



THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioners/defendants in O.S.No.2203/2017 on the file of the City Civil Judge, Bengaluru are before this Court under Article 227 of the Constitution of India questioning the correctness or otherwise of the order dated 2.8.2022 on I.A.No.15 filed under Order XVI Rule 1 of CPC.

2. Heard Shri B Chadrashekar, learned counsel for the petitioners and Shri R Shreedhar, learned counsel for the respondent.

3. Learned counsel for the petitioners/defendants would submit that the respondent/plaintiff filed a suit for a judgment and decree of permanent injunction restraining the defendants from in any way interfering with his peaceful possession and enjoyment of the suit schedule property. It is the case of the petitioners/defendants that, during the course of evidence the plaintiff/respondent has marked Exs.P11 to P23 and the petitioners have questioned the genuinity of those documents. It is contended that those documents are not proved in accordance with law and to prove their contention, it would be



necessary to examine the officials who have issued those documents. It is submitted that the documents at Exs.P11 to P23 are documents issued by the BBMP or Grama Panchayath of Thanisandra. Therefore, the learned counsel for the petitioners would submit that the petitioners filed an application under Order XVI Rule 1 CPC to summon the officials of BBMP and Grama Panchayath to say with regard to the documents said to have been issued by them which are at exhibits P11 to P23. The said application is rejected under impugned order observing that it is the plaintiff/respondent who has to prove his case on his own and also observing that the application is not clear as to why those officials are to be summoned.

4. Learned counsel for the petitioners/defendants would contend that summoning of officials from BBMP and Grama Panchayath would be absolutely necessary to prove their contention that Exs.P11 to P23 are not genuine documents. He submits that the plaintiff has marked those documents i.e., Exs.P11 to P23 and has not examined the author of those documents. In such circumstances, the defendants filed an application to summon the officials of BBMP and Grama Panchayath to say with regard to the documents at Exs.P11 to



P23. It is his submission that the Trial Court without appreciating the contention of the petitioners under impugned order, rejected the application. Learned counsel would submit that the Trial Court has wrongly come to the conclusion that securing the officials of BBMP and Grama Panchayath would not serve in the facts and circumstances of the case and he prays for allowing the writ petition.

5. Per contra, learned counsel for the respondent/plaintiff would support the impugned order and submits that, the Trial Court has rightly observed that, it is for the plaintiff to prove his case. Learned counsel would submit that the suit is one for bare injunction and it is not a suit for declaration of title. In a suit for bare injunction, it is for the party to prove his lawful possession. Thus, he prays for dismissal of the writ petition.

6. Having heard the Learned counsel for the parties and on perusal of the writ petition, the point for consideration is, as to whether the impugned order under challenge requires interference ?



7. The answer to the above point is negative for the following reasons.

8. The suit of the respondent/plaintiff is one for permanent injunction against the petitioners/defendants not to interfere with the enjoyment and possession of the suit schedule property. In a suit for bare injunction, it is for the person who approaches the Court to prove his lawful possession. Admittedly, it is not a suit for declaration of title. In that circumstance, it is for the plaintiff to prove his lawful possession over the suit schedule property. In the course of trial admittedly the respondent/plaintiff has marked exhibits P11 to P23, documents said to have been issued by the BBMP or the Grama Panchayath of Tanisandra. Therefore, it is for the plaintiff to prove the documents in accordance with law and it is for the Trial Court, at the time of final disposal, to evaluate and to appreciate the documents and its genuineness. The affidavit accompanying the application filed under Order XVI Rule 1 of CPC would state that, regarding the genuinity of the documents, officials of Grama Panchayath and BBMP are required and also to decide the controversy between the parties. The documents produced by the plaintiff is to be



proved by the plaintiff and if the plaintiff fails to prove the documents, he fails in the suit. In the facts of the present case, defendant need not summon the witnesses to disprove the document produced by the plaintiff nor to prove those documents. Thus, I am of the view that no ground is made out to interfere with the impugned order under challenge.

Accordingly, the writ petition stands rejected.

Sd/-
JUDGE

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