

Doddaveeregowda Vs. Basavaraju

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Court : Karnataka

Decided On : Jan-11-2010

Reported in : 2010(2)KarLJ175

Judge : K. Bhakthavatsala, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 26, Rule 10A

Appeal No. : Writ Petition No. 824 of 2010

Appellant : Doddaveeregowda

Respondent : Basavaraju

Advocate for Pet/Ap. : N.V. Vasanth, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K. Bhakthavatsala, J.

1. The petitioner-defendant in O.S. No. 455 of 2006 on the file of Civil Judge (Senior Division) Ramanagar, is before this Court praying to quash order dated 15-12-2009 passed on LA. No. 5 filed at Annexure-J.

2. The brief facts of the case leading to the filing of the writ petition may be stated as under:

Learned Counsel for the petitioner submits that Ex. P. 1 Palupatti was marked for collateral purpose and since the signatures at Ex. P. 1(c) and (d) of the present petitioner was denied the respondent-plaintiff filed an application under Order 26, Rule 10-A of the Civil Procedure Code, 1908 praying the Trial Court to refer the disputed signatures along with admitted signatures for comparison and report and the Trial Court erred in allowing the application.³ The respondent has filed suit against present petitioner for declaration that the suit schedule property is allotted to his share in the oral partition in the month of November, 1992 and since then he has been enjoying the suit schedule exclusively. He has sought for alternative relief that in the event of Court holding that the suit schedule property was not allotted to the share of the plaintiff in the oral partition, then to declare that he has perfected his title to the property by way of adverse possession and also sought for injunction.

4. The defendant has denied the averments of the plaint and sought for dismissal of the same. In view of the pleadings the Trial Court framed as many as 9 issues.

5. Learned Counsel for the petitioner submits that at the stage of argument the respondent-plaintiff filed an application under Order 26, Rule 10-A for referring the disputed signatures for expert opinion.

6. Issue 1 is on the point whether the plaintiff proves that suit schedule property was fallen to his share under oral partition dated 10-11-1992. In para 8 of the plaint in pursuant to it is pleaded that in pursuant to partition dated 10-11-1992 the suit schedule property was allotted to the share of the plaintiff by the defendant and the defendant and his wife have signed the memorandum of partition dated 10-11-1992. The defendant has denied his signatures at Ex. P. 1(c) and (d). Burden lies on the respondent-plaintiff to prove his case as pleaded in the plaint. The Trial Court has rightly allowed the application. I see no illegality or infirmity in the impugned order.

In the result, the writ petition fails and the same is hereby dismissed.

