

Rame Gowda and ors. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Jan-24-2002

Reported in : AIR2002Kant177

Judge : D.V. Shylendra Kumar, J.

Acts : Consitution of India - Article 226

Appeal No. : Writ Petn. No. 18289 of 2001

Appellant : Rame Gowda and ors.

Respondent : State of Karnataka and ors.

Advocate for Def. : K. Sreenivasa Gowda, Govt. Adv. and ;Ravi B. Naik, Adv.

Advocate for Pet/Ap. : T.N. Raghupathy, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

D.V. Shylendra Kumar, J.

1. This writ petition is at the instance of the defendants in O.S. 198/98 on the file of the Court of the II Munsiff, Mysore Respondents 4 and 5 are the plaintiffs in that suit and the said suit is brought for declaration that plaintiffs are entitled for a right

of easement by way of a pathway over the lands of the defendants for a declaration and consequential restraint order not to interfere with the plaintiffs when the pathway is used.

2. In the said suit, an interim application had been filed seeking for an order of temporary injunction under Order 39, Rules 1 and 2 CPC. The application was opposed and the trial Court dismissed the application. The matter was carried by way of appeal by the plaintiffs in M.A. 8/99 to the Court of the 11 Additional Civil Judge, Senior Division, Mysore. Ultimately, by a judgment dated 18-12-1999, the appeal and the application under Order 39, Rules 1 and 2 were allowed and the respondent-defendants were directed by the Court to allow the plaintiff-appellants to make use of the pathway in the manner indicated in the order. The operative portion of the order reads as under :--

'The appeal preferred by the appellants is same and hereby allowed as below :

The order of the learned trial Judge passed on I.A. No. 1 dated 14-12-1998 is hereby set aside. The plaintiffs are entitled to have easement only to the limited extent as discussed above, the plaintiffs are entitled to have a right of passage over the extreme edge of Sy.No. 186, 189, 193, 184 and 185 and northern portion of Sy. No. 182 and 258 touching Palahalli and Bangalore Main Road, to take cart (without damaging the crop of the defendants), men and material, cattle, bullocks agricultural implements only during seasonal period namely ploughing period till crops are raised and during harvesting season. However, the plaintiffs are also entitled to use this survey numbers to move about their men and material and cattle but not bullock cart of other period from raising of crops till harvesting season. There is no order as to costs.'

3. It is the case of the petitioners that subsequent to this order, the respondents 4 and 5 have started interfering in their land all over the place and in fact have indulged in acts resulting in destruction of the standing crops in the land and it is the contention of the learned Counsel Sri. Kumar appearing for the petitioner that such acts on the part of the respondents 1 and 5 is in contravention of the judgment and order contained in M.A. 8/99 passed by the Court of II Additional Civil Judge, Mysore.

4. The petitioners' further grievance is that in view of such interference with their possession of standing crops in their land, the petitioners had filed a complaint before the jurisdictional Police namely Srirangapatna Police and a complaint in this regard appears to have been lodged before the Metahalli Police Station, Mysore taluk etc. It is the contention of the petitioners that the police have not taken any action to prevent such illegal interference in their property by respondents 4 and 5.

5. It further transpires that thereafter the petitioners had also filed I.A. IX before the trial Court praying for a direction to the defendants not to cause any damage to the standing crops in their lands. However, the said I.A. came to be rejected by the trial Court observing that the Appellate Court having granted an order of temporary injunction in favour of the plaintiffs in the suit, the trial Court cannot pass any orders either in derogation or contrary to the said order.

6. Whatever may be the reasons for which the trial Court rejected that application, the fact remains that the effort on the part of the petitioners to have the restraint order modified, failed. It is thereafter that the above writ petition has been preferred praying for issuance of a writ in the nature of mandamus to direct the Srirangapatna Police to give protection to the petitioners till the harvesting of sugarcane crop in their land and to implement the judgment in M.A. 8/99 referred to above.

7. Sri Kumar, learned Counsel for the petitioners has also relied upon a decision of this Court in : AIR1996 Kant256 (Papanna v. Nagachari) wherein it has been observed that the Court has power to issue appropriate directions notwithstanding the provisions of Order 39 Rule 2A in observing that the police should ensure that the Court orders are properly obeyed or implemented.

8. In the instant case, the petitioners have suffered an adverse order at the hands of the Appellate Court and an order of temporary injunction restraining the petitioners not to interfere with the right of the respondents 4 and 5 to use the pathway during the pendency of the writ petition operates against them. The scope of the suit is only as to whether the plaintiffs are entitled for a declaration to the pathway or not. In a matter of this nature, the question of the petitioners complaining that the order of the Appellate Court is not given effect to or not

obeyed does not arise. Direction contained in the order of the Court is against the petitioners themselves and it is they who have to obey and comply with that order. It is not a direction against the respondents-defendants. If as alleged by the petitioners there is any interference, it is always open to the petitioners to seek such appropriate relief in a manner known to law. The question of issuing any direction to the police in a matter like this, does not arise. It is not free from doubt as to whether a direction of this nature can be sought for even by a person who has an order in his favour by the civil Court. It is a fortiori so in the case of a person who has suffered an adverse order.

9. The decision relied upon by the learned Counsel for the petitioner has no application to the facts and circumstances of this case and does not advance the case of the petitioner.

10. In a matter of this nature, a writ in the nature of mandamus as sought for, cannot be issued. It is accordingly rejected.

11. Sri K. Sreenivasa Gowda, learned Govt. Advocate is permitted to file memo of appearance for R1 to R3 within a period of six weeks from today.

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