiran Shetty, Senior Counsel, Advocates for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—Heard the learned counsel appearing for the appellant and learned counsel appearing for the respondent No. 1.

2. This appeal is filed challenging the correctness and legality of the order dated 27.11.2014 passed by the learned single judge in W.P. No. 3746/2013.

3. Brief facts of the case are here under:

"First respondent has filed writ petition requesting the court to issue mandamus or direction directing the respondent to demolish the RCC building constructed in the agricultural land without proper ownership and issue writ of mandamus or direction to take steps to ensure the nature of the land is not misused by any person or persons under the respondent No. 1." 4. According to petition averments the appellant, who was respondent No. 1 before the Learned Single Judge, has constructed building in Sy. No. 52/3A which is jointly owned by the Shantha Shetty and Sucharitha Shetty. It is one among several properties held by the undivided Aliyasanthana Branch family. According to the petitioner the

same is allotted to her mother as per final decree passed in RIA No. 372/1959 in O.S. No. 321/1950 by the Subordinate Judge of South, Kanara, Mangalore.

5. 1st Respondent is member of petitioner family who is entitled to 1/26th undivided share in the family properties.

6. It is also case of the writ petitioners that the suit schedule property is not converted from agricultural land to non-agricultural land. When the petitioners visited the property along with other members of the family, it was noticed by the petitioner that respondent No. 1 was making preparation to construct a house in suit schedule property which belong to undivided Aliyasanthana Branch. Further the petitioner filed O.S. No. 65/2012 for partition on the file of Senior Civil Judge and ACJM, Karkala which is pending.

7. It is also learnt that the 1st respondent has obtained plan from gram panchayat to construct building without obtaining an order for conversion. Contending that the construction put up by the 1st respondent is illegal, writ petition was filed to direct the respondent to demolish the RCC building constructed by her and also direct the respondent to take steps ensure the nature of the land is not misused by any person or persons. Writ petition filed by the appellant/respondent No. 1 before the Learned Single Judge was allowed by order dated 27.11.2014 and directed the Deputy Commissioner, D.K to initiate action against the 1st respondent U/S 96 of the Karnataka Land Revenue Act and further directed the 3rd respondent to take action against the 2nd respondent for not discharging statutory duties and also directed the 1st respondent not to divert the use of the petition schedule land from agricultural to any other purpose till the disposal of the suit and directed the trial court to conclude the trial in O.S. No. 65/2012 at earliest and proceed to judgment by the end of January 2015. This order is called in question in this appeal.

8. Main contention of the Sri. Chandranath Ariga K, learned counsel appearing for the appellant is that the learned Single Judge has committed an error in allowing the petition without looking to the pleadings and the prayer of the petitioner. He also contends that the learned Single Judge has failed to note that the writ petition was not maintainable considering the nature of prayer sought by the petitioner. According to him the contents of the writ petition and the prayer are in the nature of civil dispute and such writ petition is not maintainable. According to him direction issued by the learned Single Judge are contrary to the prayer of the writ petitioners.

9. Learned Senior counsel Sri. Shashi Kiran Shetty, appearing for respondent No. 1 submits that order impugned is inconsonance with the pleadings of the parties. Writ petition filed by the respondent No. 1 is maintainable since the appellant herein constructed a building on an agriculture land without getting conversion from agricultural to non-agricultural use. Therefore he request's the Court to dismiss the appeal.

10. After hearing both the parties, the following points arise for consideration:

"1. Whether the learned Single Judge was justified in granting several reliefs which were not sought in the writ petition contrary to pleadings and prayer of the writ petition?

2. Whether the order of learned Single Judge requires interference?."

11. Having heard the parties. The following facts are not in dispute. According to the writ petitioners, the appellant herein has constructed a residential house in Sy. No. 52/3A measuring 3 Acre 70 Cents of Kadanadale Village, Mangalore Taluk. The petitioner has filed a suit for partition and separate possession of the properties in question. It is also the case of the writ petitioner that a relief is also sought in the suit against the appellant herein not to proceed with the construction. Such being case the question is whether she can file a writ petition requesting the court to issue a direction to the appellant not to construct a building in the agricultural land without proper ownership.

12. The writ petitioner contends that the writ petitioner and 1st respondent are joint owners of the land in question. When they are joint owners it cannot be said that the 1st respondent-appellant herein has no ownership over land in question. In such circumstances the question is whether the writ petition is maintainable and the prayer of the respondent herein to demolish the construction put up by the appellant herein on the ground that the land in question is a Aliyasanthana joint family property can be considered while exercising the power's under Article 226 of the Constitution of India. In the light of the fact that a suit is filed for partition and separate possession and an order of injunction has been obtained in the suit. In case there is any violation of the order of the injunction by the appellant herein the petitioner(respondent No. 1) has to take recourse to order 39 Rule 2A of CPC and she cannot approach this Court under Article 226 of the Constitution of India. Therefore in the 1st instance we hold that the writ petition filed by the respondent No. 1 is not maintainable.

13. In view of the said findings we also hold that the relief granted by the learned Single Judge has to be set aside.

14. Accordingly, appeal is allowed. Orders passed by the learned Single Judge dated 27.11.2014 in W.P. No. 3746/2013 is hereby set aside. Consequently, writ petition filed by the 1st respondent dismissed as not maintainable. It is open for the 1st respondent to avail all other remedies available to her in accordance with the law.