A SRI HANUMANTHAPPA

v.

SRI MUNINARAYANAPPA

OCTOBER 7, 1996

B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Injunction

Suit for injunction—Appellant in possession of lands allotted to his share through a compromise decree in a partition suit—During the pendency of partition suit, respondent purchased some of the land from other co-sharer including the land falling in the share of the appellant—Courts below granting interim injunction against the appellant—Held, no injunction can be issued against a lawful owner of the property—Orders of Courts below set aside.

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13232 of 1996.

From the Judgment and Order dated 20.10.95 of the Karnataka High Court in C.R.P. No. 420 of 1995.

E G.V. Chandrasekhar for P.P. Singh for the Appellant.

E.C. Vidayasagar for the Respondent.

The following Order of the Court was delivered :

F 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 G 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. H 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 appellate was given from the total extent of 3 acres, 39 guntas of land, 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 circumstances without costs.

A 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.

R.P. Appeal allowed.