

Mohammed Hussain Vs. Ramakrishna and Another

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Court : Karnataka

Decided On : Jan-19-2015

Judge : B. Manohar

Appeal No. : Writ Petition No. 59993 of 2014 (GM-CPC)

Appellant : Mohammed Hussain

Respondent : Ramakrishna and Another

Advocate for Def. : Sri. Mithun Gerahalli

Judgement :

(Prayer: This Writ Petition Is Filed Under Articles 226 And 227 Of The Constitution Of India With A Prayer To Quash The Order Dt.7.11.14, Passed By The Court Of Xxiv Addl. City Civil and Sessions Judge, Bengaluru City On Ia.No.16 In Os.No.9403/06, Produced At Ann-J And Etc.,)

1. Petitioner is the defendant in O.S.No.9403/2006. Being aggrieved by the order dated 7.11.2014 allowing I.A.No.16 filed under Order 26 Rule 9 of CPC, the present writ petition has been filed.

2. Respondents herein filed a suit seeking for permanent injunction restraining the defendant from interfering with their peaceful possession and enjoyment of the suit schedule property and also mandatory injunction against the defendant to demolish the building already constructed in the suit schedule property.

3. The case of the plaintiffs is that they are the absolute owners of 30 guntas of land in Sy.No.26/3A situated in Nagavara village. However, the defendant, on the guise of purchase of land measuring 40 x 60 feet interfered with their peaceful possession and constructed a building in their absence.

4. The contesting defendant filed a written statement, denying the averments made in the plaint and also contended that as per the registered Sale Deed dated 19.6.1998, he purchased the land and constructed the building in accordance with law and sought for dismissal of the suit.

5. It is relevant to note that before the commencement of evidence, the petitioner filed an application seeking appointment of the Court Commissioner to find out location of the property. The said application was allowed. Being aggrieved by the said order, the defendant preferred a writ petition in W.P.No.923/2007 before this Court challenging the appointment of the Commissioner. This Court by its order dated 20.2.2007 quashed the said order with an observation that the Commissioner cannot be appointed for collection of evidence and after the completion of evidence, parties can make an application for appointment of the Commissioner, if need be to adjudicate the dispute between the parties. After conclusion of the trial in the present case, the plaintiff filed an application in I.A.No.16 for appointment of Commissioner to hold local inspection and to find out the extension of encroachment made by the defendant. The Trial Court, taking into consideration all the aspects of the matter, found that on the basis of the oral and documentary evidence, it is very difficult to find out the extent of encroachment made and the dispute between the parties. If the Commissioner is appointed and if he gives report with regard to the exact location of the building and extent of encroachment, it will be helpful for the Court to come to the correct conclusion. In view of that, he allowed I.A.No. 16 and appointed the Court Commissioner. The said order has been questioned in this writ petition.

6. Sri S.V.Prakash, learned counsel appearing for the petitioner contended that the order passed by the Trial Court is contrary to law. Earlier, this Court while quashing the order of appointment of the Commissioner observed that "if it is found, there is an ambiguity in the evidence so adduced by the parties and for

clarification of such an ambiguity, the Court Commissioner can be appointed. In the instant case, the Court has not given any finding with regard to the ambiguity in the evidence. In the absence of the same, the Commissioner cannot be appointed.

7. On the other hand, Sri Mithun Gerahalli, learned counsel for the respondents argued in support of the order passed by the Trial Court and sought for dismissal of the writ petition.

8. I have carefully considered the arguments addressed by the learned counsel appearing for the parties and perused the impugned order and other relevant records.

9. The plaintiffs filed a suit seeking for permanent injunction and also mandatory injunction. On the basis of the pleadings of the parties, the Trial Court has framed necessary issues. The parties have led evidence and after conclusion of the evidence, the petitioner made an application for appointment of the Commissioner to hold local inspection and to submit a report with regard to the extent of land where exactly the building has been constructed and the extent of encroachment. The Court felt that on the basis of the oral and documentary evidence, it is difficult to come to the correct conclusion and if the Commissioner is appointed and he submits a report, it will assist the Court to come to the correct conclusion and thus allowed the application.

10. I find there is no infirmity or irregularity in the order passed by the Trial Court. This Court in a judgment reported in AIR 2007 Kar 3029 (Miss.Renuka vs. Sri Thammanna and Others) held that after conclusion of the trial, the Court Commissioner can be appointed, if the Court comes to the conclusion that appointment of Court Commissioner is necessary. The appointment of the Court Commissioner is discretionary power of the Court. The Trial Court has exercised its discretionary power in accordance with law. The petitioner has not made out a case to interfere with the order passed by the Trial Court. Accordingly, the writ petition is dismissed.