

(2010) 03 KAR CK 0235
In the Karnataka High Court
Case No : Writ Petition No. 34763 of 2009

Thimmaiah

APPELLANT

Vs

Thimmaiah (dead) by L.Rs

RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2010) 3 KarLJ 320

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : K.V. Narasimhan, for the Appellant;

Final Decision : Dismissed

Judgement

B.S. Patil, J.—The petitioner is the defendant before the Trial Court. The respondents herein have filed the suit in O.S. No. 96 of 2007 seeking permanent injunction in respect of property bearing Survey No. 63P measuring 4 acres situated at Kyatalapura Village, Hassan District.

2. The plaintiffs-respondents have contended that the land in question was granted in favour of their ancestor one Sri Thimmaiah, S/o. Dasappa during the year 1959-60. In support of their claim, they have produced the grant certificate and the record of rights, which stood in the name of Thimmaiah, S/o. Dasaiah. After the death of Thimmaiah in the year 1988 the records of rights continued in his name and in the year 2008 they have got the records changed in their favour and the mutation is effected in this regard vide mutation M.R. No. 2 of 2007-08.

3. The case of the defendant-petitioner herein has been that his father's name was also Thimmaiah S/o Dasaiah and it was his father who has been granted the land in question and his name was continued in the records and taking undue advantage of the similarity of the names of his father and that of plaintiffs' ancestor, the plaintiffs have instituted the suit. The Trial Courts considering the application filed by the petitioner under Order 39, Rules 1 and 2 came to the

conclusion that neither the plaintiff nor the defendants were in a position to make out clearly their actual possession and enjoyment of the suit property and it was not clear as to whether the documents produced by them pertained to the plaintiff. The Trial Court found that a full dressed trial would only clarify the position. The lower Appellate Court on appeal preferred by the plaintiff has reversed the finding and has granted temporary injunction in favour of the plaintiff recording a finding that the documents produced by the plaintiff disclosed prima facie case for grant of temporary injunction and the balance of convenience was in their favour. Aggrieved by the order passed by the lower Appellate Court this writ petition is filed.

4. I have heard Sri KV. Narasimhan, learned Counsel appearing for the petitioner and perused the material on record.

5. The plaintiff has described the name of the defendant as Thimmaiah, S/o. Budiyaiah alias Thimmaiah. The defendant contends, in the written statement that his father's name is also Thimmaiah S/o. Dasaiah. The plaintiffs have produced death certificate of their ancestor under whom they claim to show that his name was Thimmaiah S/o. Dasaiah. The defendant has not produced any documentary evidence to show that the name of his father was Thimmaiah and his grandfather was Dasaiah. The grant certificate and the RTC in respect of land in question stands in the name of Thimmaiah S/o. Dasaiah. It was not difficult for the defendant to produce materials in the form of documentary evidence to show that the name of his father was Thimmaiah S/o. Dasaiah. This is an important circumstance, which goes against the defendant in this case for finding out the prima facie case. The other materials on record are taken note of by the lower Appellate Court to conclude that the payment of land revenue was by Thimmaiah S/o. Dasaiah and thereafter by the plaintiff. The mutation is effected in the name of the plaintiffs as legal heirs of the deceased Thimmaiah S/o. Dasaiah. The said mutation entry and the consequent entries in the record of rights in respect of the lands in question are also produced and taken note of by the Appellate Court. The lower Appellate Court has made an observation that though the defendant had contended that the order passed by the Tahsildar to approve the mutation entry has been challenged before the Assistant Commissioner, no documents were produced in this regard.

6. Be that as it may, on examination of the material on record, I do not find that the lower Appellate Court has in any manner committed a patent illegality in coming to the conclusion that a prima facie case was made out by the plaintiff. The finding recorded by the lower Appellate Court is in the realm of prima facie appreciation of the documents produced and about the balance of convenience between the parties for the purpose of grant of an order of temporary injunction. This Court, in exercise of the writ jurisdiction cannot upset such findings under Articles 226 and 227 of the Constitution of India. As the learned Counsel for the petitioner submits that the suit is of the year 2007 and the matter is at the stage of evidence, a direction may have to be issued to the Trial Court to expedite the

suit.

7. Accordingly, the writ petition is dismissed. In the facts and circumstances of the case, the Trial Court is directed to dispose of the suit within a period of 8 months from the date of receipt of a copy of this order.