



NC: 2025:KHC:54555
WP No. 22999 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 19TH DAY OF DECEMBER, 2025
BEFORE
THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY
WRIT PETITION NO. 22999 OF 2023 (GM-CPC)

BETWEEN:

PRAKASH HEGDE
S/O LATE RAGHUNATHA HEGDE
AGED ABOUT 61 YEARS
R/AT KAPERIGUTHU ELATHURU
VILLAGE AND POST, KINNIGOLI
MANGALURU - 574 150.

...PETITIONER

(BY SRI SANATHKUMAR SHETTY K, ADV.)

AND:

SEETHARAMA SHETTY
S/O LATE ANANDA
AGED ABOUT 51 YEARS
R/AT MAYYU SADANA KAPERIGUTHUR
ELATHURU VILLAGE AND POST
KINNIGOLI, MANGALURU - 574 150.

...RESPONDENT

(BY SRI P.P. HEGDE, SR. COUNSEL FOR
SRI VENKATESH SOMAREDDI, ADV. FOR C/R)

THIS WP IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO INTERFERE WITH THE ORDER
DTD 14.09.2023 PASSED BY THE SENIOR CIVIL JUDGE AND JMFC,
MOODABIDRI IN M.A.NO.24/2003 VIDE ANNEXURE-A WHEREBY THE
ORDER PASSED BY THE CIVIL JUDGE AND JMFC, MOODABIDRI ON
I.A.NO.III DTD 21.11.2022 IN O.S.NO.73/2022 VIDE ANNEXURE-B
HAS BEEN SET ASIDE BY SETTING THE SAID ORDER AT ANNEXURE-
A ASIDE.



THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN B GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

1. The defendant is before this Court in this writ petition filed under Article 227 of the Constitution of India with a prayer to set aside the order dated 14.09.2023 passed in M.A.No.24 of 2023 by the Court of Senior Civil Judge & JMFC, Moodbidri, D.K, wherein the order dated 21.11.2022 passed on I.A.No.III in O.S.No.73 of 2022 by the Court of Civil Judge and JMFC, Moodbidri is set aside.

2. Heard the learned counsel for the parties.

3. The respondent herein has filed O.S.No.73 of 2022 before the jurisdictional civil Court at Moodbidri seeking the relief of permanent injunction in respect to the suit schedule properties, which consists of four items of agricultural lands. In the said suit, the defendant who is the petitioner herein has filed written statement and opposed the suit claim. I.A.No.III was filed under Order XXXIX Rule 1 and 2 R/w Section 151 of CPC in O.S.No.73 of 2022 on behalf of the plaintiff with a



prayer to restrain the defendant from interfering with the peaceful possession and enjoyment of the suit schedule properties by the plaintiff. The said application was opposed by the defendant who had filed a memo to treat his written statement as objections to I.A.No.III. The Trial Court vide order dated 21.11.2022 had rejected I.A.No.III filed in O.S.No.73 of 2022. Aggrieved by the same, the plaintiff had filed M.A.No.24 of 2023 before the Court of Senior Civil Judge and JMFC, Moodbidri, D.K and the said appeal was allowed by the Appellate Court vide the order impugned. Assailing the said order, the defendant is before this Court.

4. Learned counsel for the petitioner having reiterated the grounds urged in the petition submits that plaintiff has admitted the defendant's right of pathway over the suit schedule properties. He submits that the father of the plaintiff, late Ananda Shetty had executed an agreement for sale dated 20.05.1992 in respect of Item No.1 of the suit schedule properties in favour of the mother of the defendant. The entire sale consideration was paid under the said agreement and therefore a General Power of Attorney was executed in favour



of the mother of the defendant, who was put in possession of the suit schedule Item No.1 property. O.S.No.169 of 2021 is filed by the defendant seeking the relief of specific performance of the aforesaid agreement for sale dated 20.05.1992. Suppressing the same, the plaintiff has filed the present suit and has sought injunction in respect of the suit schedule properties, including the property which is subject matter of O.S.No.169 of 2021. The Trial Court having appreciated this aspect of the matter has rightly rejected I.A.No.III. However, the Appellate Court has erroneously set aside the said order. He submits that Appellate Court was not justified in setting aside the order passed by Trial Court in view of the judgment of this Court in the case of **SMT LALITHAKSHI ANNADANAGOUDA V SADASHIVAPPA BASAPPA PATIL AND ANOTHER - AIR 1984 KARNATAKA 74.**

5. *Per contra*, the learned Senior Counsel appearing on behalf of the respondent submits that execution of the agreement for sale dated 20.05.1992 has been disputed in O.S. No.169 of 2021. The subject matter of the agreement for sale and the subject matter of the present suit are totally different.



Appreciating this aspect of the matter, the Appellate Court has set aside the order passed by the Trial Court. He submits that respondent is in possession of the suit schedule properties and at no point of time, Item No.1 property was handed over to the possession of the defendant or his mother. Therefore, the Appellate Court was justified in passing the order impugned. Accordingly, he prays to dismiss the petition.

