

(2016) 02 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petition Nos. 8905 and 8906/2015 (GM-CPC)

Vijayalakshmi

APPELLANT

Vs

Mudassir Aslam Khan and Others

RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:

Citation : (2016) 02 KAR CK 0007

Hon'ble Judges : Budihal R.B., J.

Bench : Single Bench

Advocate : K. Raghavendra Rao and Brunda K.L., Advocates, for the Appellant;
Vivek Reddy, Sr. Counsel and N.M. Pruthvi Raj, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Budihal R.B., J.—1. These two petitions have been filed seeking to quash the impugned order passed by the I Additional Senior Civil Judge, Kolar in M.A. No. 66/2013 and M.A. No. 61/2013 respectively dated 19.12.2014 produced as per Annexure "F".

2. Heard the arguments of learned counsel for the respective parties in both the petitions.

3. In W.P. No. 8905/2015 learned counsel for the petitioner during the course of her arguments has submitted that petitioner-defendant has purchased two sites bearing Nos. 29 & 30, V.P. Khata No. 493 and 494 respectively of Petechamanahalli Village, Kasaba Hobli, Kolar Taluk within the limits of Dodda Hasala Gram Panchayat from its vendor under the registered sale deed dated 22.8.2012. The sites were carved out of three survey numbers i.e., Sy. Nos. 105, 106 and 107 of Petechamanahalli, Kasaba Hobli, Kolar Taluk. It is the case of the respondents-plaintiffs that the vendor one Venkatachalapathi and his father Venkataramanappa have executed registered General Power of Attorney in the year 1991 in respect of the very suit schedule properties in favour of the plaintiffs, under which, they came to be in possession of the said sites. The Trial

Court considered the application I.A. No. 1 filed by the plaintiffs for temporary injunction on merits and during the course of its order has observed that materials placed on record shows that the owner of the property has cancelled the earlier Power of Attorney executed on 25.5.1991 in favour of Ameerjan and Mudasir Aslam Khan on 27.04.1992 and on the same day another General Power of Attorney was executed by Venkatachalapathi and Venkataramanappa in favour of the respondents-plaintiffs, which itself creates serious doubt in the case of the respondents-plaintiffs. Learned counsel has submitted that petitioner came into possession of the suit schedule properties and the name of the petitioner was mutated and she started construction work and also completed the same, whereas the respondents-plaintiffs have not produced any document to show their possession and title over the said properties. Though total extent of the property owned by Venkataramanappa and Venkatachalapathi is 2 acres 39 guntas, but the General Power of Attorney is only in respect of 2 acres and what has happened with regard to 39 guntas of land is also not mentioned by the respondents-plaintiffs. Hence, she has submitted that the Trial Court has considered all these aspects of the matter and rightly dismissed the application filed by the respondents-plaintiffs in O.S.674/2013. It is submitted that respondents-plaintiffs have challenged the said order by filing the Miscellaneous Appeal No. 66/2013 before the First Appellate Court. Though the First Appellate Court in its judgment has observed that there is no perverse or capricious view taken by the Trial Court, but it has wrongly allowed the appeal in-part and directed the parties to maintain status-quo. Hence, she has submitted that the said view taken by the First appellate Court interfering with the order passed by the Trial Court is illegal and the First Appellate Court ought not to have been allowed the appeal. It is also submitted by the learned counsel for the petitioner that as the scope in the Miscellaneous Appeal is limited, the judgment rendered by the First Appellate Court is not sustainable in law. Hence, she has submitted to allow the petition and to set-aside the order passed by the First Appellate Court. In support of her contentions, learned counsel for the petitioner-defendant has relied upon the decision of the Hon"ble Supreme Court reported in , (2006) 5 SCC 282 in the case of Seema Arshad Zaheer and others v. Municipal Corporation of Greater Mumbai and others and drawn the attention of this Court to the relevant paragraphs of the said decision.

4. Per contra, learned senior counsel for the respondents-plaintiffs during the course of his arguments has submitted that there is a registered Power of Attorney executed in the year 1991 itself in respect of the properties in question and it is no doubt true that the said Power of Attorney was cancelled on 27.04.1992 and on the same day another Power of Attorney was executed by the owners of the said property in favour of the respondents-plaintiffs. It is submitted that the trial Court has only picked up the aspect of cancellation of the earlier General Power of Attorney and execution of the fresh General Power of Attorney as a doubtful circumstance and ultimately, dismissed the injunction application filed by them. He has submitted that on the basis of the registered

