

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF JUNE 2015

BEFORE

THE HON'BLE MR.JUSTICE ANAND BYRAREDDY

REGULAR FIRST APPEAL NO. 712 OF 2015 (INJ)

Between:

1. Smt. Lakshamamma
aged 67 years,
W/o late Chinnappa @ Kumarappa bhovi,
2. K.C.Jayakumar
S/o late Chinnappa @ Kumarappa bhovi,
Aged 38 years,
3. K.C. Saraswathi
S/o late Chinnappa @ Kumarappa bhovi,
Aged 36 years,
4. K.C.Prasanna
S/o late Chinnappa @ Kumarappa bhovi,
Aged 33 years,

All are residing at No.9/8, 1st main road,
Byrasandra, 1st block East, Jayanagar,
Bangalore – 11.

...Appellants

(By Shri. H.N.Venkatesh, Advocate)

And:

1. Sarvodaya Education Trust
Represented by its trustee S.Vivekananda
S/o late Siddaiah, Aged major,
Residing at No. 376, 10th cross,
Jayanagar 2nd Block,
Jayanagar extension, Jayangar,
Bangalore 560004
2. The Commissioner
Bangalore Development Authority,
Kumara Park west,
T.Chowdaiah road,
Bangalore 560020
3. The Commissioner
BBMP, N.R.square,
Bangalore 560009

... Respondents

(By Shri K.B.S. Manian, Advocate for R1
Shri K.M.Nataraj, Advocate for
Shri B.S.Sachin, Advocate for R2)

This RFA is filed under Section 96 read with Order 41 Rule 1 of Code of Civil Procedure against the judgment and decree dated 13.4.2015 passed on I.A.No.4 in O.S.No.1565/2015 on the file of 40th Additional City Civil & Sessions Judge, Bengaluru, allowing I.A.No.4 filed under Order 7, Rule 11(d) read with Section 151 of Code of Civil Procedure, the plaint is rejected and the suit is dismissed as not maintainable without seeking the relief of declaration of title; and etc.

This RFA coming on for orders this day, the court made the following:

JUDGMENT

Heard the learned counsel for the appellants and the learned counsel for the respondents.

2. The appellants were the plaintiffs before the Trial Court. The suit was one for permanent injunction restraining the defendants, including the Bengaluru Development Authority, from interfering with the alleged possession of the plaintiffs.

3. The defendant No.1, which is said to be an educational Trust, had entered appearance and had raised several objections to the maintainability of the suit, including the fact that there was an earlier suit in O.S.No.3227/11 which was dismissed and that fact has been suppressed in the present suit and also other objections as to the land being subject-matter of acquisition proceedings and the Bengaluru Development Authority having formed a civic amenity site over the land and the defendant No.1 having been put in possession of the same and a school having been constructed over the said site and the plaintiffs having no

semblance of a right to seek injunction and finally that the suit was not in the proper form and the plaintiff ought to have sought for declaration of title. At that stage, the plaintiffs sought to amend the suit for declaration of title and court had pointed out that such a relief being claimed, would attract court fee of a substantial amount and on that controversy, the application was not ordered and the suit was treated as one for permanent injunction and the court below has proceeded to reject the plaint under Order VII Rule 11(d) read with Section 151 of Code of Civil Procedure, 1908, on the ground that the suit was not maintainable in view of an earlier suit for injunction having been dismissed.

4. The appeal was preferred on the footing that the court below having rejected the plaint in terms of Order VII Rule 11(d) of Code of Civil Procedure, 1908, could not have placed reliance on the pleadings in the written statement and if at all the plaint could have been rejected on the basis of the averments in the plaint. As the court has proceeded to do so, procedurally this was

not in order and on that ground alone, the appeal would have to be allowed.

5. Incidentally, the learned Senior Advocate Shri K.M.Nataraj appearing on behalf of the counsel for respondent No.2, would submit that the land in question is certainly subject-matter of acquisition proceedings. Though the Bengaluru Development Authority had entered appearance before the Trial Court, it had not produced any material documents to substantiate its case that the land in question was subject-matter of acquisition proceedings and that there was subsequent allotment in favour of defendant No.1.

6. It is stated that the Bengaluru Development Authority, however, is now in a position to do so and hence the application seeking to produce additional documents, along with objections to the application seeking injunction in the present appeal are filed, and would submit that on the face of it, this court could look into those documents in terms of Order 41 Rule 27(1)(b) of

the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC', for brevity) and therefore the learned Senior Advocate would submit that in terms of Order 41 Rule 27(1)(b) of the CPC, this court may even now peruse the documents which are public records and could hold that the suit was not maintainable, as laid down by the Supreme Court, since the land was subject-matter of compulsory acquisition.

7. The learned counsel for the appellants, on the other hand, would submit that even if this was so, the plaint could not be rejected on the basis of any such documents produced by the Bengaluru Development Authority and at best, an issue in that regard could have been tried as a preliminary issue, even if the documents are to be produced before the court and if the court below had to accept the same.

8. Procedurally the learned counsel for the appellants may be right in claiming that in a civil suit, the procedure being strictly covered by the CPC, the court below would not assume that the

land was subject-matter of acquisition proceedings, without a semblance of evidence being presented before it and therefore it would be necessary for the court below to allow the evidence to be placed on record before forming an opinion and even rejecting the plaint. Ultimately the appeal would have to be allowed and the matter remanded to the Trial Court for a fresh consideration of the primary issue that would arise, if the Bengaluru Development Authority should file its pleadings to assert that the land in question was subject-matter of acquisition proceedings and subsequent allotment in favour of defendant No.1.

9. The learned counsel for the appellants would, at this point, emphasize that the nature of the land ought not to be changed, though there was a school building erected by the defendant No.1 in the first instance. That school building has now been demolished and the 1st defendant is actively constructing a housing complex, though styled as a school building, and hence if the nature of the property is changed, it

would result in grave hardship to the appellants and seeks restrain of any further developments.

10. The learned counsel for the defendant No.1 would point out that the allegations are without any basis. Admittedly the defendant No.1 was very much in possession of the property and was running the school. The school building having become redundant, has now been demolished and in stages, the reconstruction of the school building is on and any delay in such construction would result in escalation in the cost of construction which the appellant is not in a position to bear and therefore any imposition on the defendant, would result in hardship and irreparable loss and hence seeks that notwithstanding the remand of the matter, defendant No.1 should be permitted to carry on with the construction. The defendant would undertake that it shall not plead equities in the event that appellants should ultimately succeed.

11. Accordingly the appeal is allowed. The matter is remanded to the Trial Court with a direction to permit the defendants to file their pleadings, if any, within the prescribed time under the CPC, running from the date of remand, and the Trial Court to ensure that after the pleadings are complete, a preliminary issue as to the maintainability of the suit in the light of the settled legal position that if the land is subject-matter of compulsory acquisition, the civil suit does not lie, would have to be framed and accordingly decided. In the meanwhile defendant No.1 is permitted to carry on with its construction work, subject to the condition that it shall not plead equities in the event the appellants should succeed.

**Sd/-
JUDGE**

Rd/-