

(2014) 02 KAR CK 0005

In the Karnataka High Court

Case No : Writ Petition No. 46879 of 2013 (GM-CPC)

Venkataramana Bhat

APPELLANT

Vs

Ramanna Gowda Since Deceased Represented by his Legal Representative

RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Constitution of India, 1950 — Article 227
Transfer of Property Act, 1882 — Section 52

Citation : (2014) 02 KAR CK 0005

Hon'ble Judges : H. Billappa, J

Bench : Single Bench

Advocate : G. Balakrishna Shastry, for the Appellant; M. Sudhakar Pai, for R1-R6, R7 to R17(e), for the Respondent

Final Decision : Allowed

Judgement

H. Billappa, J.—Service of notice to respondents 7 to 17(e) is awaited. As no relief is claimed against the respondents 7 to 17(e), the matter is heard on merits. In this writ petition under Article 227 of the Constitution of India, the petitioner has called in question, the order dated 5.7.2013, passed by the Trial Court in O.S. No. 92/1990 on I.A. No. 19 vide Annexure-"A".

2. By the impugned order at Annexure-"A", the Trial Court has rejected I.A. No. 19 filed by the petitioner to implead him as party to the proceedings.

3. Aggrieved by that, the petitioner has filed this writ petition.

4. Briefly stated the facts are:

The respondents 1 to 6 have filed suit in O.S. No. 92/1990 for partition and separate possession of the suit schedule property. During the pendency of the suit, the second defendant Lingappa Gowda has sold 6.35 acres of land in Sy. No. 155/1 in favour of the petitioner through registered sale-deed dated 26.3.1996. The petitioner has filed I.A. No. 19 to implead him as party to the proceedings.

The Trial Court by its order dated 5.7.2013 has rejected the application. Therefore, this writ petition.

5. The learned counsel for the petitioner contended that the impugned order cannot be sustained in law. He also submitted that the petitioner has purchased 6.35 acres of land in Sy. No. 155/1 and he is a necessary party to the proceedings and therefore, the Trial Court was not justified in rejecting the application. He also submitted that the alienee is a necessary party to the proceedings. He placed reliance on the decisions of the Hon"ble Supreme Court reported in Amit Kumar Shaw and Another Vs. Farida Khatoon and Another, .

6. As against this, the learned counsel for the respondents 1 to 6 submitted that the impugned order does not call for interference. He also submitted that the petitioner being a purchaser during the pendency of the suit is not a necessary or proper party to proceedings and his presence is not required for effective adjudication of the matter. Therefore, the impugned order does not call for interference. He placed reliance on the decision of this Court reported in M.T. Kempegowda Vs. Sri. G.K. Ramesh Khumaar and Others, .

7. I have carefully considered the submissions made by the learned counsel for the parties.

8. The point that arises for my consideration is, Whether the impugned order calls for interference?

9. It is relevant to note, the suit in O.S. No. 92/1990 has been filed by the respondents 1 to 6 for partition and separate possession of the suit schedule property. The second defendant Lingappa Gowda has sold 6.35 acres of land in Sy. No. 155/1 during the pendency of the suit in favour of the petitioner. Therefore, the petitioner has filed I.A. No. 19 to come on record as party to the proceedings. The Trial Court has rejected the application.

10. In M.T. Kempegowda Vs. Sri. G.K. Ramesh Khumaar and Others, , this Court has held, once the property is sold without the leave of the Court during the pendency of the suit, it is hit by the doctrine of lis pendency u/s 52 of the Transfer of Property Act and the purchaser cannot be impleaded as a party to the suit.

11. However, the Hon"ble Supreme Court in Amit Kumar Shaw and Another Vs. Farida Khatoon and Another, , has observed as follows at para 14:

An alienee pendente lite is bound by the final decree that may be passed in the suit. Such an alienee can be brought on record both under this rule as also under Order 1 Rule 10. Since under the doctrine of lis pendens a decree passed in the suit during the pendency of which a transfer is made binds the transferee, his application to be brought on record should ordinarily be allowed.

12. Similarly, in A. Nawab John and Others Vs. V.N. Subramaniam, , the Hon"ble Supreme Court has observed as follows at para 22;

The preponderance of opinion of this Court is that a pendente lite purchaser's application for impleadment should normally be allowed or considered liberally.

From the above decisions of the Hon'ble Supreme Court, it is clear, a purchaser during the pendency of the suit can be allowed to come on record. In the present case, the petitioner has purchased the property during the year 1996 through registered sale-deed dated 23.6.1996. His presence is required for effective adjudication of the matter. Therefore, the Trial Court was not justified in rejecting the application. The impugned order cannot be sustained in law.

Accordingly, the writ petition is allowed and the impugned order passed by the Trial Court in O.S. No. 92/1990 on I.A. No. 19 is hereby set-aside. I.A. No. 19 is allowed and the petitioner is permitted to come on record as one of the defendants.