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Court : Karnataka Gulbarga

Decided On : Jun-03-2014

Judge : B.S. Patil

Appeal No. : WP. Nos. 202414-415 of 2014 (GM-CPC)

Appellant : Pampanagouda

Respondent : Deepa

Judgement :

(Prayer: These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to issue a writ of certiorari, quashing the Annexure-C order dated 17.08.2012 passed in O.S.No.252/2011 on the file of the Prl. Civil Judge at Sindhanur and etc.,)

1. Petitioner is the defendant in O.S.No.252/2011 filed by the plaintiff - respondent herein. The said suit is filed seeking a decree of permanent injunction asserting that the plaintiff has been in possession of the suit schedule property measuring 1 acre 10 guntas comprised in Sy.No.122 situated at Sasalmari Village in Sindhanur Taluk of Rachur District. The plaintiff traced his title and possession to the property through her mother one Hampamma. Hampamma, in turn, is said to have got right to the property and possession of the same from her father Ayyanagouda who has given a share to her in the partition that was allegedly effected as prima facie evident from the mutation entry effected vide No.211 dated 18.06.1985.

2. The Trial Court found that as the mutation entry effected had remained unchallenged, the Court, at the stage of consideration of the prayer for grant of temporary injunction, was required to proceed on the basis of the revenue entries evidenced by the mutation entry. Thus, it has come to the conclusion that the plaintiff successfully established that prima facie case was made out regarding the actual possession of the plaintiff over the suit property and also the alleged interference by the defendant. Hence, it granted temporary injunction WP Nos.202414-415/2014 pending disposal of the suit. This order has been confirmed in appeal by the Appellate Court in M.A.No.11/2012.

3. Learned counsel for the petitioner submits that both the Courts below have seriously erred in proceeding on the basis of the mutation entry without there being any material produced to show that there was indeed a partition in the family wherein the other sisters and the defendant herein who is none other than the brother of the plaintiff were given any share. It is his submission that there cannot be a partition only in favour of a present respondent ignoring the other legal heirs.

4. Having heard the learned counsel for the petitioner and on perusal of the concurrent findings recorded by both the Courts below, I find that at the stage of consideration of the prima facie case regarding the actual lawful possession of the plaintiff, what is required to be examined is the actual lawful possession of the plaintiff over the suit schedule land. The mutation entry which has remained unchallenged is rightly taken as one of the important materials to prove the prima facie possession of the plaintiff. This approach of the Courts below cannot be termed as illegal or arbitrary. At any rate, no case is made out for interference in exercise of the writ jurisdiction.

5. Hence, these writ petitions are dismissed. The observations made on merits by the Courts below are confined only to the application for grant of temporary injunction and will not, in any manner, affect the merits of the matter during the course of trial.