General Power of Attorney wherein there is a recital regarding the delivery of possession to the respondents-plaintiffs, they got converted the property and have formed 49 sites, out of which, 47 sites were already sold and only in respect of the remaining two suit schedule sites, there is dispute between the parties. It is submitted that after the conversion and formation of the sites by the respondents-plaintiffs mutation was made in favour of the respondents-plaintiffs and they are in possession of the said property and they are looking after the said property. It is also submitted that petitioner-defendant never entered into the possession of the suit schedule property and taking advantage that there was a registered sale deed in her favour, though no possession was handed over in her favour, she contested the suit and the trial Court without considering the case of the respondents-plaintiffs, wrongly dismissed the injunction application and when the same was challenged before the First Appellate Court, it has considered all these aspects of the matter and observed that there is a serious dispute as to the title of the property by both sides and it has to be enquired into in the main suit. He has submitted that the said observation of the First Appellate Court partly allowing the appeal and directed both the parties to maintain status-quo was only to protect the interest of both sides. The documents produced by the respondents-plaintiffs prima-facie show their possession over the suit schedule property. It is also submitted that in this regard the respondents-plaintiffs have also filed complaint before the Police, but the Police have advised them to approach the Civil Court and to get the matter decided in the civil suit. Hence, it is submitted that there is no merit in this petition and same is to be rejected.

5. In reply to the arguments of the learned senior counsel for the respondents, learned counsel for the petitioner has submitted that petitioner has produced all the documents before the Trial Court to show her possession over the suit schedule property and respondents-plaintiffs have utterly failed to prove their case. Hence, it is submitted that the First Appellate Court ought not to have disturbed the finding of the Trial Court and the matter requires consideration in this petition and the same is to be allowed.

6. I have perused the materials placed on record, so also, the decision relied upon by the learned counsel for the petitioner, which is referred above, and also the orders passed by both the Courts below.

7. It is observed in the suit itself that when the lower Court acts arbitrarily, capriciously and perversely in exercise of its discretionary power, the First Appellate Court can interfere into the order passed by the Trial Court.

8. Looking to the materials on record and the pleadings produced by the parties, it is seen that the respondents-plaintiffs are holding registered General Power of Attorney, wherein it is stated that possession of the property has been handed over in their favour in the year 1991 and 1992. It is true as contended by both the sides that the original vendor has cancelled the first General Power of Attorney and on the very same day executed another General Power of Attorney

in favour of the respondents-plaintiffs, as such, the Trial Court has raised doubt with regard to the said act of the parties, so far as the General Power of Attorney is concerned. But the contention of the respondents is that on the basis of the said General Power of Attorney, they came into the possession of the property, they got conversion order and subsequently formed 49 sites, out of which, they have sold 47 sites and the dispute is only in respect of two sites, which is under challenge. It is their contention that after the conversion order and formation of sites, the mutation entries were also effected in their names. These aspects were not considered by the Trial Court in its order and when Miscellaneous Appeal was preferred before the First Appellate Court, it has referred to these aspects of the matter in detail in its judgment and observed that looking to the documents produced by both sides, there is a serious dispute as to the title of the property, therefore, same is to be ascertained during the course of trial. It has been observed by the appellate Court that in so far as 39 guntas of land is concerned, there is no claim, which is also to be considered during the trial of the main suit. It has been observed that when there is serious dispute with regard to the ownership of the suit schedule property from both sides and if the petitioner-defendant is permitted to proceed with the construction and ultimately in the suit, if it is transpired that the respondents-plaintiffs are the owners of the said property then it leads to multiplicity of proceedings and the very purpose of filing the suit would be defeated. Therefore, the First Appellate Court taking these aspects into consideration has allowed the appeal in-part and directed both the parties to maintain status-quo. If, according to the petitioner-defendant the construction work is already completed, she can bring the same to the notice of the Court during the course of trial, but so far as the judgment passed by the First Appellate Court is concerned, I am of the opinion that it is not in favour of anybody since it is observed that when there is serious dispute with regard to the ownership and title of the property during the pendency of the proceedings, status-quo is to be maintained. Therefore, I do not find any illegality in the judgment and order passed by the First Appellate Court and there are no grounds for this Court to interfere into the said judgment. Accordingly, W.P. No. 8905/2015 is hereby rejected.

9. As I have already observed above, since the first appellate Court has only directed both the parties to maintain status-quo in respect of the suit schedule properties pending disposal of the suit, the order passed by it in M.A. No. 61/2013, which is challenged in the connected W.P. No. 8906/2015 in allowing the appeal in part and setting aside the order passed on I.A. No. 1 also does not call for any interference by this Court. Accordingly, W.P. No. 8906/2015 is also hereby rejected.

However, the Trial Court shall try both the suits independently according to the merits, without being influenced by the observation made by this Court in these petitions.

Intimate accordingly.