

**C. Yogish and Another Vs. Devamma and Others**

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**Court :** Karnataka

**Decided On :** Apr-10-2017

**Judge :** Aravind Kumar

**Appeal No. :** W.P. No. 42694 of 2016 (GM-CPC)

**Appellant :** C. Yogish and Another

**Respondent :** Devamma and Others

**Judgement :**

(Prayer: This Writ Petition is filed under Article 227 of the Constitution of India, praying to set aside the Order Dtd. 4.6.2016 passed on I.A.no.3 in F.D.P. No.15/2013 by the Court of the Hon'ble Senior Civil Judge and Prl. JMFC, Tarikere Vide Annex-A and consequently allow the I.A.NO.3 Vide Annex-J.)

1. Heard Sri. Sachin V.R., learned counsel appearing for the petitioners and Smt. Anusha, learned counsel appearing for first respondent/ Caveator.

2. First respondent herein has initiated final decree proceedings under Order 20 Rule 18 of CPC in FDP No.15/2013 in order to enjoy the fruits of decree obtained by her in O.S.No.16/2003, which came to be affirmed in R.A.No.52/2011. During the pendency of said final decree proceedings petitioners herein filed an application under Order 1 Rule 10 (2) of CPC to come on record. Said application has been rejected by Lower Appellate Court with the following observation:

"7. Point No.1:- Perused the xxxxx 27.04.1988. No where in the application, she has stated that she had purchased the same under the registered sale deed. Further, she has not furnished the documents to show that she had purchased the property from the joint family members of the plaintiffs and defendants and no identification of the property from the joint family members of the plaintiffs and defendants and no identification of the property has been given in the application. In the absence of material documentary evidence, it is not proper to implead the applicant as proposed respondent as sought in the application. If she has produced the documents, for having purchased the property from the joint family members, the court could have verified the documents and passed suitable orders. The matter xxxxxx in the Negative."

3. In the meanwhile, first respondent herein is said to have filed a suit O.S.No.29/2006 for a perpetual injunction against defendants therein namely, writ petitioners herein, which came to be decreed on 11.08.2011. Appeal filed by the writ petitioners in RA No.35/2011 has also been dismissed on 06.03.2014. Being aggrieved by the same, petitioners are said to have filed RSA No.630/2014 against concurrent judgment and decree of the Courts below and in the said second appeal an order has been passed on 12.12.2014 directing the parties to maintain status-quo in respect of suit property. The suit property in the said suit i.e., O.S.No.29/2006 is item No.3 of FDP No.15/2013. In that view of the matter, petitioners herein filed an application under Order 21 Rule 97 read with Section 151 CPC to stay the Final Decree Proceedings. Said application came to be rejected on the ground that earlier attempts made by the petitioners to get themselves impleaded in RA No.52/2011 (which was against judgment and decree passed in O.S.No.16/2003, which is the subject matter of FDP No.15/2013) had been rejected on 04.07.2013 and same had reached finality. As could be seen from pleadings petitioners' claim before various forums seems to have changed its colour from time-to-time namely, at one point of time petitioners claimed to be the agreement holders but later on they contended that original owner of the property in question had executed a Will in their favour, since petitioners took care of him during his last days. However, these contentions have not been accepted by the learned District Judge as could be seen from the order dated 04.07.2013 dismissing the application of petitioners for getting impleaded in RA No.52/2011.

Undisputedly, petitioners have not challenged the order passed on 04.07.2013 dismissing I.A.No.2 in RA No.52/2011.

4. Sri. Sachin V.R., learned counsel appearing for petitioners assailing the order under challenge would contend that trial Court was not justified in dismissing the application filed by the petitioners namely, I.A.No.III under Rule 21 Rule 97 read with Section 151 CPC and in support of his submission, he has relied upon the judgment of this Court in NARENDRA NATH SHETTY vs. P.S.RAMA RAO PISEY reported in ILR 2009 Kar. 2870, whereunder this Court has taken a view that application for impleading can be entertained and granted even in a proceedings under Section 54 of CPC.

