

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 28TH DAY OF JUNE, 2011

BEFORE

THE HON'BLE MR.JUSTICE B.S. PATIL

WP.No.13467/2011 (GM-CPC)

BETWEEN:

1. Shashidhara Gowda H.D.
Aged about 58 years
2. Indudhara Gowda H.D.
Aged about 53 years
3. Shivakumar Gowda H.D.
Aged about 36 years

All are S/o Basavarajappa Gowda,
R/o Hirenelluru Village,
Talaguppa Hobli,
Sagar Taluk, Shimoga Dist.

... **PETITIONERS**

(By Sri R.Gopal, Adv.)

AND:

1. Balachandra R.
S/o Ramakrishna Shetty
Aged about 48 years
Talaguppa Village,
Sagar Taluk, Shimoga Dist.
2. Smt.Girijamma
W/o Basavarajappa Gowda,
Aged about 81 years
R/o Hirenelluru Village,
Talaguppa Hobli,
Sagar Taluk, Shimoga Dist.

... **RESPONDENTS**

(By Sri S.V.Prakash, Adv. for C/R1)

This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the order dated 24.3.2011 passed by the Sr.Civil Judge & JMFC., Sagar vide Annexure-N and etc.

This writ petition coming on for preliminary hearing this day, the Court made the following:-

ORDER

1. In this writ petition, petitioners are calling in question an interim order passed in Misc. Appeal No.5/2010 by the learned Senior Civil Judge, Sagar, thereby granting an order of temporary injunction in favour of the respondents herein restraining the petitioners from obstructing the possession and enjoyment of the suit schedule property till the disposal of the appeal.

2. The 1st respondent herein has filed O.S.No.48/2010 seeking relief of specific performance of the agreement for sale dated 16.02.2005. An application was filed by him under Order XXXIX Rules 1 & 2 CPC praying for temporary injunction to protect his possession from the alleged interference by the petitioners. The Trial Court rejected the said application holding that the agreement for sale relied upon by the plaintiff - respondent was not sufficiently stamped. On appeal, the



learned Appellate Judge has passed the impugned order recording a finding that the plaintiff was in possession and the said possession required to be protected till the disposal of the appeal.

3. Learned Appellate Judge has virtually decided the main appeal while disposing of the interlocutory application. He was well advised to dispose of the main matter instead of passing such a lengthy order while granting an order of temporary injunction. Be that as it may, the factors that weighed in the mind of the Appellate Judge for granting an order of temporary injunction is the statement of the defendants in the written statement stating that a sum of ₹.1,50,000/- was received by them, but not towards the agreeing to sell the property. Learned Appellate Judge has also looked into the agreement for sale to record a finding that the respondent-plaintiff was put in possession of the property.

4. As already noticed herein above, learned Appellate Judge ought to have disposed of the main appeal itself instead of recording a finding on the entire controversy and styling the order as an interim order. Ends of justice, therefore, require that a direction be issued to the learned Appellate Judge to



dispose of the appeal within a period of two months from the date of receipt of a copy of this order. Until then, both the parties are directed to maintain status-quo with regard to the possession of the property as it obtains today. With this modification to the impugned order, this writ petition is disposed of. However, it is made clear that the learned Appellate Judge shall not be influenced by any of the observations made by him in the course of the impugned order while considering the appeal on merit. All contentions are left open.

Sd/-
JUDGE

PKS