



CNR: KAHC010095082022

NC: 2026:KHC:42551
W.P. No.4670/2022

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.4670/2022 (GM-CPC)

BETWEEN:

SRI. S.E. SUDHEENDRA
S/O LATE SRI. S.N. ESHWARAIAH
AGED ABOUT 48 YEARS
R/AT NO.16,
GANESHA TEMPLE ROAD
19TH MAIN, 50 FT.CROSS ROAD
GIRINAGAR,
BENGALURU 560085.

...PETITIONER

(BY SRI. R.B. SADASIVAPPA, ADV.,)

AND:

1. SRI. RAMACHANDRA RAO
S/O LATE SRI. KRISHNOJI RAO
AGED ABOUT 74 YEARS.

SINCE DEAD BY HIS LR'S.
- a. SMT. PREMABAI D
W/O LATE SRI.RAMACHANDRA RAO K
AGED ABOUT 69 YEARS
R/AT. NO.110, 1ST MAIN, 2ND CROSS
KEBBEHALLA,
RAJIV GANDHI NAGAR
SUNKADAKATTE,
BANGALORE-560091.

Digitally signed
by RUPA V

Location: HIGH
COURT OF
KARNATAKA



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- b. SMT. R. JEEJABAI
D/O LATE SRI. RAMACHANDRA RAO K
W/O SRI. RAVI
AGED ABOUT 44 YEARS
R/AT. NO.53, 6TH CROSS
BAIYAPPANAHALLI EXTN.,
BANGALORE NORTH
BANGALORE-5600383.
- c. SMT. MANJULA BAI BOSLE R
D/O LATE SRI. RAMACHANDRA RAO K
AGED ABOUT 43 YEARS
R/AT. NO.110, 1ST MAIN, 2ND CROSS
KEBBEHALLA,
RAJIV GANDHI NAGAR
SUNKADAKATTE,
BANGALORE-560091.
- d. SRI. SARDHAR SUYODHAN RAO B.R.
S/O LATE SRI. RAMACHANDRA RAO K
AGED ABOUT 40 YEARS
R/AT. NO.85, KEBBEHALLA
VISHWANEEDAM POST
BANGALORE NORTH
BANGALORE-560091.
- e. SMT. KASTHURI BAI BONSLE R
D/O LATE SRI. RAMACHANDRA RAO K
W/O SRI. MADHUSUDHAN
AGED ABOUT 35 YEARS
R/AT. NO.O-85/E-63,
KEBBEHALLA
RAJIV GANDHI NAGAR PART-2
BANGALORE NORTH
BANGALORE – 560091.
- 2. SMT. GANGAMMA
W/O SRI. G.V. MAYANNA
AGED ABOUT 73 YEARS
R/O GUNNAGERE VILLAGE AND POST



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KUNIGAL TALUK,
TUMKUR DISTRICT.

AND ALSO AT:
NO.1016, 15TH MAIN
BANASHANKARI 1ST STAGE
1ST BLOCK, HANUMANTHANAGARA
BENGALURU 560050.

3. SRI. MOTHILAL MALI .G
S/O SRI. GOKUL RAMJI
AGED ABOUT 48 YEARS
MOTHI AUTOMOBILE NO.1
24TH MAIN, 50 FT ROAD
GIRINAGAR,
BENGALURU 560085.

...RESPONDENTS

(BY SRI. K. SHRIDHARA, ADV., FOR R1 (a to e)
V/O/DTD:25.11.2022, NOTICE TO R2 & R3 IS D/W)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASHING THE IMPUGNED ORDER DATED 24.01.2022 PASSED BY THE 11TH ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, (CCH-8) ON IA NO.4 FILED UNDER SECTION 151 CPC IN EXECUTION PET.NO.923/2019 VIDE ANNEXURE-A & ETC.

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



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

ORAL ORDER

This petition is filed challenging the order dated 24.01.2022 passed on I.A.No.4 in Ex.No.923/2019 by the XI Additional City Civil and Sessions Judge, Bengaluru (for short, '***the Executing Court***').

