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Court : Karnataka Dharwad

Decided On : Jul-28-2015

Judge : B. Veerappa

Appeal No. : Writ Petition No. 107205 of 2015 [GM-CPC]

Appellant : Shrikant

Respondent : Subhas and Others

Judgement :

(Prayer: This Writ petition is filed under Articles 226 and 227 of the Constitution of India, Praying to set aside the order dated 05/06/2015 of the court of the PRL. Senior Civil Judge, Ranebennur passed on I.A.No.5 in R.A.81/2012 vide Annexure-G and allow the application I.A.No.5.

1. The petitioner-plaintiff/appellant filed the above writ petition against the order date 05.06.2015 dismissing his application I.A. No. V filed under Order XVIII Rule 18 of the Code of Civil Procedure, 1908 (for short the CPC').

2. The plaintiff/petitioner filed O.S. No.146/2009 for declaration of title in respect of suit schedule Aproperty and consequential relief of mandatory injunction against the defendant to hand over the vacant possession of the suit schedule properties by removing the illegal construction, contending that the plaintiff is the absolute owner and in possession of the suit schedule properties, purchased under the registered sale deed dated 13.04.2005 for valuable consideration and the

defendant is the adjacent owner of suit schedule Bproperty and for some unavoidable circumstances, the defendant subsequent to that constructed some temporary erections in the property of one Basavaraj Bimappa chalageri and the same was situated towards western side of suit schedule Aproperty. The defendant without any right, titled in respect of suit Aproperty, high handedly, constructed permanent erection by encroaching the plaintiff's property to an extent of 10X15 feet approximately, etc.

3. The defendant filed written statement, resisted the plaint averments and sought for dismissal of the suit.

4. After hearing both parties, the trial court dismissed the suit on 31.07.2008.

5. Against the said judgment and decree, the petitioner filed regular appeal in RA No.81/2012, before the Principal Senior Civil Judge, Ranebennur. When the appeal was posted for arguments on the main matter, the petitioner/appellant filed an application under order XVIII Rule 18 of the CPC, seeking for local inspection of the disputed properties by the appellate court, contending that the evidence adduced by either for the parties in the said suit is very clumsy and difficult to understand. Therefore, the personal inspection of the disputed property by the appellate court is necessary.

6. The defendant/ respondent filed objections to the said application and contended that already the appellant in his evidence before the trial court has admitted that the walls, situated towards east to west of the property covered in his sale deed, is a common wall and based on the said admission and also on the basis of the available records, the trial court has passed the judgment and as there is no ambiguity in the evidence adduced by the parties, there is no need for the Court to make personal inspection and hence, sought for rejection of the said IA.

7. Considering the said application and the objections, the appellate court by its order dated 15.06.2015 has dismissed the said application. Against the said order, the present writ petition is filed.

8. I have heard he learned counsel for the petitioner.

9. Sri.N.P.Vivekmehta, learned counsel for the petitioner, has contended that the impugned order passed by the appellate court rejecting the application is erroneous and contrary to law and that the total area of petitioner's property as per the sale deed is 561 sq.ft.in which, house area i.e., built-up area is 200 sq.ft. (20X10 feet) and remaining area is open space and this open space lies on the northern side; there is a window in the northern wall of petitioner's house. The walls on east and west are common wall and it is revealed by material on record. This material fact has not been considered by the appellate court and it is necessary for the court to inspect the spot, to resolve the controversy between the parties. Therefore, he sought to set aside the impugned order passed by the appellate court.

10. I have given my anxious consideration to the arguments advanced by the learned counsel for the petitioner and perused the entire material on record.

11. It is not in dispute that the suit is filed by the plaintiff for declaration of title in respect of suit schedule A and B properties and consequential relief of mandatory injunction to remove the alleged illegal construction by the defendant. After considering the entire oral and documentary evidence on record, the trial court dismissed the suit holding that the petitioner failed to establish his title in respect of suit schedule A and B properties and the plaintiff has failed to prove the alleged encroachment made by the defendant.

12. Against the said judgment and decree, a regular appeal is filed. When the appeal was posted for arguments, at that belated stage, the appellant filed the present application .

13. It is worthwhile to extract the provision of Order XVIII Rule 18 of the code of civil procedure, which reads as under:-

18. Power of court to inspect. "the court may at any stage of a suit inspect any property or thing concerning which any question may arise and where the Court inspects any property or thing it shall, as soon as may be facts observed at such inspection and such memorandum shall form a part of the record of the suit. ?

14. By a plain reading of Order XVII Rule 18 of the CPC, makes it clear the court may at any stage of the suit inspect any property or thing concerning which any question may arise and record the relevant facts observed on such inspection and such memorandam shall be part of the record of the suit. The said provision goes to show that the power has been vested in the court to make inspection, if it deems fit. The said power can be exercised by the court suo motu or even at the request made by the parties to lis. The language does not suggest that parties can claim spot inspection by the Court is not bound under Order XVIII Rule 18 C.P.C. to make a local inspection even if both the parties request for the same, if it considers that such an inspection is not necessary. On the other hand, an inspection can be made by the Court even if neither of the parties request, if it thinks necessary to do so in the interest of justice. The provision has not been enacted in order to test the veracity or the correctness of the evidence adduced in the case or believing some witnesses as against others, when the two sets speak about state of facts in a contradictory fashion.

15. The use of words at any stage of a suit in Order XVIII Rule 18 C.P.C. further goes to show that the local inspection can be made at any stage, namely, before the evidence has begun to be recorded or in the course of recording of the evidence or after the evidence is concluded and before the argument are heard and judgment is delivered. It is obvious that there must be some purpose for the Courts making such inspections, but by no stretch of imagination, the provisions can be said to have been enacted by the legislature for appreciating or believing the statement of a witness as against others.

16. In the present case, the suit of the plaintiff is for declaration of his title and mandatory injunction seeking vacant possession of the said properties from the defendant. As has rightly observed by the appellate court that, an application was also moved before the trial court by the present appellant seeking for appointment of Court Commissioner which was rejected and the same was confirmed by the High Court and there is clear evidence of the parties before the trial court in which the appellate court did not find any such ambiguity or difficulty for understanding the dispute/issue involved in the case. Moreover, there are also some admissions by PW-1 in his evidence which certainly do not warrant the personal or local

inspection by the appellate Court to the schedule properties.

17. In view of the aforesaid reasons, this Court is of the consideration opinion the impugned order passed by the appellate court is in accordance with law. The petitioner has not made out any ground to interfere with the same. Accordingly, the writ petition is dismissed.

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