

(2015) 02 KAR CK 0331

In the Karnataka High Court

Case No : Writ Petition No. 106008/2014 (GM-CPC)

T. Umesh Gouda and Others

APPELLANT

Vs

B. Virupakshagouda and Others

RESPONDENT

Date of Decision : 16-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2015) 02 KAR CK 0331

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : S.G. Kadadakatti, for the Appellant

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—Heard Shri S.G. Kadakatti, learned counsel appearing for petitioners. Perused the impugned order dated 09.12.2013 Annexure - F and order dated 09.01.2014 Annexure - G, whereunder order passed by Trial Court allowing I.A. No. 2 filed by respondents -plaintiffs and granting an order of temporary injunction in their favour is being questioned by defendants.

2. It is the contention of Shri S.G. Kadadakatti, learned counsel appearing for petitioners - defendants, that Trial Court ought not to have taken into consideration the "Will" propounded by plaintiffs for the purpose of examining claim of possession of suit schedule property by defendants, since plaintiffs are claiming to be legatees under the alleged "Will" which is seriously disputed by defendants, as against the claim of defendants they being successor in interest or claiming through succession of the propounder of the "Will". Hence, he contends that orders passed by Courts below are erroneous and liable to be set aside.

3. Suit schedule properties was originally belonging to one Shri Thimmanagouda. On his demise, his wife Smt. Parvathamma succeeded to his estate. They did not have any issues. Undisputedly, after demise of Thimmanagouda, his wife Smt.

Parvathamma continued to be in possession and enjoyment of suit schedule properties. Defendant Nos. 1 to 4 and grandfather of defendant No. 5 had filed a suit in O.S. No. 18/2001 claiming 1/3rd in suit schedule properties along with other properties during the lifetime of Smt. Parvathamma. Said suit came to be dismissed on 11.12.2007 and it was affirmed in R.A. No. 21/2008 by judgment and decree dated 17.06.2010. Said judgment and decree is now pending adjudication in R.S.A. No. 6009/2010. During the pendency of said appeal, Smt. Parvathamma expired i.e., on 21.04.2013. These are undisputed facts.

4. Claim of the plaintiffs is that they were assisting Smt. Parvathamma in agricultural operations in respect of suit schedule properties and plaintiffs being Smt. Parvathamma's brother's sons, she executed a "Will" in their favour on 13.08.2009 bequeathing suit schedule properties in their favour and on account of resistance to enjoyment of suit schedule properties by plaintiffs, they have been perforced to file suit for perpetual injunction against defendants. In aid of main relief, they also filed an application under Order 39 Rules 1 and 2 CPC seeking an order of temporary injunction against defendants. Said application came to be resisted by defendants by filing detailed statement of objections. On contest, Trial Court found that prima facie case is in favour of plaintiffs and held when defendant Nos. 1 to 4 had filed a suit against deceased Smt. Parvathamma, they (defendant Nos. 1 to 4) cannot be expected to be either residing along with Smt. Parvathamma or said Smt. Parvathamma could have permitted them to be in possession of suit schedule properties and as such, it assured at a conclusion held that there is no prima facie case in favour of defendants and also balance of convenience and these two factors were in favour of plaintiffs who have propounded the "Will" executed by Smt. Parvathamma in their favour and as such, it came to be held if an order of temporary injunction is not granted, it is the plaintiffs who will be put to irreparable loss of injury and on account of all the three ingredients necessary for granting an order of temporary injunction swayed in favour of plaintiffs, said order came to be passed by Trial Court granting an order of temporary injunction. This also came to be affirmed by Lower Appellate Court. But Courts below have concurrently held that plaintiffs are in possession of suit schedule properties.

5. Though Shri S.G. Kadadakatti would vehemently contend that until and unless "Will" is proved in accordance with law, same cannot form the basis for accepting plaintiffs' lawful possession over suit schedule properties. Though said argument would look attractive at the first instance, same cannot be accepted for simple reason that defendant Nos. 1 to 4 who are claiming to have succeeded to the estate of deceased Smt. Parvathamma had undisputedly filed a suit against very said Parvathamma in O.S. No. 18/2001 and Courts below have dismissed the suit and now said issue namely their right to claim partition and possession of suit schedule by them is under adjudication by this Court in R.S.A. No. 6009/2010.

6. In that view of the matter, defendants cannot be heard to contend that during the life time of Smt. Parvathamma they were in possession and enjoyment of

suit schedule properties or immediately on her demise on 21.04.2013.

7. Hence, orders passed by Courts below granting an order of temporary injunction in favour of plaintiffs which has been affirmed by lower Appellate Court cannot be held to be either erroneous or contrary to material evidence available on record. There is no infirmity whatsoever in the orders passed by Courts below. It is needless to state that any opinion formed by Trial Court or Lower Appellate Court would be confined only to scrutiny and examination of I.A. No. 2 (filed by plaintiffs for an order of temporary injunction) against defendants. Trial Court would necessarily evaluate the entire evidence after full fledged trial while considering the claims of the respective parties.

There is no merit in this writ petition. Accordingly, it is hereby rejected.