2. Sri.R.B.Sadashivappa, learned counsel appearing for the petitioner submits that the respondent No.1-plaintiff had filed a suit in O.S.No.4855/2007 for specific performance of agreement stated to have been executed by the respondent No.2-defendant No.1. In the said suit, the petitioner herein, who was defendant No.3, appeared and filed the written statement but could not adduce the evidence. The trial Court decreed the suit. Thereafter, the petitioner-judgment debtor filed the miscellaneous petition under Order IX Rule 13 of the Code of Civil Procedure, 1908, (for short, '***the CPC***') seeking to set aside the *ex-parte* judgment and decree passed in



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O.S.No.4855/2007. In the meantime, the respondent No.1-decree holder had initiated the execution proceedings and in the said execution proceedings, an application was filed by the petitioner seeking to stay the further proceedings on the ground that proceedings in Misc.No.619/2019 is pending. The Executing Court under the impugned order, rejected the said application solely on the ground that the application is filed when the draft sale deed was prepared and there is only one provision under the CPC to stay the decree i.e., under Order XLI Rule 5(2) of the CPC, and rejected the said application.

3. It is submitted that the defendant No.1 in the suit has sold the property in favour of defendant No.2 on 22.08.2003 and thereafter defendant No.2 sold the said property on 21.05.2007 in favour of defendant No.3, who is the petitioner herein, and the respondent No.1-plaintiff had filed the suit in the year 2007 seeking to enforce the agreement dated 06.06.2003, which is admittedly barred



by law of limitation. However, petitioner-defendant No.3 could not place the evidence before the trial Court, which resulted in passing of the *ex parte* judgment and decree and if the said decree is allowed to be executed, it would prejudice the case of the petitioner who is in lawful possession being the title holder from 2007. In support of his contentions, he placed reliance on the decision of this Court in the following cases:

- i. ***Ansari Sakeenabi vs. Maligi Modeensab¹***
- ii. ***Sri.Chandan P. vs. Sri.Papanna Balaji and others²***

Hence, he seeks to allow the petition by staying the execution proceedings till the disposal of the miscellaneous petition in Misc.No.619/2019.

4. Per contra, Sri.K.Shridhara, learned counsel appearing for the respondent No.1(a to e) supports the impugned order of the Executing Court and submits that the miscellaneous petition is filed belatedly in the year

¹ ILR 1997 KAR 1909

² W.P.No.33242/2024 C/w W.P.No.32966/2024 DD:25.04.2026



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2019 and the decree obtained by respondent No.1 is in the year 2015 and the respondent No.1-decree holder is unable to enforce the decree till this date. It is submitted that the initiation of miscellaneous proceedings by the petitioner is belated and considering the said aspect the Executing Court has rightly come to the conclusion that the said Court has no power to stay the decree and it is only the Appellate Court under Order XLI Rule 5(2) of the CPC that has the power to stay the decree. It is further submitted that attempt of stalling the execution proceedings is at the fag end of the proceedings i.e., when the draft sale deed is produced. Hence, there is no good ground made out by the petitioner to interfere with the impugned order of the Executing Court. Hence, he seeks to dismiss the petition.

5. I have heard the arguments on both sides and perused the material available on record.



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6. The respondent No.1, now deceased, filed the suit in O.S.No.4855/2007 seeking to enforce the agreement of sale alleged to have been executed by the respondent No.2 - Smt.Gangama in his favour on 06.06.2003. In the said suit, the petitioner was arrayed as defendant No.3. The said suit came to be decreed vide judgment dated 28.09.2015. The records indicate that the defendant No.3 has entered appearance, filed written statement, thereafter the counsel for the defendant No.3 remained absent and later filed a memo of retirement. The judgment on record indicates that the memo of retirement is filed after serving the notice on the defendant No.3.

