

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT GULBARGA

DATED THIS THE 28TH DAY OF OCTOBER 2011

BEFORE

THE HON'BLE MR. JUSTICE S. ABDUL NAZEER

* 82919

WRIT PETITION NOS. 82918 TO ~~81919~~ 2011 (GM-CPC)

Between:

Hussain Sab,
S/o Sayed Sab Attar,
Aged about 62 years,
Occ; Agriculture & Business,
R/o Balawadgi village,
Chittapur Tq., Gulbarga Dist.

* Corrected with
Chamber order, dated
13/11/2012.

Devi M
(Addl. PS to ABHJ)

.... Petitioner.

(By Sri Ameet Kumar Deshpande, Adv.)

And:

The Wadi Stone Marketing Company Pvt. Ltd.,
Wadi, Chittapur Tq., Gulbarga Dist.,
Through its Director Sarwat Mehmood,
S/o Mehboob Ali, aged about 54 years,
Occ; Business, r/o Indiranagar, Wadi,
Chittapur Tq., Gulbarga Dist.,
Now at Hyderabad.

.... Respondent.

These Writ Petitions are filed under Articles 226 & 227 of the Constitution of India, praying to quash the impugned order dated 14.6.2011 passed by the Civil Judge (Sr.Dn.), Chittapur, in

M.A.Nos.10/2011 (old No.10/2009) dismissing the appeal and confirming the order dated 4.7.2009 of the Civil Judge (Jr.Dn.), Shahabad, etc.

These Writ Petitions coming on for Preliminary Hearing this day, the Court passed the following:

ORDER

The petitioner is the defendant in O.S.No.22/2009 on the file of the Civil Judge (Sr.Dn.), Shahabad and the respondent is the plaintiff. The plaintiff filed the above suit for injunction restraining the defendant from interfering with its peaceful possession and enjoyment of the suit schedule property. In the said suit, the plaintiff filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure for grant of ad-interim order of temporary injunction. It appears that the trial Court has granted an ex-parte order of temporary injunction as prayed for in the application.

2. After service of notice, the defendant not only filed his written statement but also an application under Order 39 Rule 4 of the Code of Civil Procedure for vacation of the interim order granted in the suit. The trial Court clubbed both the applications and passed an order on 4.7.2009 allowing the application-I.A.No.2 filed by the

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plaintiff and rejecting the application-I.A.No.4 filed by the defendant. The defendant or any persons claiming through or under him were restrained from alienating, mortgaging, leasing, encumbering or creating any charge over the suit land bearing Sy.No.77/1 measuring 6 acres 15 guntas of Belavadgi village, Chittapur Taluk, Gulbarga District. The appeals filed by the defendant challenging the said order were dismissed.

3. Having heard the learned Counsel for the petitioner, I do not find any merit in this case. The courts below have noticed that the plaintiff is claiming title to the property under a sale deed. The plaintiff has produced RORs in respect of the suit land for the period from 1973-1974 to 2006-2007, the endorsement issued by the Tahsildar, Chittapur, dated 21.4.2004 and the order of the Tahsildar, Chittapur, dated 21.11.2005 and other documents. The courts below have held that the defendant has not produced documentary evidence in support of his contention that he is the owner and in possession of the suit schedule property. The findings of the courts below are on appreciation of the materials on record, which does not call for

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interference. There is no merit in these writ petitions. They are accordingly dismissed. However, the trial Court is directed to dispose of the suit on its merits and in accordance with law without being influenced by this order or the impugned orders. No costs.

**Sd/-
JUDGE**

BMM/-