



CNR: KAHC010064612024

NC: 2026:KHC:46406
WP No. 3822 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION NO.3822 OF 2024 (GM-CPC)

BETWEEN:

GOVINDA
AGED ABOUT 74 YEARS,
S/O LATE RANGAPPA,
R/O GURUBHAVAN ROAD,
K.R. EXTENSION,
MADHUGIRI TOWN,
TUMKUR DISTRICT-572132.

...PETITIONER

(BY SRI. PRABHUGOUD B. TUMBIGI, ADVOCATE)

AND:

1. SMT. HANUMAKKA
AGED ABOUT 70 YEARS,
W/O LATE HANUMANNA,
R/O JILLARAGUNTE,
MADAKASIRA TALUK,
ANANTHAPURA DISTRICT-515301.
2. SRI NAGARAJU R.H.
AGED ABOUT 69 YEARS,
S/O LATE HANUMANTHEGOWDA,
3. SMT. SAVITHRAMMA
AGED ABOUT 50 YEARS,
W/O NAGARAJU R.H.
4. SRI PRAKASH
AGED ABOUT 35 YEARS,
S/O NAGARAJU R.H.



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RESPONDENT NOS.2 TO 4 ARE
R/O RAGHUVANAHALLI,
PURAVARA HOBLI, MADHUGIRI TALUK,
TUMKUR DISTRICT-572175.

...RESPONDENTS

(R-1 – R-3 ARE SERVED;
VIDE ORDER DATED 03.07.2026 R-4 IS DEEMED TO BE SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED
ORDER DATED 20.01.2024 PASSED ON I.A.NO.VII IN
O.S.NO.522/2014 BY THE HON'BLE PRINCIPAL CIVIL JUDGE AND
JMFC, MADHUGIRI PRODUCED VIDE ANNEXURE-A TO THE WRIT
PETITION AND CONSEQUENTLY ALLOW THE I.A.NO.VII FILED BY
THE PETITIONER THEREIN PRODUCED WIDE ANNEXURE-D.

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

CORAM: HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL ORDER

1. The plaintiff [**the petitioner**] has called in question the order
dated 20.01.2024 passed by the Principal Civil Judge and JMFC,
Madhugiri [**the Trial Court**] on I.A.No.VII in O.S.No.522/2014,
whereby the application filed under Order XXIII Rule 1(3) read with
Section 151 of the Code of Civil Procedure [**CPC**] seeking



permission to withdraw the suit and to grant liberty to institute a fresh suit on the same cause of action, came to be dismissed.

Brief facts

2. The petitioner instituted suit O.S.No.522/2014 seeking declaration of his ownership and lawful possession over the suit property, along with a declaration that the sale deed referred to in the suit are not binding upon him and consequently that permanent injunction to be issued against the defendants **[the respondents]** restraining them from interfering with the peaceful possession and enjoyment of the said suit property. The suit was in respect of Sy.No.42/4 measuring 39 guntas. During the pendency of the suit, the plaintiff filed I.A.No.VII under Order XXIII Rule 1(3) of the CPC seeking withdrawal of the suit with liberty to institute a fresh suit. In the affidavit, it is stated that he had filed suit O.S.No.415/2021 in respect of Sy.No.42/3 and that the present suit has been inadvertently filed in respect of Sy.No.42/4, whereas it ought to have been filed in respect of Sy.No.42/3. He further states that the boundaries mentioned in the plaint schedule were also incorrect and that on account of these defects the present suit might fail.



3. The defendants opposed the application, contending that the plaintiff has not disclosed any sufficient or legally recognizable formal defect and that the application was intended to prolong the litigation.

4. The Trial Court referred to Order XXIII Rule 1(3) of the CPC and held that withdrawal with liberty to institute a fresh suit could be permitted only when the suit could fail by reason of formal defect or where there were other sufficient grounds. The Trial Court found that the plaintiff's statement that he had filed another suit and did not wish to continue the present suit was insufficient.

Submissions

5. Learned counsel for the petitioner would contend that subsequent to the institution of the suit, the petitioner noticed that the property had been incorrectly described, particularly with regard to the survey number and boundaries. According to the petitioner, though the suit was instituted in respect of Sy.No.42/4, it ought to have been filed in respect of Sy.No.42/3 and therefore, the suit would fail on account of such formal defect. It is further contended that the petitioner had already instituted suit O.S.No.415/2021 in



respect of Sy.No.42/3 and since the present suit was still at the stage prior to commencement of evidence, no prejudice would be caused to the respondents if the suit was permitted to be withdrawn with liberty to institute a fresh suit.

6. It is submitted that the expression “formal defect” occurring in Order XXIII Rule 1(3) of the CPC ought to receive a liberal consideration in the facts of the case.

7. Though the respondents have been served they have chosen to remain absent.

Reasons and conclusion

8. Having considered the pleadings in the original suit as well as the affidavit filed in support of I.A.No.VII, this Court finds no reason to interfere with the ultimate conclusion of the Trial Court. The plaint is unequivocal. The petitioner has profounded his claim upon his alleged title and possession over Sy.No.42/4 and the suit schedule also specifically identifies Sy.No.42/4 as a suit property. More importantly, the petitioner has made a specific averment in the plaint that Sy.No.42/3 did not belong to his family or the family



CNR: KAHC010064612024

of the respondents and that neither the petitioner nor respondents were its owner in possession.

9. Having pleaded the case in that manner, the petitioner now by way of this application for obtaining the liberty under Order XXIII Rule 1(3) of the CPC seeks to contend that the suit ought to have been filed in respect of Sy.No.42/3. Such a plea is not a mere correction of a formal error. If Sy.No.42/3 and Sy.No.42/4 are distinct properties, permitting withdrawal with liberty to institute a fresh suit in respect of Sy.No.42/3 would effectively permit the petitioner to abandon the subject matter of the existing suit and commence a fresh proceeding concerning a different property. The fact that the petitioner had already instituted O.S.No.415/2021 in respect of Sy.No.42/3 further assumes significance in this regard.

10. The liberty contemplated under Order XXIII Rule 1(3) of the CPC is not an absolute right of the plaintiff. The said provision reads as under:

“WITHDRAWAL AND ADJUSTMENT OF SUITS

1. ***Withdrawal of suit or abandonment of part of claim.—***(1) x x x
- (2) x x x



CNR: KAHC010064612024

(3) *Where the Court is satisfied,—*

- (a) *that a suit must fail by reason of some formal defect, or*
- (b) *that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of suit or part of a claim,*

It may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.”

11. From the above provision, it is clear that the Court must be satisfied that the statutory requirements are fulfilled. In the present case, the alleged defect does not merely affect the form of plaint, it concerns the identity of the property and consequently, the very subject matter of the suit. Therefore, the alleged defect cannot be treated as a “formal defect” within the meaning of Order XXIII Rule 1(3) of the CPC. Accordingly, the Trial Court was justified in refusing permission to withdraw the suit with liberty to institute a fresh suit. Though the reasons assigned by the Trial Court may not fully address the significance of the pleadings in the original plaint, its ultimate conclusion does not warrant interference in exercise of the supervisory jurisdiction under Article 227 of the Constitution.



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The writ petition is accordingly ***dismissed***. The order passed on I.A.No.VII dated 20.01.2024 in O.S.No.522/2014 is hereby ***confirmed***.

Sd/-

JUSTICE K.S. HEMALEKHA

AT
List No.: 1 SI No.: 29