

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 29TH DAY OF OCTOBER 2002

BEFORE

THE HON'BLE MR. JUSTICE V. GOPALA GOWDA

WRIT PETITION NO.38083/2002 (GM-Res)

BETWEEN;

M. Narayan Das,
S/o late M. Kadarappa,
major, aged 78 years, Residing at
"Poorna Horticulture", 47th cross,
8th Block, Jayanagar,
Bangalore-560 070.

..PETITIONER

(By Sri C.B.Srinivasan for Sri Jayanth M. Pattanshetty,
Ashok Patil and V. Srinivas Raghavan for petr.)

AND;

1. J. Rasaranjan,
S/o J.S.Rousseau, Aged about 54 years.

2. Smt. J. Mahishree, w/o late
J. Udayan, Aged about 48 years.

Both residing at No.104, Adarsh Nest,
III Cross, C.R.Layout, Bangalore-560 078.

..RESPONDENTS

(By Sri Anant Mandgi and Smt. Ujwala A. Mandgi for C/R)

This writ petition filed under Articles 226 & 227 of
the Constitution of India praying to quash the order of
the Court of the XXVII Additional City Civil Judge,
Bangalore City, Dt.3.10.2002 in O.S.11/2002 at Ann-K
allowing IA IV and permitting the return of the original
documents to R1 and 2 and dismiss the said application
& etc.,

This writ petition coming on for prly.hg. this day,
the Court made the following:-

..ORDER..



ORDER


Petitioner has filed this writ petition seeking for issuance of a writ of certiorari quashing the order dated 3.10.2002 passed by the XXVII Addl. City Civil Judge, Bangalore City, in O.S.No.11/02 at Annexure-K allowing I.A.No.IV and directing the Office to return the original documents to respondents 1 and 2 which were produced by them and has sought for dismissing the same urging various grounds.

2. The suit is filed by the petitioner for grant of judgment and decree of bare permanent injunction against the Corporation not to make Katha in respect of the suit schedule property in favour of respondents 1 and 2. The petitioner filed an application under Order 13 Rule 10 of CPC in O.S.No.4833/2002 to call for the original documents produced by respondents 1 and 2 in support of their case in O.S.No.11/2002. During the pendency of the said application, I.A.No.4 was filed by respondents 1 and 2 in O.S.No.11/2002 under Order 13 Rule 9 CPC



requesting the trial Court to return the original documents produced by them in support of their case. The petitioner also filed application I.A.No.6 dated 27.6.2002 under Order 13 Rule 8 read with Sec.151 CPC seeking to keep the said documents in safe custody till the disposal of the suit and pass such other orders urging various grounds. The trial Court without considering the application I.A.No.6 filed by the petitioner allowed I.A.No.4 filed by respondents 1 and 2 permitting them to take back the original documents produced by them. Hence, this writ petition questioning the correctness of the order passed on I.A.No.4.


3. It is contended by the learned Senior counsel Sri.C.B.Srinivasan appearing for the petitioner that the trial Court without considering and passing orders on the application I.A.No.6 filed by the petitioner has considered the application filed by respondents 1 and 2 and though they have not made out the case for return of the documents, has proceeded to pass the impugned order which is a non-speaking orders and



the same requires to be inteferred with by allowing this writ petition.

4. The learned counsel for respondents 1 and 2 has sought to justify the impugned order placing strong reliance upon the provisions of Order 13 Rule 9 CPC contending that under the above said provisions of the CPC, if a party is desirous to receive back the documents produced by him in the suit and placed on the record shall, unless the document is impounded under Rule 8, is entitled to receive back the same and since there is no order passed under Order 13 Rule 8 CPC, the learned trial Judge has rightly exercised his power and granted the relief which cannot be interferred with by this Court in exercise of its extraordinary and supervisory jurisdiction.

5. With reference to the rival contentions urged by the parties, I have examined the impugned order to find out as to whether the impugned order is correct or not. For the purpose of appreciating the rival contentions



urged by the parties, it is necessary for this Court to extract Order 13 Rule 9 CPC which reads thus:-

"Order 13 Rule 9 CPC: RETURN OF ADMITTED DOCUMENTS:- (1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under Rule 8, (underlined by me) be entitled to receive back the same,-

- (a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and
- (b) Where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of:

6. It is an undisputed fact that as on the date of passing of the order, the application filed by the petitioner under Order 13 Rule 8 CPC was pending consideration by the trial Court. The learned trial Judge ought to have taken up both the applications referred to supra for



consideration and pass appropriate orders. Though he has referred to the rival contentions urged by the parties and the findings recorded by this Court in the criminal petition No.1975/2002 filed by respondents 1 and 2, the trial Judge has not passed the order on the application I.A.No.6 filed by the petitioner. Without passing any order on that application, the trial Judge should not have exercised his power under Order 13 Rule 9 and passed the impugned order. The learned trial Judge has conveniently ignored the statutory provision under Order 13 Rule 8 CPC as there was a request made by the petitioner after filing of the application by respondents 1 and 2 for impounding the documents for the reasons mentioned in the application and it is the duty of the Court to find out as to whether the petitioner is entitled for the relief claimed in I.A.No.6. The impugned order passed by the trial Court without considering and passing the order on the said application, is not proper and therefore the impugned order is vitiated in law. On this ground alone, the petition must succeed.



7. Apart from this, the learned trial Judge except adverting to the facts and the rival contentions in the impugned order, he has not recorded the reasons as to on what ground he has ordered for return of the original documents to the respondents 1 and 2. This is also one more reason for this Court to interfere with the impugned order and quash the same.

8. For the reasons stated supra, this writ petition is allowed. The impugned order is quashed. The matter is remitted back to the trial Court with a direction to it for considering both the applications I.As.4 and 6 respectively and pass appropriate orders within two weeks from the date of receipt of this order. Till the order is passed, the documents produced by respondents 1 and 2 shall be kept in safe custody.

Sd/-
JUDGE

*alb/-