



Presented on : 05-11-2014

Registered on : 05-11-2014

Decided on : --

Duration :

IN THE COURT OF THE CIVIL JUDGE & JMFC., KOPPA.

Present : Smt. Aishwarya Chidanand Pattanshetti,

B.Com.,LL.M.,

Civil Judge & JMFC., Koppa.

Dated: This the 11th day of August 2023

O.S. No. 84/2014

Plaintiffs

Sindil Kumar S/o Late Chinna Thambi,
Age 40 years, Agriculturist, R/o
Guddethota Village and Post, Koppa
Taluk, Chikkamagalur District since dead
by Lrs.

- 1 Smt. Leela W/o late Sendil Kumar, Age
49 years,
- 2 Shabari Girish S/o late Sendil Kumar,
Age 27 years, Both are Agriculturist, R/o
Guddethota Village and Post, Koppa
Taluk, Chikkamagalur District

(By Sri P.T.D., Advocate)

-Vs-

Defendants

- 1 P.B. Vishnumurthy, 60 years,
- 2 P.B. Nagabhushan, 58 years,

3 P.B. Manjunath, 55 years,

4 P.B. Balakrishna, 60 years,

All are S/o Pattabhiramaiah, Agriculturist,
R/o Achebetthadakolalu, Guddethota
Village and Post, Koppa Taluk.

(By Sri. B.S.N., Advocate)

ORDERS ON I.A.No.10

This is an application filed by the learned counsel for the applicant/plaintiff U/ ORDER 39 RULE 2A r/w Sec.151 of CPC seeking an order to detain the opponent/defendant in civil prison for breach of injunction and disobedience of the order of this Court dated 29.8.2015, on IA No. 3 filed U/O.39 Rule 1 and 2 of CPC in the interest of justice and equity.

2. The application is supported with the affidavit of plaintiff, wherein it is stated that he has filed this suit against defendants seeking for relief of permanent injunction along with an application U/O.39 Rule 1 and 2 of CPC. And this Court allowed IA No.3 on 29.8.2015 and the said order is still in force. But the defendants have not respected the said order and started making unnecessary

disturbances for the peaceful enjoyment of the I.A. schedule property. The plaintiff has stated that on 9.6.2022 the opponents forcibly entered into the I.A. schedule property and forcibly cut and removed the silver oak trees in the schedule property. The plaintiff has stated that in this respect his son by name Shabari Girish gave a complaint to the PSI of Jayapura Police Station. The plaintiff has stated that he has produced the acknowledgment issued by the PSI of Jayapura Police Station. The plaintiff has further stated that subsequently on 14.6.2022 and 17.6.2022, his son gave a complaint to the Dy SP, Koppa and SP, Chikkamagaluru. The plaintiff has stated that the act of the defendants/opponents are purely violation of Court Order and showing disobedience to the Court Order. Hence, prayed to allow this application.

3. On the other hand the learned counsel for the defendants resisted the present application by filing his objections. It is contended that the present application is not maintainable under law and facts and is liable to be dismissed in limine and the same is filed with an intention to bargain time and to delay the trial. It is contended that

the application filed by the plaintiff is not presently maintainable as the cause of action to the suit dies and the right of action dies with the plaintiff and such right dies with the plaintiff and any action that would have arrived to the plaintiff is only a limited one.

4. It is further contended that the defendants have not committed any violation of the Court Order and the property of the plaintiff is not identified and the written statement filed by the defendants may be treated as part and parcel of the objections. It is contended that the plaintiff has sworn to a false affidavit and the defendants have violated the Court Order and the alleged incident is narrated fact for the purpose of the case. The defendants have contended that in view of the demise of the plaintiff the cause of action dies with the plaintiff and the legal heirs of the plaintiff have no right to urge any action for having committed any of the offences. Hence, by stating all these grounds the defendants have prayed to dismiss the application with costs.

5. Heard the arguments on both sides and perused the documents on record.

6. Having heard and on perusal of materials on record, the following points that would arise for my consideration;

1. Whether the applicant/plaintiff has made out valid grounds to allow I.A. No.10 as sought for at this stage?

2. What order?

7. My finding on the above points is as follows;

Point No.1 : In the Affirmative,

*Point No.2 : As per final order,
for the following:*

∴ REASONS ∴

8. **Point No.1: -**

On perusal of the materials on record it reveals that, the deceased plaintiff had filed this suit against the defendants for the relief of permanent injunction in respect of the suit schedule property. When the matter

was posted for await documents from the Tahshildar the deceased plaintiff filed the present application on 28.7.2022 and the matter was posted for objections to IA.No.10. Meanwhile the plaintiff was reported to be dead on 24.8.2022 and his Legal representatives plaintiff No.1(a) and (b) were brought on record as the right to sue survives on them, on application filed by them under Order 22 Rule 3 R/w Section 151 of CPC as IA.No.11, which was allowed on 16.12.2022.

9. Admittedly this Court had allowed IA No.3 under Order 39 Rule 1 and 2 R/W Sec.151 of CPC on 29.8.2015 and directing the defendants not to cut and remove the silver oak trees and also damage the coffee plants in the suit schedule land till the disposal of the suit.

10. On perusal of the entire materials on record it is clear that there is serious dispute in respect of the suit schedule property. Therefore, it is crystal clear that the defendants have also violated the order dated 29.8.2015 and the said order has not been challenged by the defendants till date.

11. It is to be noted that the present application is filed along with Sec.151 of CPC i.e inherent power of the Court and it may be exercised by a Court to do full and complete justice between the parties before it. In the present case on hand the applicants have shown prima facie to allow the application by considering the documents as produced.

12. **The Hon'ble High Court of Karnataka in K. Sheshappa V/s ST Francis Xavier Churom (Chikkaballapura 1999) (Kar. LJ 379) has held,**

"The purpose of order 39 Rule 2(A) is to prevent breach of the orders of the Court and disobedience of the orders of the Court..... When the Court has ordered parties to maintained status quo order and if breach of such status quo order is made out and established it is the duty of the Court to see that said breach is punished and is not repeated..... But the Court has to consider the suit separately and the application alleging that the defendant has committed breach of the status quo order has to be decided on the basis of evidence led in the application under order 39 Rule 2(A) and these two have to be taken to be distinct proceedings".

13. In this suit there is clear violation of the order of this Court passed on 29.8.2015 on IA.No.3 under Order 39 Rule 1 and 2 of CPC. Therefore in view of the proposition laid down by the Hon'ble High Court of Karnataka it would be appropriate to register a separate Civil Miscellaneous case against the defendants. With these observations, I answer the Point No.1 in the Affirmative.

14. **Point No.2:-**

As per my discussion in Point No.1, I proceed to pass the following;

ORDER

The application filed by the plaintiff U/
ORDER 39 RULE 2A r/w Sec.151 of CPC as
I.A.No.10 is hereby allowed.

Office is directed to register a separate Civil
Miscellaneous case against the defendants.

Sd/-
(Aishwarya Chidanand Pattanshetti)
Civil Judge & JMFC,
Koppa.