7. Be that as it may, the judgment and decree sought to be executed in Ex.Case No.923/2013 by the decree holder is an *ex parte* decree. At this stage, it would be appropriate to refer the decision of this Court in the case of ***Ansari Sakeenabi*** referred supra, wherein para No.8 reads as under:



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"8. No doubt, the plaintiff's suit was contested by defendant at its earlier stages and till the plaintiff's evidence was recorded, but he failed to appear on the subsequent dates of hearing and remained absent of course for valid reason, when the suit was set down for his evidence. Then the suit was decreed by the Trial Court on the basis of plaintiff's evidence only. It is not the case that defendant remained absent in the suit after any portion of his evidence was recorded in which event alone the Trial Court could have disposed of the suit treating him as present as envisaged by Explanation to Rule 2 of Order 17. C.P.C. Read in the context of this Explanation, sub-clause(b) of Rule 3 of Order 17 C.P.C makes the legal position clear that when, a party to the suit remains absent without leading any evidence, the Trial Court is enjoined by Rule 2 of Order 17 to proceed to dispose of the suit in one of the modes stipulated in Order 9 C.P.C., As a necessary legal corrolary it follows that any decree passed by the Trial Court disposing of the suit on the basis of plaintiff's evidence only due to non-appearance of contesting defendant at subsequent stages in the suit and on his failure to Tead his evidence, is an ex-parte decree against him and not a decree or merits. In view of this emerging legal position the decree in the instant case has to be



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treated as an ex-parte decree and not as a decree passed on merits. Therefore, the application under Order 9, Rule 13 C.P.C. made by the petitioner before the Trial Court in Mis.Case No.4/89 seeking to set aside the decree in question was maintainable in law; and the Trial Court as well as the lower appellate Court have clearly erred in taking the contrary view and passing the impugned orders dismissing the said application. As such, the revision is entitled to succeed."

8. This Court in the aforesaid decision has considered the effect of Order IX Rule 13 of the CPC held that even if one of the defendants entered appearance and filed a written statement but could not lead the evidence is to be construed as an *ex parte* decree against him. Keeping in mind the aforesaid enunciation of law laid down by this Court, I am of the view that the miscellaneous petition filed by the petitioner is maintainable which is under consideration.

9. It is required to be noticed that the petitioner herein is specifically contending that the suit filed by the



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respondent No.1 is not maintainable as it is barred by law of limitation. It is contended that without taking note of the fact that the original owner i.e., defendant No.1 in the suit, has executed the registered sale deed in favour of the defendant No.2 on 22.08.2003 and thereafter the defendant No.2 has executed the sale deed in favour of the defendant No.3-petitioner herein on 21.05.2007, the suit came to be decreed *ex-parte* by the trial Court. In my considered view, the said aspect is required to be considered by the concerned Court in the miscellaneous proceedings.

10. Insofar as the contention of the learned counsel for the respondent No.1(a to e) that the petitioner herein has filed the miscellaneous petition belatedly and that he had the knowledge with regard to passing of the decree etc., are concerned, are also required to be gone into in the miscellaneous proceedings by the said Court by permitting the parties to adduce the evidence.



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11. In view of the pendency of the miscellaneous proceedings, I am of the considered view that if the Executing Court is allowed to proceed further, it would cause great prejudice to the petitioner, who was defendant No.3 in the suit who claims to be the title holder and is in possession of the property.

12. Keeping in mind the aforesaid factual scenario, I am of the view that the Executing Court has committed grave error in rejecting the application filed by the petitioner herein. Hence, I proceed to pass the following:

ORDER

- i. The writ petition is ***allowed.***
- ii. The impugned order dated 24.01.2022 passed on I.A.No.4 in Ex.No.923/2019 by the XI Additional City Civil and Sessions Judge, Bengaluru, is set aside.
- iii. The Executing Court shall not proceed with Ex.No.923/2019 till the disposal of the



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miscellaneous petition in Misc.No.619/2019
filed by the petitioner herein.

- iv. The petitioner herein shall not drag on the
said miscellaneous proceedings. The
concerned trial Court shall dispose of the
Misc.No.619/2019 as early as possible.

No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

BSR
List No.: 1 Sl No.: 21