

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 2013 OF 2019
(Arising out of S.L.P.(C) No.23249 of 2018)

Shri Revansiddeshwar Pattan
Sahakari Bank Niyamit

....Appellant(s)

VERSUS

Taluka Tokrekoli
(Ambiga Samaji C Vikas Sangh
Indi) (Earlier Gangamath Sangha)
& Anr.

....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. Leave granted.
2. This appeal is filed against the final judgment and order dated 28.06.2018 passed by the High Court of Karnataka at Kalaburagi in Writ Petition No.203932

of 2015 whereby the High Court partly allowed the writ petition filed by respondent No.1 herein.

3. A few facts need mention *infra* for the disposal of this appeal, which involves a short question.

4. The appellant is defendant No. 2, respondent No. 1 is the plaintiff and respondent No. 2 is defendant No. 1 in O.S. No.445/2013 before the Court of Civil Judge, Indi at Indi.

5. Respondent No. 1 has filed a civil suit against respondent No. 2-Deputy Commissioner, Bijapur (defendant No. 1) and the appellant (defendant No. 2). The suit is for a declaration and injunction in relation to the suit land as detailed in the plaint.

6. In this suit, the plaintiff (respondent No. 1 herein) as well as defendant No. 2 (appellant herein) both filed an application for grant of injunction against each other under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 being IA No.1 and IA No.2 respectively.

7. The Trial Court by order 10.03.2014 dismissed both the applications. Defendant No. 2 (appellant herein) felt aggrieved by the dismissal of his application (IA No.2) filed Misc. Appeal No. 7/2014 in the Court of Senior Civil Judge & JMFC, Indi. By order dated 16.07.2015 (Annexure P-9), the appellate Court allowed the appeal and granted injunction which reads as under:

“The appeal filed by the defendant No.2/appellant is allowed.

The orders passed by the Trial Court, Civil Judge & JMFC, Indi on I.A.No.2 filed by defendant No.2/appellant under Order 39 Rules 1 and 2 of CPC in O.S. No.445/2013 dated 10.3.2014 is hereby set aside.

The plaintiff/respondent No.1 is hereby restrained from causing obstruction to the defendant No.2/appellant in making constructing over the property as prayed in the application I.A.No.2 till the disposal of suit.

No order as to costs.”

8. The plaintiff (respondent No. 1) felt aggrieved and filed W.P. No.203932/2015 in the High Court of

Karnataka, Kalaburagi and questioned its legality and correctness. By impugned order, the Single Judge of the High Court partly allowed the writ petition filed by the plaintiff (respondent No. 1). The High Court confirmed the injunction granted to defendant No. 2 by the Appellate Court and at the same time also granted injunction in favour of the plaintiff and restrained defendant No. 2 from interfering in plaintiff's possession. The order reads as under:

“Therefore, the petition is partly allowed. The order dated 16.7.2015 passed by the appellate Court, i.e., the Senior Civil Judge and JMFC, Indi, in Miscellaneous Appeal No.07 of 2014 granting injunction to the defendants with respect to property bearing CTS No.1336A/1B1B/1A1A/1A1A/29 measuring 30x55=1650 sq. ft. situated at Indi is confirmed. At the same time, the application filed by the plaintiff for injunction against the defendants with respect to property bearing CTS No.1336A/1B/1A/1/1A/1A measuring 30x40 and further 15x30 situated at Indi is allowed. The defendants are restrained from interfering in the peaceful possession of the plaintiff's property bearing CTS No.1336A/1B/1A/1/1A/1A measuring 30x40 and further 15x30 situated at Indi. The plaintiff is restrained from interfering in the

**defendants' possession of property bearing
CTS No.1336A/1B1B/1A1A/1A1A/29
measuring 30x55=1650 sq.ft. situated at
Indi."**

9. It is against this order of the High Court, defendant No. 2 has felt aggrieved and filed this appeal by way of special leave in this Court.

10. So, the short question, which arises for consideration in this appeal, is whether the High Court was justified in allowing the plaintiff's writ petition in part.

11. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside the impugned order remand the case to the High Court for hearing the writ petition afresh in accordance with law.

12. The need to remand the case to the High Court has occasioned for the reason that firstly, the High Court did not assign any reasons for allowing the writ

petition and secondly, the High Court seemed to have passed somewhat inconsistent order.

13. It is clear from the fact that the High Court allowed the injunction application made by both the parties against each other though the writ petition was filed by the plaintiff against the appellate order, which was passed only on the injunction application filed by defendant No. 2 (IA No.2) in their favour.

14. In other words, the only question before the High Court was whether the Appellate Court was justified in allowing the defendant No.2's appeal and in consequence was justified in allowing his (defendant's) injunction application (I.A.No.2) made against the plaintiff seeking injunction in relation to the suit property.

15. The reason was that it was not in dispute that the plaintiff did not challenge before the Appellate Court that part of the order of the Trial Court by which his injunction application was dismissed.

16. In this view of the matter when the plaintiff's injunction application stood dismissed by the Trial Court and the same was not carried in appeal at his instance, the same could not have been revived by the High Court in a writ petition filed by the plaintiff.

17. We are, therefore, unable to agree with the view taken by the High Court as the High Court neither examined the facts of the case properly nor the legal questions arising in the case, therefore such order is legally unsustainable.

18. The appeal is accordingly allowed. The impugned order is set aside. The case is remanded to the High Court for deciding the writ petition afresh on its merits in accordance with law.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[DINESH MAHESHWARI]

New Delhi;
February 25, 2019