

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
[SRI SRINIVAS S GOWDA AND ANOTHER VS. SMT HEMALATHA
M AND OTHERS]

HSJ

24.07.2024

(VIDEO CONFERENCING / PHYSICAL HEARING)

ORDER ON I.A.NO.3/2024

Heard on I.A.No.3/2024.

2. Learned counsel for respondent No.1 has filed I.A.No.3/2024 under Section 151 of Code of Civil Procedure praying to modify the interim order of stay dated 28.05.2024 passed by this Court and permit respondent No.1 to utilize the schedule property in terms of the interim order passed in WP No.5542/20520 c/w WP No.13134/2021(LB-BMP) which is operating during pendency of the suit between the appellant and respondent No.1 and also filed affidavit of the respondent No.1 with some documents.

3. Learned counsel for the appellant has filed the detailed statement of objections by way of affidavit to this application along with some documents.

4. Learned senior counsel Sri. Uday Holla, submitted that the building is constructed on the schedule properties is lying vacant therefore, prays for permission to occupy the said

building in order to avoid further deterioration of the building without claiming any equity and creating any third party rights on the building during pendency of the appeal and occupying and utilizing the building is subject to result of this appeal, as, respondent No.1 has obtained decree in her favour of permanent injunction. Further, argued with reference to the order passed in WP No.5452/2020 c/w WP No.13134/2021, therefore, respondent No.1 is entitled to utilize the suit site in terms of the interim order in pending suit between the parties. The said order is confirmed in the WA No.1306/2022 and further the Special Leave Petition is filed before the Hon'ble Apex Court against the order is dismissed. Further, argued with reference to the observations made in the WP No.54190/2018.

5. On the other hand learned counsel for the appellant by filing statement of objections for the aforesaid affidavit vehemently contended that in violation of the interim order of status-quo, the respondent No.1 has put up construction therefore, she is not entitled to occupy the building constructed on the suit site, as it perpetrates to do the wrong things more. It is apprehension expressed by the counsel that if the respondent No.1 is permitted to occupy the building that would

be amounting to permit to respondent No.1 to create third party rights and would be as good as putting respondent No.1 in possession of property in question, which is nothing but decreeing the suit of which the judgment and decree is questioned in the appeal. Further, submitted that respondent No.1 has obtained licence and plan sanction for construction of basement and ground floor in violation of status-quo order passed by this Court in MFA No.579/1999 and whatever the constructions are made are in the teeth of the orders passed by this Court hence, the construction is requires to be demolished. Further, submitted when suit is filed in O.S.No.4938/2018, the schedule property was vacant and there was no construction, but however, based on the Ex-parte order of injunction building was constructed. Thereafter, on 29.09.2018 the order of injunction is modified with the status-quo order but respondent No.1 had constructed structure on it. Further, submitted that during interim order of status-quo the respondent No.1 has continued the construction, therefore, prays to dismiss I.A.No.3/2024 filed for modification of the interim order.

6. Learned counsel for the appellant has relied on the judgments of Hon'ble Supreme Court are as under:

- a. **SRUJIT SINGH & OTHERS Vs. HARBANS SINGH & OTHERS** reported in **(1995) 6 SCC 50.**
- b. **JEHAL TANTI & OTHERS Vs. NAGESHWAR SINGH (DEAD) THROUGH LRS.** reported in **(2013) 14 SCC 689.**
- c. **SATYABRATA BISWAS & OTHERS Vs. KALYAN KUMAR KISKU & OTHERS** reported in **(1994) 2 SCC 266.**

7. This Court on 28.05.2024 has passed the interim order of operation and execution of the judgment and decree dated 29.02.2024 in O.S.No.4938/2018 is stayed. Now, the respondent No.1 is seeking modification of the said order and for permission to occupy the building constructed without claiming any equity and without claiming any third party rights thereon.

8. There is dispute between Vinayaka House Building Co-operative Society and Chikkathimayya, regarding ownership of the land, in which the suit site was formed in the layout by the Vinayaka House Building Co-operative Society. The respondent No.1 has filed suit for permanent injunction against the appellant herein and other respondents. The said suit is decreed, thereby, restrained the appellant and respondent

Nos.2 and 3 from interfering with possession of plaintiff in respect of suit schedule property. Therefore, the respondent No.1 is having benefit of decree of permanent injunction against the appellant and other respondents. There was suit in O.S.No.1717/1998 between Vinayaka House Building Co-operative Society Vs. Chikkathimayya regarding the ownership and in the said suit temporary order of injunction was granted against which MFA No.579/1999 is filed and there was order directing the parties to maintain status-quo. The respondent No.1 is not party in the suit and in MFA No.579/1999.

