
(2008) 08 KAR CK 0032
In the Karnataka High Court
Case No : Writ Petition No. 18844 of 2007

Union of India (UOI)

APPELLANT

Vs

Shivanna and Others

RESPONDENT

Date of Decision : 27-08-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 4
Constitution of India, 1950 — Article 226, 227

Citation : (2008) 4 KCCR 2570

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Y.D. Harsha, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The petitioner, being aggrieved by the order dated 28.10.2005 on I.A. Nos. I, IV and v. in O.S. No. 1287/2005 on the file of the learned Principal II Civil Judge (Junior Division), Bangalore Rural District, Bangalore and also the order dated 9.8.2007 in M.A. No. 24/2006 on the file of the learned I Additional Civil Judge (Senior Division), Bangalore Rural District, Bangalore vide Annexures - A and B respectively, has presented the instant writ petition.

2. The plaintiff/petitioner herein has filed a suit for permanent injunction and for Ors. incidental reliefs. Along with the plaint, he also filed I.A. No. I seeking temporary injunction in O.S. No. 1287/2005 on the file of the learned Principal II Civil Judge (Junior Division), Bangalore Rural District, Bangalore. Respondents 1 to 5 have filed an application under Order 39, Rule 4 of CPC to vacate the ex-parte order of temporary injunction granted in favour of the petitioner and I.A.V was also filed by the 6th respondent under Order 39, Rule 4 of CPC to vacate the interim order granted in favour of the petitioner. All the three applications filed by the petitioner and the respondents have come up for consideration before the Trial Court on 28.10.2005. The Trial Court, after considering the grounds urged by the petitioner and the respondents in their affidavits along with the

accompanying applications and after hearing the respective Counsel for the parties, has framed necessary points for consideration in para 10 of the order and after critical evaluation of the oral and documentary evidence and Ors. relevant material on the file, by assigning reasons in para 15 of the order, has rejected I.A.I filed by the petitioner and allowed I. As. IV and v. filed by the respondents and vacated the temporary injunction granted in favour of the petitioner. However, both the parties were directed not to alter or improve the pathway demarcated in the survey sketch produced by the respondents in the interest of Grass Farm which is existing on either side of the said pathway till the disposal of the suit. Questioning the correctness of the order passed on I. As.I, IV and v. in O.S. No. 1287/2005 dated 28.10.2005, the petitioner filed Miscellaneous Appeal No. 24/2006 on the file of the learned I Additional Civil Judge (Senior Division), Bangalore Rural District, Bangalore. The said appeal had come up for consideration before the learned Civil Judge on 9.8.2007. The learned Civil Judge, after hearing both the sides and after considering the material available on record, has dismissed the appeal filed by the petitioner. Being aggrieved by the orders impugned passed by both the Courts below as referred above, the petitioner felt necessitated to present the instant writ petition seeking appropriate reliefs as stated supra.

3. I have heard the learned Counsel for the petitioner Sri Y.D. Harsha.

4. After careful perusal of the grounds urged by the petitioner and Ors. material available on the file including the orders passed by both the Courts below, what it emerges is that the Trial Court, after careful evaluation of the material available on record and taking into consideration the sketch submitted by the surveyor, has observed that the disputed road/pathway is a link road/cart-tract which connects Byatha village to the main PWD road and this link road is in existence in the middle of Grass Farm of the petitioner. Except the dispute as to the identity of the roads, there is no dispute between the parties as to the existence of Grass Farm i.e., the suit schedule property. To show the existence of PWD main road on the western side of suit property, the plaintiff produced rough sketch of his own and also produced four photographs and to show the interference over suit schedule property, the plaintiff produced copies of the complaint lodged against the defendants before various departments of Government and the police. The Trial Court further observed that it is purely a question of fact and law and a full-fledged Trial is required and decision has to be taken after considering the oral and documentary evidence and Ors. relevant material on the file. AnOrs. aspect which was taken into consideration by the Trial Court is that the Member of Parliament has granted Rs. 3 lakhs for the improvement of the disputed road and at that juncture, if the defendants are permitted to alter the nature of disputed road/pathway, by the time the final orders is to be passed in the suit, the nature of the disputed road itself will be changed. In that event, it will become difficult for the Court to decide whether the road claimed by the plaintiff and the defendants are one and the same or not. Taking these facts into consideration, the Trial Court has directed the respondents to maintain the disputed road as it is

and if in case, the petitioner succeeds in the matter, he can be suitably compensated. The said reasoning is given by the Trial Court in para 15 of the order after critical evaluation of the oral and documentary evidence and Ors. relevant material available on the file and after giving sufficient opportunity to the respective Counsel appearing for the parties. The said order passed by the Trial Court vide Annexure-A was questioned before the learned I Additional Civil Judge (Senior Division), Bangalore Rural District, Bangalore in Miscellaneous Appeal No. 24/2006. The learned Civil Judge, in turn, after critical evaluation of the entire material on record and after going through the order passed by the Trial Court, has specifically observed that the materials on record reveal that there exists a link road in the middle of the suit schedule property which leads to Byatha village connecting Hesaraghatta to Sannenahalli. The survey sketch prepared by the Survey of India in 1974 also discloses the existence of link road within the area granted to the petitioner by the State Government. The materials on record further reveal that the said road belonged to Panchayat Raj Department which is under the maintenance of the local Grama Panchayat now comes under the Zilla Panchayath Engineer's control. The communication issued by the Executive Engineer, Zilla Panchyath dated 5.5.2007 also reveals that the road is situated in the middle of the suit schedule property and it is a public road. The existence of the road in the middle of the suit schedule property is forthcoming from the Government records. Under the circumstances, the contention of the petitioner that there exists no link road in the suit schedule property and the respondents trespassed and disturbed the peaceful possession of the petitioner with an intention to make a road in the suit schedule property appears to be false and baseless. It is an admitted fact that adjacent to the suit schedule property, the agricultural lands of the villagers are situated and they are cultivating he said lands and villagers are making use of the said road to access to their lands. Further, since the petitioner has failed to prove prima facie case, balance of convenience and irreparable injury, the learned Civil Judge could not find any error apparent on the face of the order passed by the Trial Court and has held that the Trial Court has rightly appreciated the documents placed on record and exercised discretionary power after considering all the revenue records.

5. Both the Courts below, after critical evaluation of the oral and documentary evidence and Ors. relevant material available on the file and after affording opportunity to the Counsel representing the parties, have recorded a concurrent finding of fact against the petitioner. In view of the concurrent finding of fact recorded against the petitioner, interference by this Court exercising the extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India is not justifiable nor I find any good ground as such made out by the petitioner to consider the reliefs sought for in the instant writ petition.

6. Accordingly, the instant writ petition filed by the petitioner is dismissed as devoid of merits. However, the Trial Court is directed to dispose of the suit i.e., O.S. No. 1287/2005 expeditiously.