

SHANTHAMMA v. SRI NINGEGOWDA , (2024-1)213 PLR 191 (Kar.)

KARNATAKA HIGH COURT

Before: Mr. Justice S.G. Pandit.

SMT. SHANTHAMMA – Petitioner,

Versus

SRI NINGEGOWDA – Respondent.

WRIT PETITION NO. 10853 OF 2020 (GM-CPC)

Civil Procedure Code, 1908 (V of 1908) Order 39 Rule 1 and 2 – Property – Dispute with regard to identity of the property – Status quo – It would be appropriate for the parties to maintain status quo with regard to their possession.

ORDER

S.G. Pandit, J. – (5th September, 2023) – Heard the learned senior counsel Sri.G.V.Chandrashekar for Smt.Apeksha.D., learned counsel for petitioner/plaintiff and learned counsel Sri.Girish B. Baladare for respondent/defendant. Perused the writ petition papers.

2. Learned senior counsel for the petitioner/plaintiff would submit that petitioner/plaintiff filed suit for declaration and injunction in respect of the suit schedule property. Along with the suit, petitioner/plaintiff is said to have filed I.A.No.2 under Order XXXIX Rule 1 and 2 of CPC praying to restrain the defendant from interfering with plaintiff's peaceful possession and construction over the suit schedule property. It is submitted that Trial Court by order dated 04.07.2019 in O.S.No.749/2018 on the file of the IV Additional Civil Judge and JMFC., Hassan (for short, 'Trial Court') rejected I.A.No.2. Against which, petitioner/plaintiff filed M.A.No.39/2019 on the file of the Additional Senior Civil Judge and JMFC., Hassan. The Appellate Court also rejected the said M.A confirming the order passed by Trial Court. Against which, petitioner/plaintiff is before this Court.

3. Learned senior counsel Sri.G.V.Chandrashekar would point out that this Court on 05.10.2020 granted interim order of status quo and the said order is operating between the parties till this date.

4. Learned counsel Sri.Girish B. Baladare for respondent would submit that petitioner/plaintiff has not made out any prima facie case and as such both the Trial Court as well as Appellate Court rightly rejected I.A filed by petitioner/plaintiff under Order XXXIX Rule 1 and 2 of CPC. Since the petitioner/plaintiff has not made out prima facie case, he prays for dismissal of the writ petition.

5. Having heard the learned senior counsel for petitioner/plaintiff and learned counsel for respondent/defendant and on perusal of the writ petition papers, I am of the view that order

of status quo granted by this Court on 05.10.2020 requires to be continued directing the Trial Court to dispose of the suit expeditiously.

6. On going through the writ petition papers, it is seen that there is dispute with regard to identity of the property. The petitioner/plaintiff claims that he is the owner in possession of Sy.No.5/4 whereas respondent/defendant claims that he is in possession of land in Sy.No.5/14. Learned counsel for the respondent/defendant would submit that subsequently Sy.No.5/14 is rectified as Sy.No.5/4.

7. Since there is dispute with regard to identity of the property, it would be appropriate for the parties to maintain status quo with regard to their possession. Therefore, order of status quo granted by this Court on 05.10.2020 is continued until disposal of O.S.No.749/2018 on the file of the IV Additional Civil Judge and JMFC., Hassan. The Trial Court is directed to endeavor for early disposal of the suit with the co-operation of the parties.

With the above, writ petition stands disposed of.

*R.M.S.
disposed of.*

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Petition