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Kantappa Vs. Krishnabai

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Court : Karnataka

Decided On : Oct-25-1994

Reported in : ILR1994KAR3676; 1995(1)KarLJ521

Judge : M.M. Mirdhe, J.

Acts : Code of Civil Procedure (CPC), 1908 - Order 39 - Rules 1 and 2; Specific Relief Act, 1963 - Sections 38

Appeal No. : C.R.P. No. 652 of 1988

Appellant : Kantappa

Respondent : Krishnabai

Advocate for Def. : Ashok Kalyanashetty, Adv. for R-1 and R-2

Advocate for Pet/Ap. : M. Mahabaleshwara Gowda, Adv.

Disposition : Petition allowed

Judgement :
Held:

(i) In view of the Judgment of the Division Bench deliveredby this Court in 1981 (2) KLJ 388, the law laid down in theRuling reported in AIR 1986 Karnataka 99, cannot be saidto be a good law.

(ii) The plaintiff is entitled to the relief of permanent injunction as well as temporary injunction if he is able to satisfy the condition required for issue of injunction in his favour.

OREDR

Mirdhe, J

1. This Civil Revision Petition is preferred by the petitioner who was the plaintiff in the trial Court against the order dated 26.8.1987 passed by the Additional Civil Judge, Bihar, in M.A.No.37 of 1985 allowing the Miscellaneous Appeal and setting aside the order dated 8.8.1985 passed by the Munsiff, Basavakalyan, in O.S.No.79 of 1984 dismissing I.A.No.II filed by the respondent under Order 39 Rule 4 of the C.P.C.

2. I have heard the learned Counsel for the petitioner and the learned Counsel for the respondent and perused the records of the case.

3. The petitioner has filed a suit against the respondent for specific performance of agreement of sale dated 15.5.1984. He also filed an LA. under Order 39 Rules 1 and 2 C.P.C. for temporary injunction and a temporary injunction came to be issued on 2.6.1984 exparte. After the defendants appeared in the suit and filed a written statement on 18.9.1984 they filed I.A.No.II for vacating the temporary injunction under Order 39 Rule 4 C.P.C. The trial Court after hearing both sides and perusing the material on record dismissed IANo.II filed by the respondents and made the temporary injunction issued on 2.6.1984 absolute. The respondents were aggrieved by this order and they have challenged the said order in Appeal in the Court of the Civil Judge, Bidar, and that Appeal came to be heard by the Additional Civil Judge, Bidar, and he allowed the Appeal and set aside the order of the Munsiff, Basavakalyan, and allowed I.A.No.II filed by the respondents and dismissed I.A.No.I. It is this order that is challenged in this case.

4. The basis for the Additional Civil Judge to set aside the order of the Munsiff is the Ruling of this Court in U.N. SHARMA v. PUTTEGOWDA AND ANR . In that Ruling this Court has held where in a suit for permanent injunction the plaintiff

alleged agreement of sale and the execution is denied by the defendants, the plaintiff is not entitled to claim any relief under Order 39 Rules 1 and 2 C.P.C. This is a Ruling delivered by the Hon'ble Single Judge of this Court. There is another Ruling reported in MAHADEVAMMA v. B.S. LINGARAJU AND ORS. 1981 (2) KLJ 388, wherein the Division Bench of this. Court consisting of Hon'ble M.N. Venkatachalaiah and N.R. Kudoor, JJ., have held as follows:-

'An intending transferee under a contract for sale of immovable property, who is put in possession of the property in part performance of the contract, can as a plaintiff bring an action for the possessory remedy of an injunction in protection of his possession against the transferor.'

Their Lordships have quoted the Ruling of the Supreme Court in RANACHHODDAS CHAHAGANLAL v. DEVAJI SUPDU DORIK AIR 1977 SC 1517, wherein the Apex Court has held as follows:-

'One of the limbs of part performance is that the transferee has in part performance of the contract taken possession of the property. The most important consideration is the contract. The true principle of the operation of the acts of part performance seems to require that the acts in question must be referred to some contract and must be referred to the alleged one; that they prove the existence of some contract, and are consistent with the contract alleged. The doctrine of part performance is defence. It is a sword and not a shield, (sic). It is a right to protect his possession against any challenge to it by the transferor contrary to the terms of the contract.'

This Ruling though on earlier day was not brought to the notice of this Court when this Court passed a Judgment reported in . In view of the Judgment of the Division Bench delivered by this Court in 1981 (2) Karnataka Law Journal 388, the law laid down in the Ruling reported in cannot be said to be a good law. The lower appellate Court relied on the Ruling reported in which cannot be said to be a good law in view of the fact that the said Ruling has not taken into consideration the law laid down by the Division Bench of this Court in 1981 (2) Karnataka Law Journal 388. There are no other grounds given by the Additional Civil Judge in allowing the Appeal of the respondents. Since the lower appellate Court has based its

Judgment on a Ruling of this Court which cannot be said to be holding the field in view of the earlier Division Bench Ruling of this Court quoted above, the Judgment of the Additional Civil Judge cannot be sustained and it is liable to be set aside.

5. The next question to be considered by the Court is whether the. judgment of the trial Court is sustainable in law. It cannot be disputed now in view of the law laid down by this Court in 1981 (2) Karnataka Law Journal 388 quoted above that the plaintiff is entitled to the relief of permanent injunction as well as temporary injunction if he is able to satisfy the conditions required for issue of injunction in his favour. The petitioner has filed the suit for specific performance of the agreement of sale dated 15.5.1984. He filed the suit on 1.6.1984 and an exparte temporary injunction came to be issued on 2,6.1984. He has also produced the original of the agreement of sale which is an unregistered one. In prima facie proof of that document, he filed his affidavit and the affidavit of the scribe and two attesting witnesses. The scribe has supported the case of the respondents. Subsequently he seems to have switched over his loyalty to the petitioner and he has filed his affidavit supporting the case of the petitioner. The attesting witnesses have filed an affidavit in support of the case of the petitioner. Therefore, there is prima facie material placed by the petitioner that defendant-1 executed an agreement of sale in favour of the plaintiff on 15.4.1984 agreeing to sell the suit schedule property in his favour and as per the averment in the agreement she has also put him in possession of the property. Though the defendants have produced the tax paid receipts for the year 1984-85, they have not produced any further receipts to show that they have paid any tax subsequent to 1985-86. Their paying tax for the year 1984-85 will not come to their aid because they might have paid it before the execution of the agreement of sale in favour, of the petitioner. On the other hand the conduct of the defendants is to be seen. Though the injunction was issued on 2.6.1984 till 18.9.1984 they did not take any steps for getting the temporary injunction vacated. This cannot be the conduct of a person who is in possession of the property and against whom an exparte temporary injunction is issued. Such a person will approach the Court at the earliest will try to and get the temporary injunction vacated. Taking into consideration all these aspects the trial Court dismissed the I.A. filed by the respondents under Order 39 Rule 4 G.P.C. and made the temporary injunction issued by it absolute. After going through the order

of the trial Court it cannot be said that the trial Court has exercised judicial discretion vested in it either capriciously or arbitrarily or unjustly. Therefore, the lower appellate Court was wrong in interfering with the order of the trial Court.

6. Hence I proceed to pass the following order:-

The Petition is allowed. The order of the Additional Civil Judge, Bidar, is set aside and the order of the Munsiff, Basavakalyan, is restored. Since the suit is of the year 1984, the Munsiff, Basavakalyan, is now directed to dispose of the suit as expeditiously as possible but not later than two months from today.

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