5. As could be seen from the said judgment, successful plaintiffs had initiated final decree proceedings for decree being drawn allotting respective shares. In the said proceedings an application under Order 1 Rule 10(2) CPC was filed by the applicants i.e., writ petitioners therein to come on record, contending interalia that they are the purchasers of property pedente lite and produced the documents of title. However, said application was rejected by the trial Court. Being aggrieved by the same petitioners were before this Court. Coordinate Bench of this Court taking note of the judgment of Apex Court in the case of KHEMCHAND SHANKAR CHOUDHARY AND ANOTHER vs. VISHNU HARI PATIL AND OTHERS reported in AIR 1983 SC 124 whereunder it came to be held that transferees during the pendency of partition suit can appear in final decree proceedings and claim equitable partition, even though they are not parties to the suit and as such held that applicants are to be impleaded in the said proceedings.

6. The facts obtained in the present case is entirely different. In the instant case, it is not the case of applicants that they had purchased the suit property from the party to the proceedings (O.S.No.16/2003). However, their claim as observed hereinabove is two fold; at the first instance, they claimed that husband of first respondent - Sri.Nanjaiah had executed an agreement of sale dated 27.04.1988 and later on they have contended in the cross objections filed in FDP No.15/2013 that said Nanjaiah had executed a Will dated 15.02.1980 in their favour. In fact on the same grounds, they had filed the application under Order 1 Rule 10(2) CPC to

come on record in R.A.No.52/2011, which was an off-shoot of judgment and decree passed in O.S.No.16/2003 and as already observed hereinabove said application has been rejected and it has reached finality.

7. In the said R.A.No.52/2001 learned District Judge by order dated 04.07.2013 - Annexure - C, rejected the application as already noticed hereinabove solely on the ground that petitioners viz., impleading applicants and had not placed any iota of evidence to establish their right, title and interest over item No.3 of the property, which is now subject matter of FDP No.15/2013. This order undisputedly has reached finality and learned counsel appearing for petitioners - Sri.V.R.Sachin has not been able to place on record any material to show that said order dated 04.07.2013 having been set aside by this Court or having been stayed. Thus, it can be safely concluded that order dated 04.07.2013 has reached finality.

8. As to whether petitioners are having any right by virtue of an agreement or Will purported to have been executed by the husband of first respondent - Sri.Nanjaiah cannot be examined in the final decree proceedings, particularly in the background of first respondent herein already having obtained an order of permanent injunction to restrain the petitioners from interfering with their possession in O.S.No.29/2006, which is now pending in RSA No.630/2014. However, no opinion is expressed by this Court in that regard as it is likely to prejudice the right of either of the parties. In that view of the matter, judgment of NARENDRA NATH SHETTY relied upon by Sri.V.R.Sachin, learned counsel appearing for petitioners would neither be applicable to the facts on hand nor would come to their rescue to contend that petitioners are entitled to seek for stay of the proceedings in FDP No.15/2013.

9. Be that as it may. The fact that petitioners being aggrieved by the judgment and decree passed in O.S.No.29/2006, which was confirmed in R.A.No.35/2011, has been challenged in RSA No.630/2014 is not in dispute. It is also not in dispute that in the said RSA No.630/2014 an order of status- quo has been ordered to be maintained by both the parties by order dated 12.12.2014. Thus, petitioners' alleged possession over the property in question, if any, stands protected. In that view of the matter, drawing up of final decree in FDP No.15/2013 cannot be stalled

at the instance of present petitioners, who prima facie have no semblance of right. However, it is made clear that no opinion is expressed in that regard since the claim of petitioners that they are in possession of item No.3 of property is now the subject matter of RSA No.630/2014 and it is open to the parties therein to workout their rights in accordance with law.

10. In the light of aforesaid discussion, I proceed to pass the following:

## **ORDER**

(i) Writ petition is hereby dismissed with costs.

(ii) Order dated 04.06.2016 passed on I.A.No.III in FDP No.15/2013 by the Senior Civil Judge and Principal JMFC, Tarikere, is hereby affirmed.

(iii) Petitioners are directed to pay cost of Rs.5,000/- to first respondent herein within two weeks from today, failing which registry is directed to issue a certificate in favour of respondent Nos.1 and 2 herein on affidavit being filed stating such costs has not been deposited to enable them to recover the same by filing an execution petition.

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