



CNR: KAHC010002322020

NC: 2026:KHC:52795
WP No. 223 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.223 OF 2020 (GM-CPC)

BETWEEN:

1. MR ABDUL SAJID
S/O ABDUL BASITH,
AGED ABOUT 44 YEARS,
R/AT PORTION OF DOOR NO.25,
NEW NO.4, VENKATAPPA ROAD,
SHIVAJINAGAR, BENGALURU-560001.

...PETITIONER

(BY SRI. SKANDA KUMAR, ADVOCATE FOR
SRI. RAGHUNATH .M.D AND LEGAL AXIS, ADVOCATE)

AND:

1. MRS. AKTHARUNNISA
W/O MOHAMMED ABBAS,
AGED ABOUT 71 YEARS,
R/AT GAYATHRIPURAM II STAGE,
UDAYAGIRI, MYSURU 570019.
2. MRS. HASEENA
W/O RAFEEQ,
AGED ABOUT 51 YEARS,
R/AT NO.52, MUSLIM BLOCK,
NANJANGUD TOWN-571301
3. MRS. SHANAWAZ
D/O LATE MOHAMMED ABBAS,
AGED ABOUT 44 YEARS,

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4. MRS SHAMEENA
W/O LATE MOHAMMED ABBAS,
AGED ABOUT 42 YEARS,
5. MR KHALEEL AHAMMED
S/O LATE MOHAMMED ABBAS
AGED ABOUT 53 YEARS,
6. MR. JAWEED
S/O LATE MOHAMMED ABBAS,
AGED ABOUT 51 YEARS,
7. MR. ABEED
S/O LATE MOHAMMED ABBAS,
AGED ABOUT 49 YEARS,
8. MR. BABU
S/O LATE MOHAMMED ABBAS,
AGED ABOUT 47 YEARS,
9. MR. ASLAM
S/O LATE MOHAMMED ABBAS,
AGED ABOUT 44 YEARS,

SL.NO. 3 TO 9 ARE R/AT
NO.1708, 19TH CROSS, MADINA MASJID ROAD,
KYATHAMARANHALLI, MYSURU – 570019.

...RESPONDENTS

(R1, R3, R4, R5, R7, R8 AND R9 ARE SERVED)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ALLOW THE WRIT PETITION WITH COSTS, QUASH THE ORDERS PASSED LVI ADDL. CITY CIVIL AND SESSIONS JUDGE, MAYO HALL. CCH 57, BENGALURU PASSED IN O.S.NO.3770/2018 ON I.A.5, FILED BY THE PETITIONER UNDER ORDER XIV RULE 5 OF CPC DATED 16.12.2019 AT ANNEXURE-E; AND ETC.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

The captioned writ petition is filed by defendant No.18 calling in question the order dated 16.12.2019 passed by the learned Judge in O.S.No.3770/2018 on I.A.No.5, whereby the application filed by the petitioner under Order XIV Rule 5 of the Code of Civil Procedure, 1908, (for short 'CPC') seeking framing of additional issues, has been rejected.

2. Respondent No.1, though served with notice, has chosen not to contest the present proceedings. Notice to the co-defendants remains un-served. However, having regard to the nature of the relief sought in the present writ petition, the said respondents are not necessary parties for adjudication of the controversy involved herein. Accordingly, service of notice on the unserved respondents is dispensed with.

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3. The facts leading to the filing of the present petition are as follows:

The plaintiffs have instituted O.S.No.3770/2018 seeking the relief of partition and separate possession. The petitioner, who is arraigned as defendant No.18 in the said suit, has filed his written statement and, at paragraph Nos.14 and 15 thereof, has specifically raised a plea of res judicata and limitation. The petitioner has also specifically pleaded that the court fee paid by the plaintiffs is insufficient.

4. The petitioner, contending that the aforesaid pleas give rise to distinct and material issues requiring adjudication, filed I.A.No.5 under Order XIV Rule 5 of CPC., seeking framing of additional issues. The learned Trial Court, however, rejected the said application without advertng to or examining the specific pleadings raised by the petitioner in his written statement.

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5. Since the controversy in the present writ petition turns upon the pleadings contained in the written statement and the necessity of framing appropriate issues arising therefrom, it would be apposite to extract paragraph Nos.14, 15 and 16 of the written statement, which read as under:

"14. This defendant further submits that one Mr.S.R.Thomas and V.Shivakumar filed the suit against this defendant, claiming that they are the agreement holders had filed a suit before the 44th Addl City Civil Judge, CCH Nos.4, 5 in O.S.No.5249/2017 and this defendant after entered appearance for filing the written statement against the application under Order VII Rule 11(a), (b) & (d) r/w Sec. 151 of CPC and questioned the maintainability of the suit. After hearing both the parties had passed order in O.S.No.5249/2017 vide judgment and decree 03.10.2017, allowed the application and rejected the plaint. This order has become final and the said persons have not challenged the said order, as such, the order is binding on the plaintiffs also.

15. This defendant further submits that the plaintiffs have lost the litigation in O.S.No.3267/1992, O.S.No.6233/1997, Misc No.977/2006 and Misc. No.306/2007 and the said order is final and the said orders were not challenged, as such, the plaintiffs are

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binding by the said judgment and decree and the plaintiffs are debarred from claim any interest over the suit schedule property.

