
Emthiyaz Beg Vs Rakibha Jhan

Writ Petition No. 9707 of 2015 (GM-CPC)

Court: Karnataka High Court

Date of Decision: June 17, 2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) - Order 43 Rule 1(r)#Transfer of Property Act, 1882 - Section 52

Citation: (2015) 3 KCCR 2462

Hon'ble Judges: A.V. Chandrashekara, J

Bench: Single Bench

Advocate: Narayana Swamy V., for the Appellant; D.S. Hosmath, Advocates for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A.V. Chandrashekara, J

Heard the learned Counsel for the petitioner and the learned Counsel for the respondent. With their consent, the

matter is taken up for final hearing. Petitioner is the plaintiff in O.S. 44/11 pending on the file of Principal Civil Judge, Kollegal. The suit is filed for

the relief of possession and separate possession against defendants 1 to 6 who have contested the suit. During the pendency of the suit, an

application had been filed by the plaintiff seeking an order or temporary injunction against the 7th defendant with regard to alienation of the

schedule property till the disposal of the suit. Unfortunately the trial Court has granted an order of injunction restraining the 7th defendant from

interfering with the peaceful possession of suit schedule property by way of a temporary injunction till disposal of the suit, though no such prayer

was sought for in the application.

2. Being aggrieved by the order of stay granting injunction, the 7th defendant chose to file an appeal under Order XLIII, Rule 1(r), C.P.C. before

the Civil Judge, (Senior Divn.), Kollegal. The appeal was allowed on 19.1.2015. The plaintiff is aggrieved by the said order.

3. As rightly pointed out by the learned Counsel for the respondent, the trial Court could not have granted the order of temporary injunction against

the 7th defendant from interfering with the suit property in any manner when the very limited relief of injunction against alienation alone had been

sought for. The trial Court has not properly considered the documents of record.

4. The first appellate Court can interfere with a well considered order of the trial Court only when it suffers from perversity or illegality. In the light

of the documents not having a bearing on the suit, the first appellate Court has chosen to allow the appeal. Admittedly the 7th defendant is the

purchaser of the property in the year 1998 through a registered sale deed and his name finds place in the revenue records. Therefore the trial Court

has drawn statutory presumption under Section 133 of the Karnataka Revenue Act, 1964. The approach of the first appellate Court is quite

proper and no interference is called for. In the result, the petition is dismissed. Insofar as the relief against alienation is concerned it is made clear

that any alienation that is made during the pendency of Court proceedings will always be subject to the outcome of the suit and the person who

purchases such property would run the risk as stated in Section 52 of the Transfer of Property Act.