
(2001) 04 KAR CK 0001

In the Karnataka High Court

Case No : Miscellaneous First Appeal No"s. 1679 and 1680 of 1999

The Home School, Bangalore and Another

APPELLANT

Vs

M. Shafi Ul Huq and Another

RESPONDENT

Date of Decision : 18-04-2001

Acts Referred:

Transfer of Property Act, 1882 — Section 108

Citation : (2002) 1 CivCC 460 : (2001) ILR (Kar) 4250 : (2001) 6 KarLJ 93 : (2001) 4 KCCR 2745

Hon'ble Judges : Chandrashekaraiiah, J

Bench : Single Bench

Advocate : Ashok B. Patil, for the Appellant; Kumar and Kumar, for the Respondent

Final Decision : Dismissed

Judgement

1. These two appeals are against the order passed on I.A. Nos. 1 and 2 filed for temporary injunction restraining the defendants, their agents, henchmen etc., from interfering with their peaceful possession and enjoyment of the schedule premises and for an injunction restraining the defendants from demolishing or in any manner damaging the compound wall constructed in-between premises Nos. 17 and 18 and the chain-linked wire mesh erected between premises Nos. 16 and 18 of Sri M.N. Krishna Rao Road, Basavanagudi, Bangalore.

2. The said applications were resisted by the defendants. The Trial Court after hearing both the parties and after considering the materials produced before it rejected both the applications by a common order. This order is under challenge by the appellants in this appeal.

3. The facts in this case are as follows.-

Premises bearing No. 17 belongs to the first respondent and 18 belongs to the second respondent. The second respondent had filed a petition for eviction of the plaintiffs under the provisions of the Karnataka Rent Control Act. It is submitted

that the said petition was allowed and it was confirmed ultimately by this Court and also by the Supreme Court. The Supreme Court while dismissing the petition filed by the plaintiffs directed them to handover possession by 31-3-1999.

4. It is submitted that pursuant to the order of the Supreme Court the plaintiffs have handed over possession of the premises bearing No. 18 to the second respondent on 31-3-1999. In the meanwhile the plaintiffs had put up a compound in-between the premises bearing Nos. 17 and 18 on 16-3-1999. Thereafter on the complaint that the respondents are attempting to remove the compound put up by the plaintiffs have filed a suit for permanent injunction. In the said suit the plaintiffs made an application for temporary injunction under Order 39, Rules 1 and 2 of the CPC.

5. Sri Ashok B. Patil, learned Counsel appearing for the plaintiffs submits that the Trial Court is not justified in refusing to grant injunction on the application filed by the plaintiffs. Learned Counsel appearing for the respondents submitted that the Trial Court has in fact considered all the materials and passed an order refusing to grant injunction. The Trial Court has held that the appellants without obtaining consent of the owner of the premises bearing Nos. 17 and 18 had put up compound which is an unauthorised one and therefore, he is not entitled for an order of temporary injunction. It is an admitted fact that the premises bearing No. 17 belongs to the first respondent and the premises bearing No. 18 belongs to the second respondent. So far as the extent of land both in respect of sites bearing Nos. 17 and 18 is concerned, there is no inter se dispute between respondents 1 and 2. According to the respondents the appellants have put up compound on premises No. 18 encroaching 20 ft. towards the south. The appellants being the tenants under the first respondent ought to have obtained permission of the first respondent who is the owner of the premises before and after ascertaining the extent of the land bearing No. 17, should have taken steps to put up compound in-between sites bearing Nos. 17 and 18. Admittedly, the appellants have not taken any permission before putting up any compound and also have not ascertained what is the total extent of the site bearing No. 17. This conduct of the appellants itself disentitles invoking of equity jurisdiction for an order of temporary injunction.

6. Learned Counsel for the appellants submits that since the compound is only a temporary structure there is no need to obtain any permission of the first respondent that too when the first respondent is not a citizen of this country. In support of this contention the learned Counsel for the appellant relied upon the following decisions.-

- (i) Venkatlal G. Pittie and Another Vs. Bright Bros. (Pvt.) Ltd., ;
- (ii) Ratnamala Dasi and others Vs. Ratan Singh Bawa, ;
- (iii) Padmanabha Shettigara v Srinivasa Acharya;
- (iv) Panduranga Mallya v Alphonso A. Rodrigues.

The facts involved in the above said cases have no application to the facts involved in this case. In all the above said cases the Court considered whether the landowner is entitled to an order of eviction on the ground that the tenant had materially altered the nature of the property by erecting some permanent structure. Here the case of the respondents is that the appellants have not obtained permission and consent of the landowner before putting up any construction.

Section 108-F of the Transfer of Property Act reads as follows.-

"Rights and liabilities of lessor and lessee.--In the absence or a contract or local usage to the contrary, the lessor and the lessee of immovable properties as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased-

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor".

From this it is seen that even to effect repairs the tenant is expected to give notice to the landlord. In the instant case the appellants have not even bothered either to intimate the landlord or obtain necessary permission for the purpose of erection of compound. Further, the appellants also never bothered to know from the landlord i.e., the first respondent regarding measurement of the premises bearing No. 17. Further, the appellants are also not able to establish that they had put up the compound within the premises bearing No. 17. Under these circumstances, in my opinion, the Trial Court is justified in not exercising its discretion in the matter of granting injunction in favour of the appellants.

7. The power of the Appellate Court in the matter of granting or refusing to grant injunction is very limited. Granting or refusing to grant injunction is purely within the discretion of the Trial Court. The Trial Court having considered all the materials placed before it declined to grant injunction in favour of the appellants. If that is so, I find no reason to interfere in the order of the Trial Court in these two appeals.

8. In the result, I pass the following order:-

(i) Appeals are rejected;

(ii) No costs.