



CNR: KAHC010002192023

NC: 2026:KHC:42559
WP No. 369 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO. 369 OF 2023 (GM-CPC)

BETWEEN:

SMT PRAMEELA
W/O SRI KRISHNAPPA
AGED ABOUT 62 YEARS
R/AT NO.1
PIPELINE ROAD
VAJARAHALLI
KANAKAPURA MAIN ROAD
BENGALURU - 560 062

...PETITIONER

(BY SRI. V.B. SHIVA KUMAR, ADVOCATE)

AND:

Digitally signed
by
ANNA PURNA G
Location: High
Court of
Karnataka

1. THE COMMISSIONER
BENGALURU DEVELOPMENT AUTHORITY
SANKEY ROAD
BENGALURU - 560 003
2. THE EXECUTIVE ENGINEER
BENGALURU DEVELOPMENT
AUTHORITY
SANKEY ROAD
BENGALURU - 560 003
3. THE ASSISTANT EXECUTIVE ENGINEER
BENGALURU DEVELOPMENT



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AUTHORITY
SANKEY ROAD
BENGALURU - 560 003

4. THE DEPUTY SECRETARY
ALLOTMENT OF SITES
BENGALURU DEVELOPMENT AUTHORITY
SANKEY ROAD
BENGALURU - 560 003

5. SRI M GANESH
S/O LATE MUNKRISHNAPPA
AGED ABOUT 64 YEARS
GUNDURU
BENGALURU EAST TALUK
BIDARAHALLI HOBLI
BENGALURU - 560 062

...RESPONDENTS

(BY SRI. SACHIN B.S., ADVOCATE FOR R1 TO R4
SRI. RAMESH P. KULKARNI, ADVOCATE FOR R5)

THIS WP IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER
DATED 30.11.2022 PASSED BY THE LVI ADDITIONAL CITY
CIVIL AND SESSIONS JUDGE, BENGLAURU IN
O.S.NO.1907/2016 PRODUCED AT ANNEXURE-A AND ETC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:



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CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This writ petition is filed challenging the order dated 30.11.2022 passed in O.S.No.1907/2016 on the file of the LVI Additional City Civil and Sessions Judge, Bengaluru (hereinafter referred to as the 'trial Court' for short).

2. Sri V.B. Shiva Kumar, learned counsel for the petitioner, submits that the petitioner filed a suit in O.S.No.1907/2016 against the respondents herein seeking the relief of declaration that the sale deed dated 14.12.2015 executed by the BDA in favour of defendant No.5 is illegal, unlawful and void, and other reliefs. In the said suit, defendant No.5 filed the written statement. Thereafter, defendant No.5 intended to file a counter claim, which was negated by this Court in W.P.44746/2019. Hence, defendant No.5 had no defence in the said suit.



3. It is submitted that defendant No.5 filed I.A.No.22 under Order XVIII Rule 17 read with Section 151 of the Code of Civil Procedure (for short, 'CPC') before the trial Court, seeking permission to recall DW-1 and permit defendant No.5 to cross-examine DW-1 and I.A.No.23 under Section 151 of the CPC is filed seeking to recall the order dated 22.11.2022 closing the defendant side evidence and posting the case for arguments. The said applications were allowed by the trial Court vide order dated 30.11.2022 by incorrectly recording that Sri M. Byregowda, learned counsel for the plaintiff had submitted that the applications may be allowed on payment of heavy costs. The said Sri M. Byregowda, learned counsel for the plaintiff had filed an affidavit before this Court indicating that he was not present before the Court on the said date.

4. It is further submitted that the impugned order is passed without assigning any reasons. It is also submitted that one defendant cannot cross-examine another defendant in the absence of a counter claim or an



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independent claim in the suit. It is contended that if such an unheard-of procedure is allowed, it would cause great injustice to the plaintiff. Hence, he seeks to allow the petition.

5. *Per contra*, Sri Ramesh P Kulkarni, learned counsel for respondent No.5 supports the order of the trial Court and submits that the evidence of the official of defendant Nos.1 to 4 is against the interest of defendant No.5. Hence, the co-defendant has every right to cross-examine another co-defendant. It is submitted that Sri M. Byregowda, learned counsel representing the plaintiff, had given his consent before the trial Court to allow the applications and that he now wants to withdraw or go back on the said consent. He has to approach the same Court and seek to withdraw his consent and not by filing the writ petition. In support of his contention, he placed reliance on the following decisions:



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- 1) **STATE OF MAHARASHTRA Vs. RAMDAS SRINIVAS NAYAK**¹ (Paragraph Nos.4 to 7); 1(a)²
- 2) **THE STATE Vs. BASDEO BAWRI**³, (Paragraph No.4), Assam High Court;
- 3) **RAGHAVA WARRIER VS. SAROJANI WARASYAR**⁴, (Paragraph No.5) Kerala High Court;
- 4) **SRI MOHAMED ZIAULLA Vs. Mrs. SORGRA BEGUM AND ANOTHER**⁵;
- 5) **M/S. ENNEN CASTINGS PRIVATE LIMITED (IN LIQUIDATION), REPRESENTED BY THE OFFICIAL LIQUIDATOR, BENGALURU VS. M.M.SUNDARESH AND OTHERS**⁶.

6. I have heard the arguments of the learned counsel for the petitioner, learned counsel for the respondents and meticulously perused the material available on record.

¹ AIR 1982 SC 1249

² AIR 2007 SC 2244

³ 1961(1) Cri.L.J. 621

⁴ 1989 Cri.L.J. 2464

⁵ ILR 1997 KAR 1378

⁶ ILR 2003 KAR 3490



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7. The petitioner filed a suit in O.S.No.1907/2016 against the Commissioner, BDA, Bengaluru and others. In the said suit, the plaintiff is seeking the relief of declaration that the sale deed dated 14.12.2015 executed by the BDA in favour of defendant No.5 is illegal, unlawful and void, and liable to be cancelled, and also seeking the relief of perpetual injunction against the defendants from interfering, dispossessing or taking forcible possession of the plaintiff's lawful title and lawful possession of the suit schedule property.

