2021 INSC 742

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.6779-6780 OF 2021

Acqua Borewell Pvt. Ltd. …Appellant

Versus

Swayam Prabha & Others …Respondents

WITH

CIVIL APPEAL NOS. 6787-6788 OF 2021
CIVIL APPEAL NOS. 6789-6790 OF 2021
CIVIL APPEAL NOS. 6791-6792 OF 2021
CIVIL APPEAL NOS. 6793-6794 OF 2021
CIVIL APPEAL NOS. 6781-6782 OF 2021
CIVIL APPEAL NOS. 6785-6786 OF 2021
CIVIL APPEAL NOS. 6783-6784 OF 2021

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court of Karnataka at Bengaluru dated 22.09.2020 in M.F.A. No. 1638/2020 and M.F.A. No. 1849/2020 (CPC), by which the High Court has allowed the aforesaid appeals in part and has modified the interim injunction granted by the learned XIV Additional City Civil Judge, Bengaluru, CCH 28 (hereinafter referred to

as the learned 'trial Court') passed in IA Nos. 1, 18, 22 and 24 in O.S. No. 4709/2019 and restricted the injunction against alienation to the extent of 1/7th share in the total plaint schedule properties till the disposal of the case, the third parties have preferred the present appeals.

2. That respondent nos.1,22,23 and 24 herein have instituted O.S. No. 4709/2019 before the learned trial Court seeking a declaration that the plaintiffs and defendants 18 & 19 (respondent nos. 19 & 20 herein) are entitled to their mother Laxmi Devi's 1/7th share in the total plaint schedule properties and consequently prayed for a decree for partition and separate possession. They have also further sought a declaration that 2015 Settlement Deed is *void ab-initio.*

2.1 At this stage, it is required to be noted that the plaint schedule properties consist of number of properties ranging from A1 to A40 in the said suit. The original plaintiffs filed IA No. 1 in OS No. 4709/2019 seeking ex-parte ad-interim injunction qua the suit schedule properties. The learned trial Court initially granted ex-parte injunction restraining the defendants in the suit from alienating and creating any charge and third party interest upon the suit schedule properties to the extent of the plaintiffs share, till the next date of hearing of the interim injunction application. That by order dated 26.09.2019, the learned trial Court dismissed IA No.1 in OS No. 4709/2019 and refused to grant an interim

injunction in favour of the plaintiffs, inter alia, holding that some of the suit schedule properties are evidently owned by the firms/trusts/companies which entities have not been made parties to the suit.

2.2 Aggrieved by the order passed by the learned trial Court refusing to grant injunction, one of the plaintiffs in O.S. No. 4709/2019 preferred M.F.A. No. 1638/2020 before the High Court. The other plaintiffs also filed a separate appeal being M.F.A. No. 1849/2020 (CPC). By the impugned common judgment and order, the High Court has partly allowed the said appeals and has modified the order passed by the learned trial Court in the interim injunction application and has directed to issue restraint order qua the defendants against the alienation to the extent of 1/7th share in the total plaint schedule properties till disposal of the case. The High Court has also passed an order insofar as the activity such as construction, improvements, whether fresh or modification, are conducted over the schedule properties, the party doing so shall be doing it at his risk and shall not be entitled to claim equity at the end.

3. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court granting injunction to the

extent of 1/7th share in the total plaint schedule properties, the third parties to the suit have preferred the present appeals.

3.1 It is the case on behalf of the appellants that some of the suit properties for which the injunction has been granted, the appellants have right, title or interest on the basis of the development agreement/s and/or otherwise and though they are directly affected by the interim injunction granted by the High Court, they are not made parties to the suit and the injunction has been granted with respect to properties in which the appellants herein claim right, title or interest without hearing them.

3.2 It is also the case on behalf of the appellants that as such the plaintiffs have filed the application/applications to implead the appellants herein as party to the suit contending inter alia, that the appellants are the necessary and proper parties. It is submitted that without disposing of the said application/applications to implead the appellants as necessary and proper parties, the High Court ought not to have granted injunction with respect to properties in which the appellants claim right, title or interest.

