



CNR: KAHC010111102021

NC: 2026:KHC:42208
W.P. No.5123/2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 10TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.5123/2021 (GM-CPC)

BETWEEN:

SADASHIVA M. SHETTY
S/O LATE MUDDANNA SHETTY
AGED ABOUT 76 YEARS
R/AT MIGNONETTE APARTMENT
NO.5, L J ROAD, 1ST CROSS ROAD
NEAR LIVING ROOM
MAHIM, MUMBAI - 400016.

...PETITIONER

(BY SRI. B.S. SACHIN, ADV.,)

AND:

SMT. KUSUMA B. BHANDARY
W/O BHUJANAGA BHANDARY
AGED ABOUT 80 YEARS
PRESENTLY R/AT NO.126/127
PANDURANGA SADAN
GROUND FLOOR, FIRST AND
10TH ROAD, OPP MADHU PARK
KHAR (WEST), MUMBAI - 400052.

...RESPONDENT

(BY SRI. CYRIL PRASAD PAIS, ADV.,)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DTD.27.11.2020 PASSED ON IA NO.6 IN O.S.NO.1004 OF 2018 ON THE FILE OF PRINCIPAL CIVIL JUDGE, MANGALORE, D.K. AS PER ANEXURE-A AND CONSEQUENTLY ALLOW IA NO.6 AS PRAYED FOR & ETC.

Digitally signed
by RUPA V

Location:
HIGH COURT
OF
KARNATAKA



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

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

ORAL ORDER

This writ petition is filed challenging the order dated 27.11.2020 passed on I.A.No.6 in O.S.No.1004/2018 by the Principal Civil Judge, Mangaluru, D.K. (for short, '**the trial Court**').

2. Heard Sri.B.S.Sachin, learned counsel appearing for the petitioner and Sri.Cyril Prasad Pais, learned counsel appearing for the respondent.

3. The respondent-plaintiff had filed the suit in O.S.No.1004/2018. In the said suit, the petitioner-defendant filed an application under Section 10 and 151 of the Code of Civil Procedure, 1908 (for short, '**the CPC**') seeking to stay the further proceedings in the suit on the ground that the issue involved in the present suit and earlier decided suit between the same parties, which is



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subject matter in the pending RFA No.946/2017, is one and the same. The said application was opposed by the respondent-plaintiff. The trial Court, under the impugned order, rejected the application.

4. The respondent-plaintiff had filed the suit in O.S.No.65/2014 against one Sri.Sundar M.Shetty and the petitioner herein, who was defendant No.2 in the said suit. The relief sought for in the suit was to declare that the registered deed of release dated 06.07.2004 as null and void and not binding on the plaintiff and other consequential reliefs. The said suit came to be decreed by the trial Court vide judgment dated 15.02.2017. In the said suit, the trial Court had framed 10 issues, wherein Issue No.2 reads as under:

"2. Whether the plaintiff proves that she never executed Power of Attorney in favour of 1st defendant so as to execute Release Deed dated: 06-07-2004 in favour of 2nd defendant with respect to suit item No.1 to 6 properties?"



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5. The trial Court in O.S.No.65/2014, while recording the findings has come to the conclusion that the plaintiff had proved that the GPA at Ex.D1 has not been executed by the plaintiff in the said suit. The said judgment and decree in O.S.No.65/2014 is challenged by the petitioner herein, who is defendant No.2 in the said suit, in RFA No.946/2017, this Court heard and admitted the said appeal.

6. The respondent herein had filed another suit in O.S.No.1004/2018 against the petitioner herein seeking the relief of declaration that the alleged registered gift dated 07.07.2004 is void, not binding on the respondent-plaintiff and other reliefs. The perusal of the plaint indicates that there is a clear reference with regard to the General Power of Attorney ('**GPA**') dated 07.06.2001 and based on such a premise, a suit came to be filed and there is also a reference about the judgment and decree in O.S.No.65/2014. The perusal of the findings recorded by



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the trial Court in O.S.No.65/2014 and the plaint averments in O.S.No.1004/2018 indicate that the plaintiff is primarily contending in both the suits that she never executed the GPA in favour of Sri.Sundar M.Shetty, who in turn executed the relinquishment deed dated 06.07.2004 which was the subject matter in O.S.No.65/2014 and who has executed a registered gift deed dated 07.07.2004 in favour of the petitioner herein, which is the subject matter in O.S.No.1004/2018.

7. The issue involved in both the suits is with regard to the execution of the GPA by the plaintiff in favour of Sri.Sundar M.Shetty dated 07.06.2001 and the trial Court in O.S.No.65/2014 has already come to the conclusion that the said GPA is not executed by the plaintiff in favour of Sri.Sundar M.Shetty and continuing a later suit based on the said GPA is impermissible as the issue involved in the previous suit and issue involved in the subsequent suit filed by the respondent-plaintiff is



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substantially one and the same and between the same parties.

8. Though in the earlier suit there was an additional defendant i.e. Sundar M.Shetty, who is not arrayed as a party in the subsequent suit and that itself would not be a ground to say that the relief and the issue involved in both the suits are not one and the same.

9. It is also required to be noticed that if in the aforesaid RFA No.946/2017 pending before this Court, this Court records a finding contrary to the findings recorded in O.S.No.65/2014, there would be likelihood of conflict of views on the issue of GPA. Hence, I am of the considered view that the trial Court has committed a grave error in rejecting the application in I.A.No.6 filed by the petitioner-defendant. Hence, I proceed to pass the following:

ORDER

- i. The writ petition is ***allowed***.



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ii. The impugned order dated 27.11.2020 passed on I.A.No.6 in O.S.No.1004/2018 by the Principal Civil Judge, Mangaluru, D.K. is hereby set aside. Consequently, the application in I.A.No.6 filed by the petitioner-defendant before the trial Court is allowed. The further proceedings in O.S.No.1004/2018 pending on the file of the Principal Civil Judge, Mangaluru, D.K. are stayed till the disposal of the RFA No.946/2017.

No orders as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

BSR
List No.: 1 Sl No.: 21