9. This Court in WP No.54190/2018 has ordered on 14.12.2018 directing the respondent No.1 herein not to put any further construction beyond the basement and ground floor as it has been already put up pursuant to sanction plan issued by the BBMP and for other incidental works .

10. This Court in WP No.5452/2020 c/w WP No.13134/2021 dated 21.11.2022 has observed and passed the order at Para No.17 that the respondent No.1 (petitioner in WP) has completed the construction of basement and ground floor on the suit site. It is further observed that in O.S.No.4938/2018, respondent No.1 has obtained an order of temporary injunction restraining the appellant herein (5th

respondent in WP therein) from interfering with peaceful possession and enjoyment of the suit site and the same is in operation till today, therefore, it is ordered that respondent No.1 is entitled to utilize the said suit site in terms of the interim order operating in the pending suit between the parties. This order is confirmed in WA No.1306/2022 and SLP.No.21659/2023 filed against the said order is dismissed. This order is passed on 21.11.2022 and is confirmed in SLP No.21659/2023 dated 03.10.2023. Though there was an order of maintaining status-quo during pendency of the suit, but the BBMP has sanctioned plan and respondent No.1 has put up construction and respondent No.1 has also benefit of decree of permanent injunction. Whatever the order of status-quo was granted in MFA No.517/1999 is between the Vinayaka House Building Co-operative Society Vs. Chikkathimayya, for which the respondent No.1 is not party. Hence, the said order of status-quo passed in MFA No.517/1999 is not binding on the respondent No.1.

11. The Trial Court has observed in the judgment that the appellant has answered that he has no personal knowledge about Writ Appeal, Writ Petition and Special Leave Petition. But, in these Writ Petition, Writ Appeal and Special Leave

Petition the appellant was party. Further, it is observed the Trial Court as observed at Para 15(g) that he is not aware when Sy.No.17 changed into Sy.No.43. Further, observed that the appellant do not have personal knowledge even regarding extent of land and from say of his lawyer he has deposed that the extent of Sy.No.17 is 4 acres. Therefore, respondent No.1 has benefit of decree of permanent injunction in O.S.No.4938/2018. Further, the Trial Court has observed in the judgment that the appellant is claiming non existing property whereas, respondent No.1 has produced revenue records such as khata etc., to claim over the suit schedule property.

12. Further, though according to the contention of the appellant that while the order of status-quo in force respondent No.1 has constructed the building that is at the risk of respondent No.1. This Court has permitted in WP No.5452/2020 c/w WP No.13134/2021 that respondent No.1 is entitled to utilize the subject site in terms of the interim order operating in the pending suit between the parties as discussed above. Furthermore, request of the respondent No.1 is that to occupy the building is without claiming any equity and without creating any third party rights on it. Therefore, if respondent

No.1 is permitted to occupy the building put up on the suit site that is subject to result of the appeal, hence, the I.A.No.3/2024 filed by respondent No.1 is liable to be allowed.

13. The decisions relied on by the counsel for the appellant are not applicable for having difference in factual matrix between in the cited cases above and in the present case. I.A.No.3/2024 is filed only for seeking modification of the interim order granted on 28.05.2024 for permission to occupy the building instead of lying vacant, otherwise the building would be deteriorated without being use. At the most the respondent No.1 is claiming occupation of the building subject to result the appeal and without claiming any equity and also without creating any third party rights. Therefore, I.A.No.3/2024 is hereby allowed.

14. Hence, I proceed to pass the following:

ORDER

I.A.No.3/2024 is allowed.

The order dated 28.05.2024 passed by this Court in this appeal is hereby modified that the respondent No.1 is permitted to utilize the schedule property subject to result of the appeal. Also it is directed to respondent No.1, shall not

create any third party rights in whatever manner and shall not claim any equity.

Accordingly, I.A.No.3/2024 is allowed in terms of above.

**Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE**

TL/SRA
List No.: 1 SI No.: 38