3.3 It is submitted that the High Court has failed to appreciate that the learned trial Court passed a reasoned and speaking order while refusing to grant injunction. It is submitted that the learned trial Court specifically observed while refusing to grant injunction that some of the properties

are standing in the name of the firms/trusts/companies and admittedly the said entities have not been made parties to the suit. It is submitted that despite the above, the High Court has granted injunction with respect to properties in which the appellants claim right, title or interest, without impleading the appellants and without giving them an opportunity of being heard.

4. Learned counsel appearing on behalf of the original plaintiffs/original appellants before the High Court have supported the impugned common judgment and order passed by the High Court.

5. We have heard Shri K.V. Vishwanathan, learned Senior Advocate appearing for the appellants and Shri Saurabh Kansal, learned Advocate appearing on behalf of the contesting respondent nos. 1,20 & 23.

5.1 At the outset, it is required to be noted that against the suit schedule properties A1 to A40, the appellants herein – third parties to the suit are claiming right, title or interest on the basis of the development agreements or otherwise with respect to Schedule A 6 (Part); Schedule A8; Schedule A9, A30, A32 (Part); Schedule A1, A4(Part), A6(Part), A11(Part), A14, A24 & A34(Part); Schedule A4(Part), A34(Part); Schedule A35; Schedule A4(Part), A11(Part), A25, A26, A27, A34(Part); and Schedule A3, A28, A32, A37 & A38. It is also not in dispute that the application/s submitted by the original plaintiffs to

implead the appellants herein as proposed defendant nos. 20, 21, 26, 18, 19, 25, 22, 23 & 17 is/are pending. The said application/s is/are filed by the original plaintiffs to implead the appellants as defendants to the suit contending inter alia, that they are necessary and proper parties. Therefore, according to the plaintiffs also, the appellants herein (proposed defendants) are necessary and proper parties. Therefore, before granting any injunction with respect to the properties in which the appellants herein (proposed defendants) are claiming right, title or interest on the basis of the development agreements or otherwise they ought to have been given an opportunity of being heard. No injunction could have been granted against them without impleading them as defendants and thereafter without giving them an opportunity of being heard.

6. It is required to be noted that the learned trial Court dismissed the injunction application and refused injunction by observing that some of the properties are evidently owned by the firms/trusts/companies which have not been made parties to the suit. Therefore, the impugned common judgment and order passed by the High Court granting injunction with respect to 1/7th share in the total plaint schedule properties which has been passed without giving an opportunity of being heard to the appellants and without impleading them as party-

defendants in the suit by the learned trial Court, is unsustainable and deserves to be quashed and set aside.

7. In view of the above and for the reasons stated above, all these appeals succeed. The impugned common judgment and order passed by the High Court granting injunction against alienation to the extent of 1/7th share in the total plaint schedule properties is hereby quashed and set aside qua Schedule A6 (Part); Schedule A8; Schedule A9, A30, A32 (Part); Schedule A1, A4(Part), A6(Part), A11(Part), A14, A24 & A34(Part); Schedule A4(Part), A34(Part); Schedule A35; Schedule A4(Part), A11(Part), A25, A26, A27, A34(Part); and Schedule A3, A28, A32, A37 & A38 properties only.

The learned trial Court to first decide and dispose of the application/applications filed by the plaintiffs to implead the appellants herein as party-defendants in O.S. No. 4709/2019 after giving them an opportunity of being heard, which shall be considered and decided in accordance with law and its own merits and thereafter, if at all the appellants herein – proposed defendants are impleaded as party-defendants, the learned trial Court to consider the interim injunction application afresh with respect to the properties mentioned above, in accordance with law and its own merits.

8. The present appeals are allowed to the aforesaid extent. No costs.

……J.
[M.R. SHAH]

NEW DELHI;
NOVEMBER 17, 2021.

……J.
[B.V. NAGARATHNA]