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Court : Karnataka

Decided On : Jan-04-2013

Judge : A.S. Bopanna

Appeal No. : W.P. No. 21897 of 2010 (LB-BMP)

Appellant : Chandru

Respondent : The Additional Commissioner (East), Bruhath Bangalore Mahanagara Palike and Others

Judgement :

(Prayer: This writ petition is filed under Article 226 and 227 of the Constitution of India praying to quash the order passed by the first respondent dated 3.12.2009 produced at Annexure-A. This writ petition coming on for preliminary hearing in 'b' group this day, the court made the following)

ORDER

The petitioner is before this Court assailing the order dated 3.12.2009 which is impugned at Annexure- A to the petition. By the said order, the first respondent has rejected the application filed by the petitioner to implead himself as a party to the proceedings and has consequently ordered the change of khatha to the name of the 2nd respondent.

Heard learned counsel for the parties and perused the petition papers.

2. The petitioner herein claims right in respect of property under a sale deed dated 21.3.2007 executed by Smt. Parimala and her son Sri. Ravikiran. The case of the petitioner is that the property originally belonged to the husband of Smt. Parimala viz., Late N. Raju and after his death, the vendors have sold the property in his favour. The sale deed is produced at Annexure-D to the petition. When this was the position, there appears to have been certain claims made by the 2nd respondent in respect of the very same property claiming to be the wife of late N. Raju. It is in that context, the second respondent had initiated proceedings under Section 114-A of the Karnataka Municipal Corporation Act praying that the khatha be changed to her name by deleting the name of Smt. Parimala, since according to the 2nd respondent, said Smt. Parimala was not entitled to the property. In the said proceedings, the petitioner filed an application under Order 1 Rule 10 CPC seeking impleadment as a party to the said proceedings. It is on dismissal of the said application, the case put forth by the 2nd respondent has been considered in favour of the 2nd respondent and the khatha has been changed.

3. A perusal of the impugned order dated 3.12.2009(Annexure-A) would indicate that the first respondent had rejected the application filed by the petitioner mainly on the reliance being placed on certain paper report with regard to said Late N. Raju having been murdered and the petitioner having been party to the same. In my opinion, said aspect could not have arisen for consideration in a proceeding under Section 114-A of the Act, since all that what was required to be noticed by the first respondent is the rival rights claimed in respect of the property. If this aspect of the matter is kept in view, though no specific finding can be recorded in the instant proceedings with regard to ownership of the property either by the petitioner or the second and third respondents, the fact which cannot be lost sight of is that the proceedings before the first respondent was initiated by the 2nd respondent on 3.5.2007. To the said proceedings, Smt. Parimala was impleaded as the respondent. However, the records would disclose that the sale deed was executed by Smt. Parimala and her son in favour of the petitioner on 21.3.2007, which is a date prior to the date on which proceedings under Section 114-A was initiated by the 2nd respondent. If that be so, Smt. Parimala had lost interest in the

property as on the said date and the petitioner who had purchased the same under the registered sale deed was entitled to be on record to put forth his contention for the purpose of consideration of the same by the first respondent. Therefore, opportunity should have been provided to the petitioner for impleading himself as respondent to the said proceedings and thereafter the first respondent should have considered the rival contentions in accordance with law claiming right in respect of the property for the purpose of seeking retention of change of khatha of the said property. Since that procedure has not been followed by the first respondent and has rejected the application of the petitioner on irrelevant consideration, the order dated 3.12.2009 cannot be sustained.

4. The impugned order dated 3.12.2009 is accordingly set-aside. The matter stands remitted to the first respondent with a direction to permit the petitioner herein to come on record as respondent to the said proceedings. Thereafter, the first respondent shall permit the petitioner to file objection statement and bring all records on file of the proceedings before the first respondent and the second respondent herein also shall be permitted to file any further pleadings or documents before the first respondent. The first respondent shall thereafter consider the rival contentions in accordance with law and come to the conclusion on the materials available before him. The petitioner and respondent Nos.2 and 3 shall now appear before the first respondent on 4th February 2013 at 12 noon without further notice. The first respondent shall thereafter regulate the proceedings and conclude the same in accordance with law as expeditiously as possible.

5. Accordingly, writ petition is disposed of.

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