16. This defendant further submits that the allegation that the plaintiffs are in possession and further allegation that the plaintiffs are entitled 1/3rd share is not true and correct and the same is figment of imagination and the relief/s sought for declaring that release deed dated 17.01.2013, 04.02.2013, 28.02.2014, sale deed dated 09.09.2014 are all barred by limitation and the plaintiffs cannot maintain the present suit, the plaintiffs are not in physical nor in joint possession of the schedule property."

6. It would also be apposite to extract the proposed additional issues which the petitioner seeks to have framed, having regard to the specific pleadings contained in the written statement extracted supra. The proposed additional issues, which according to the petitioner arise for consideration in the suit, are as follows:

"1. Whether the Court Fee is sufficient?

2. Whether the 18 defendant proves that the suit is hit by principles of Resjudicata?

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3. *Whether the suit is barred by limitation?"*

7. Insofar as the proposed additional issue relating to the plea of *res judicata* is concerned, this Court is of the view that the pleadings contained in paragraph No.14 of the written statement do not, by themselves, disclose the necessary foundation for attracting the bar under Section 11 of CPC., The petitioner has merely referred to rejection of the plaint in O.S.No.5249/2017, instituted by an agreement holder seeking specific performance, against tenants-in-common instituting a suit for partition. Such a pleading, without particulars as to the issues directly and substantially in issue, the parties to the earlier proceedings, the adjudication therein and the manner in which the present suit is barred, would not be sufficient to frame an issue on *res judicata*.

8. Likewise, the averments contained in paragraph No.15 of the written statement, referring to the plaintiffs having allegedly suffered an adverse outcome in

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O.S.No.3267/1992, O.S.No.6233/1997, Miscellaneous Petition No.977/2006 and Miscellaneous No.306/2007, are vague and bereft of material particulars. The nature of the reliefs sought in the said proceedings, the parties thereto, the issues adjudicated and the manner in which the decision rendered therein operates as a bar to the present suit have not been pleaded. In the absence of such foundational pleadings, it is not possible to ascertain whether the essential ingredients of Section 11 of CPC., are attracted. Therefore, the proposed issue relating to *res judicata* does not arise for consideration for want of necessary and specific pleadings.

9. Be that as it may, the position is entirely different insofar as the plea of limitation is concerned. In paragraph No.16 of the written statement, the petitioner has specifically referred to the Release Deeds dated 17.01.2013, 04.02.2013 and 22.02.2014 and the Sale Deed dated 09.09.2014 and has specifically contended



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that the challenge laid by the plaintiffs to the said documents is barred by limitation. Once the plaintiffs seek a declaration in respect of the aforesaid documents and the defendant specifically raises a plea that such relief is barred by limitation, the said plea necessarily gives rise to an issue requiring adjudication.

10. The learned Trial Court has noticed the prayer for declaration and has observed that the question of limitation is a mixed question of law and fact. Having recorded such a finding, the learned Trial Court was not justified in declining to frame an issue on limitation. The specific plea raised by the petitioner in paragraph No.16 warranted framing of an additional issue, with the burden appropriately cast upon the petitioner, to determine whether the suit, insofar as the reliefs claimed therein are concerned, is barred by limitation. The failure to frame such an issue has resulted in the material plea raised by



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the petitioner being left without a corresponding issue for adjudication.

11. The petitioner has also specifically pleaded in paragraph No.20 of the written statement that the plaintiffs are not in physical possession of the suit schedule properties and, on that premise, has questioned the sufficiency of the court fee paid on the plaint. The burden of establishing the said plea would necessarily lie upon the petitioner. The fact that the suit is one for partition amongst parties governed by Mohammedan Law, who are tenants-in-common, and the further question as to whether there has been any ouster, are matters which require consideration on the basis of the pleadings and evidence led by the parties. Consequently, the plea regarding sufficiency of court fee also gives rise to an issue requiring adjudication.

12. The impugned order, insofar as it rejects the application seeking framing of additional issues on the



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pleas of limitation and sufficiency of court fee, is cryptic and does not disclose proper consideration of the specific pleadings raised by the petitioner. The learned Trial Court has failed to exercise the discretion vested in it under Order XIV Rule 5 of CPC., in a judicious manner. However, insofar as the plea of *res judicata* is concerned, in the absence of the requisite foundational pleadings, no issue can be directed to be framed.

13. For the foregoing reasons, the writ petition deserves to be allowed in part. Accordingly, the following:

ORDER

(i) The writ petition is ***allowed in part.***

(ii) The order dated 16.12.2019 passed on I.A.No.5 in O.S.No.3770/2018 by the LVI Additional City Civil and Sessions Judge, Mayo Hall, CCH-57, Bengaluru, is set aside in part.

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(iii) The learned Trial Court is directed to frame appropriate additional issues in respect of limitation and sufficiency of court fee, arising out of the specific pleadings contained in the written statement, and proceed with the suit in accordance with law.

(iv) Insofar as the issue relating to sufficiency of court fee is concerned, the same shall not be treated as a preliminary issue, having regard to the law laid down by the Full Bench of this Court in ***Venkatesh R. Desai v. Smt.Pushpa Hosamani and others***, reported in ***ILR 2018 KAR 5095***, particularly when the suit is pending before the City Civil Court at Bengaluru, which has unlimited pecuniary jurisdiction.

(v) The proposed issue relating to *res judicata* need not be framed in the absence



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of specific and necessary pleadings disclosing
the ingredients of Section 11 of CPC.,

(vi) All contentions of the parties are left
open to be urged and adjudicated before the
learned Trial Court in accordance with law.

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**(SACHIN SHANKAR MAGADUM)
JUDGE**