8. In the said suit, defendant Nos.1 to 4 have filed their written statement. In paragraph No.6 of the written statement, the BDA has taken a clear stand that defendant No.5 manipulated and, in collusion with some of the officials of the BDA, fabricated the documents and got the sale deed executed. It is required to be noticed that defendant No.5 also filed a detailed written statement denying the averments made in the plaint. Defendant No.5 intended to raise a counter claim in the said suit, which



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was negated by this Court in W.P.No.44746/2019, by considering the decision of the Hon'ble Supreme Court in the case of ***ASHOK KUMAR KALRA VS. WING CDR, SURENDRA AGNIHOTRI AND OTHERS***⁷.

9. Be that as it may, it is required to be noticed that the plaintiff has led evidence. Thereafter, defendant Nos.1 to 4 examined their official as DW-1 and thereafter, the learned counsel for defendant No.5 filed an application seeking permission to cross-examine DW-1, which came to be allowed by recording the consent of the learned counsel for the plaintiff under the impugned order dated 30.11.2022, by imposing a cost of Rs.500/-.

10. Insofar as the contention of the learned counsel for the petitioner that there was no consent by the counsel to allow the said application is concerned, in my considered view, the aforesaid decision of the Hon'ble Supreme Court in the case of ***STATE OF MAHARASHTRA*** referred to supra clearly indicates that the records of the

⁷ (2020) 2 SCC 394



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Court are conclusive, and neither a lawyer nor a litigant may claim to contradict them, except before the same Court, but nowhere else. In view of the enunciation of law laid down by the Hon'ble Supreme Court, I am of the view that insofar as non-giving of consent by counsel is concerned, the petitioner cannot argue the same in the writ proceedings, but ought to have filed an application seeking to recall the order on the ground that consent was not accorded by the counsel.

11. Insofar as allowing a co-defendant to cross-examine another witness of the co-defendant is concerned, this Court, in the case of **SRI MOHAMED ZIAULLA** referred to supra, at paragraph Nos.8 and 9, held as under:

"8. Section 137 and 138 of the Evidence Act do not specifically refer to cross examination of co-defendant's witnesses. But, the courts have to adopt a golden rule that no evidence shall be received against any co-defendant or co-accused who had no opportunity of testing it by cross examination; as it would be unjust and unsafe not to allow a co-accused or co-defendant to cross-examine witness called by one whose case was adverse to his, or who has given evidence against him. If there is no clash of interest or if nothing has been said against the other party, there cannot be any right of



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cross-examination. A short but, interesting discussion is found in Sarkar's Evidence at Page 1342 13th Edition. Similar opinion is found in Principles and Digest of the Law of Evidenced by M.Monir, Third Edition Page 1114.

9. *This very question was debated in the English Courts as far back as in 1920 vide a decision in LORD vs COLVIN, 3 Drew 222. The learned Judge in the said case after consulting all the equity judges held that before an examiner in Chancery, one defendant might cross examine another defendant's witness. The same right exists between respondent and co-respondent in divorce cases provided eight is hostile to the other, for it friendly, eg. Where both deny the adultery, each can only be examined as the other's witness and not cross-examined. A defendant may cross-examine his co-defendant who gives evidence or any of his co-defendant's witnesses if his co-defendant's interest is hostile to his own. Therefore, the procedure that has been followed by the Courts in England and in India has not left this question in doubt. Where it is shown that the interest between the defendants' inter-se conflict each other, the other defendant has necessarily to be treated as an adversary and he is certainly entitled to cross examine the other defendant or his witnesses."*

12. It would be useful to refer to the decision of this Court in the case of **M/S ENNEN CASTINGS PRIVATE LIMITED (IN LIQUIDATION), REP. BY OFFICIAL LIQUIDATOR, BENGALURU** referred to supra, wherein, at paragraph No.11, it is held as under:

"11. Therefore, it is very clear that from the aforesaid passages that it is the settled law that no evidence should be received against one who had no opportunity of testing it by cross-examination; as it would be unjust and unsafe not to allow a co-accused or co-defendant to cross-examine a witness called by one whose case was adverse



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to him, or who has given evidence against. If there is no conflict of interest, such an opportunity need not be given. Therefore, the condition precedent for giving an opportunity to a defendant/respondent to cross-examine a co-respondent or a defendant is either from the pleadings of the parties or in the evidence, there should exist conflict of the interest between them. Once it is demonstrated that their interest is not common and there is a conflict of interest and evidence has been adduced, affecting the interest of the co-defendant/co-respondent, then before the Court could act on that evidence, the person against whom the evidence is given should have an opportunity to cross-examine the said witness, so that ultimately truth emerges on the basis of which the Court can act. Under these circumstances, there is no substance in the contentions of the respondents 1, 4 and 5 that a co-respondent has no right to cross-examine the other respondent."

13. Considering the enunciation of law laid down by this Court, I am of the considered view that the BDA/defendant Nos.1 to 4 in their written statement as well as in their evidence, have taken a stand contrary to the stand of defendant No.5. Hence, defendant No.5 has every right to cross-examine the co-defendant. It is also to be noticed that, after the impugned order, the counsel for defendant No.5 had partly cross-examined DW-1. I do not find any good ground to interfere with the order of the trial Court in the present petition.



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14. In view of the above, the writ petition is devoid of merits and the same is ***rejected***.

15. Pending interlocutory applications, if any, stands closed.

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**

SHS
List No.: 1 Sl No.: 12