

SUPREME COURT OF INDIA

Sri Hanumanthappa

Vs.

Sri Muninarayanappa

(K Ramaswamy and G Pattanaik JJ.)

07.10.1996

ORDER

Leave granted.

We have heard learned counsel on both sides. No doubt this appeal arises from an interlocutory application, since it has an effect on the judicial proceedings that have become final; we think that at this stage, it would be appropriate to interfere with this matter and correct it.

This appeal by special leave arises from the order and judgment of the High Court of Karnataka made on 20.10.1995 in C.R.P. No.420/95. Admittedly, the appellant had instituted the suit for partition and separate possession of the suit property in 1966 in Suit No.88/66 which was dismissed on February 20, 1988. On appeal, after the remand by the High Court, Appeal No.98/88 culminated in a compromise. A compromise decree was passed on February 29, 1990 (sic.). Thereunder the appellant was given from the total extent of 3 acres 39 guntas of lands towards his share and decree in that behalf was passed. under the Panchnama drawn by the Tehsildar on July 22, 1993 the appellant was put in possession of 39 guntas of land as per the certified copies of the Panchnama filed in the trial Court as Item No.17 of the documents filed in the present suit. The district Court also in the present proceedings recorded a finding in paragraph 14 of its order that the appellant. was put in possession of 39 guntas of land. The question, therefore arises: whether an injunction can be issued against the appellant? It is not in dispute that pending that partition suit No.88/66, the

respondent had purchased the land belonging to his vendors including 39 guntas of land under registered sale deed dated February 24, 1986. Undoubtedly the respondent was not a party to the compromise decree dated February 29, 1990. Since he purchased the property pending the suit for partition, a compromise decree having been executed by the parties in which the right of the appellant to the extent of 39 guntas was crystallized and he was duly put in possession, necessarily, he was in lawful possession of the property as an owner. The question is: whether an injunction can be issued against the lawful owner? It is settled legal position that no injunction can be issued against a lawful owner of the property. The High Court proceeded on the premise that the appellant was put in possession of the property after the interim injunction was granted by the trial Court. It is factually incorrect since the injunction was granted by the trial Court only on January 5, 1994 by which date he had already been put in possession by the Tehsildar under the Panchnama dated July 22, 1993. Under these circumstances, the High Court also was in error in coming to the conclusion that the appellant cannot be in lawful possession since he had come in possession after the injunction was issued under Order 39 Rules 1 and 2 of CPC. The appeal is accordingly allowed. The orders of the courts below stand set aside. But in the circumstances without costs.

It is made clear that since the respondent has purchased the property pending the suit, it would be open to him to proceed against his vendor in accordance with law.