6. Perusal of the plaint in O.S.No.73 of 2022 would go to show that plaintiff claims right over the suit schedule property under his father, late Ananda Shetty, who was granted occupancy rights of the suit schedule properties by the jurisdictional Tribunal. O.S.No.169 of 2021 was filed by the defendant in the present suit claiming that late Ananda Shetty had executed agreement for sale dated 20.05.1992 in favour of his mother, after the occupancy rights of the land, which is subject matter of the said suit was granted in his favour along with the other items of land. Under the agreement for sale, the entire sale consideration of ₹10,000/- was paid to Ananda Shetty. It appears that in view of the non alienation period, Ananda Shetty also had executed a General Power of Attorney.



The defendant in OS No.169 of 2021, who is the plaintiff herein had filed written statement in the said suit admitting that the subject matter of O.S.No.169 of 2021 was granted to his father late Ananda Shetty by the Land Tribunal though he has disputed the agreement for sale and the General Power of Attorney in favour of the mother of the defendant by his father late Ananda Shetty.

7. The copy of the agreement for sale as well as the General Power of Attorney is made available to this Court by the learned Senior Counsel for the respondent. Perusal of the agreement for sale and the General Power of Attorney would go to show that, the sale consideration of Rs.10,000/- was paid in entirety by the mother of defendant herein to the father of the plaintiff, namely Ananda Shetty. It appears that under the said circumstances, in the General Power of Attorney, there is a Clause which provides that the mother of the defendant herein is entitled to mortgage the property which is the subject matter of the said agreement for sale in any bank or cooperative society of her choice and avail loan on the security of the said property. The General Power of Attorney also provides that



mother of the defendant is entitled to put up compound wall and other construction in the land which is subject matter of the General Power of Attorney. It is also stated that the said General Power of Attorney is irrevocable.

8. As on the date the suit in OS No.73 of 2022 was filed by the plaintiff herein, who is defendant in OS No.169 of 2021, he was served with the suit summons in OS No.169 of 2021. However, in the present suit, he has suppressed the fact about the defendant herein filing suit in OS No.169 of 2021 in respect of Item No.1 of the suit schedule properties in the present case. It is relevant to note here that in OS No.169 of 2021, it is specifically pleaded that mother of the plaintiff therein was put in possession of the suit schedule property in the said case by the father of the plaintiff herein after the agreement for sale dated 20.05.1992 and the general power of attorney dated 20.05.1992 was executed in her favour by the father of the plaintiff, namely, Ananda Shetty.

9. Considering the aforesaid aspects of the matter, the Trial Court had rightly rejected IA No.III filed in OS No.73 of 2022. The Appellate Court on the ground that it was not



necessary for the plaintiff to reveal the fact about filing of OS No.169 of 2021 in the present suit has thought it fit to set-aside the well reasoned order passed by the Trial Court which in my opinion is erroneous and illegal.

10. This Court in the case of *Smt. Lalithakshi (supra)* in paragraph Nos.15 and 18 has observed as follows:-

"15. That being so, it is obvious, that the first appellate Court had no jurisdiction to interfere with the discretionary order passed by the trial Court, simply because, it was reasonably possible to take another view on the facts of the case. The first appellate Court has substituted its own discretion substituting the judicial discretion exercised by the trial Court. It could not do so. It has to stay its hands and confirm the order passed by the trial Court in the circumstances. The first appellate Court has made it clear that two interpretations are possible and that being so, it is not proper to allow the defendant to construct a latrine with septic tank. That observation is clearly illegal. It has exceeded its jurisdiction in so observing. Its order cannot be sustained.

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18. The trial Court has considered all the necessary ingredients while refusing to issue temporary injunction. It has in fact, raised points for consideration while passing the order on I.A.I. It has raised the following points in para 9 of its judgment.

"(1) Whether the plaintiffs are having prima facie case to make the ex parte temporary injunction order absolute?

(2) Whether by vacating the order of temporary injunction the plaintiffs will be put to irreparable loss and the balance of convenience lies in their favour ?"

It has considered all these aspects. That makes it clear that the order passed by the trial Court is properly based on its judicial discretion, in accordance with the well established principles of law."

11. The Appellate Court can interfere with the discretionary order passed by the Trial Court if the said order is arbitrary, capricious or passed ignoring settled principles of law. Merely for the reason that a different view could have been taken, the Appellate Court was not justified in interfering with



the discretionary orders passed by the Trial Court. The Appellate Court cannot reassess the material to reach a different conclusion if the Trial Court's decision was a reasonably possible one. In addition to the same, right of way of the defendant over the suit schedule properties is admitted by the plaintiff. Therefore, I am of the opinion that the Appellate Court was not justified in setting aside the order passed on IA No.III in OS No.73 of 2022 by the Court of Civil Judge and JMFC, Moodbidri. Under the circumstances, the following order:-

12. The petition is allowed. The impugned order dated 14.09.2023 passed in MA No.24 of 2023 by the Court of Senior Civil Judge and JMFC, Moodbidri, Dakshina Kannada, is set-aside.

13. Since the suit is of the year 2022, the Trial Court shall expedite trial in the suit and dispose off the suit on merits, as expeditiously as possible.



14. In view of the disposal of the main petition, pending interlocutory applications, if any, do not survive for consideration. Accordingly, the same is disposed off

Sd/-
(S VISHWAJITH SHETTY)
JUDGE

NMS/DN