

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 11th Day of January 2000

BEFORE

THE HON'BLE MR. JUSTICE CHANDRASHEKARAIHAH

C.R.P.NO.3265/1999

Between:

O.Kishanchand,
S/o.Obha Naik,
age: Major,
Working as Special
Land Acquisition Officer,
Upper Krishna Project,
Bagalkot, Dist: Bagalkot.

...PETITIONER

(By Sri.C.H.Jadhav, Adv.)

And:

1. Smt.Rukmavva,
W/o.Padiyappa Hadi,
age: major, R/o.Sunag,
Taluk: Bilgi,
Dist. Bagalkot.
2. Thippavva,
W/o.Seshappa Hosamani,
age:Major, R/o.Yelligutti
village, Taluk: Bilgi,
Dist: Bagalkot.
3. Balappa,
S/o.Ramappa Hosamani,
age: major, Occ:Agriculture,
R/o.Yelligutti village,
Taluk: Bilgi, Dist:Bagalkot.

...RESPONDENTS

(By Sri.S.B.Hebballi, Adv. for R-1)

. . . .

This C.R.P is filed u/s.115 CPC against the order dated 25.9.99 passed on I.A.No.III in O.S.No.260/98 on the file of the I Addl. Civil Judge (Sr.Divn.), Bagalkot allowing I.A.No.III filed U/O.39 R2(A) CPC.

This C.R.P. coming on for admission this day, the Court made the following:-

O R D E R

This Revision petition is against an order passed by the First Addl. City Civil Judge, Bangalore, on I.A.III filed under Order 39 Rule 2[~]~~A~~ of CPC.

2. Sri.S.B.Mebballi, learned Counsel appearing for the contesting respondent submitted that this revision petition is not maintainable since an order impugned is appealable under Order 43(1)(r) of CPC. No doubt, an order passed under Order 39 Rule 2[~]~~A~~ is appealable, but, in the instant case, there could not be any order passed by the Civil Judge as against the petitioner under Order 39 Rule 2[~]~~A~~ CPC. Therefore, so far as the petitioner is concerned,

the impugned order cannot be treated as an order under Order 39 Rule 2A[✓] CPC. Hence, I am of the view that the Revision Petition in so far as ^{the petitioner} he is concerned is maintainable.

3. The Civil Judge has O.S.No.260/98, granted an injunction in favour of the plaintiffs restraining them from receiving any compensation under Order 39 Rule 1 and 2 CPC. The complaint of the contesting respondent is that the Land Acquisition Officer has dis-obeyed the order of temporary injunction and therefore, the learned Civil Judge is right in attaching ~~the~~ personal property of the petitioner. So far as the Land Acquisition Officer i.e, the petitioner is concerned, there is no order under Order 39 Rule 1 and 2 CPC restraining him from ~~dispensing~~^{dispensing} the compensation to the defendants in the suit. If that is to be the case, it cannot be said that the petitioner who is the Land Acquisition Officer has dis-obeyed the order of

temporary injunction. But the petitioner being an officer of the State Government ought not to have paid the amount when the defendants were restrained from receiving the compensation. But, in the case on hand, technically, the petitioner has not dis-obeyed the order passed under Order 39 Rule 1 and 2 since there is no order asking him not to pay the amount. Therefore, the Learned Civil Judge was not right in attaching the property of the petitioner. In the result, I pass the following order:

4. The Revision petition is allowed. The impugned order in so far as it relates to attaching the property of the petitioner is concerned is set-aside.

Sd/-
Judge

sps/-