



CNR: KAHC010121332022

NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO.5618/2022 (GM-CPC)

C/W

WRIT PETITION NO.5553/2022 (GM-CPC)

IN W.P. No.5618/2022:

BETWEEN:

SMT. SIDDAMMA
W/O LATE BOREGOWDA
AGED ABOUT 79 YEARS
R/AT DHANAGURU VILLAGE
KASABA HOBLI, MALAVALLI TALUK
MANDYA DISTRICT.

...PETITIONER

(BY SRI. G. KRISHNA MURTHY, SR. COUNSEL FOR
SRI. NARAYANA V.S. ADV.,)

AND:

SRI. RAKESHGOWDA H.S.
S/O SIDDALINGEGOWDA
AGED ABOUT 29 YEARS
R/AT D. HALASAHALLI VILLAGE
KASABA HOBLI, MALAVALLI TALUK
MANDYA DISTRICT.

...RESPONDENT

(BY SRI. UDAY K.S. ADV.,)

Digitally signed
by RUPA V

Location: HIGH
COURT OF
KARNATAKA



CNR: KAHC010121332022

NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE IMPUGNED ORDER DTD 31.01.2022, IN M.A.NO.04/2020, PASSED BY THE SENIOR CIVIL JUDGE AND JMFC, MALAVALLI VIDE ANNEX-A. CONSEQUENTLY, CONFIRM THE ORDER DTD 07.02.2020 IN O.S.NO.411/2019, ON THE FILE OF PRINCIPAL CIVIL JUDGE, AT MALAVALLI VIDE ANNEX-B AND REJECT I.A.NO.1 FILED UNDER ORDER 39 RULE 1 AND 2 OF CPC AND ALLOW THE WRIT PETITION & ETC.

IN W.P. NO.5553/2022:

BETWEEN:

SMT. SIDDAMMA
W/O LATE BOREGOWDA
AGED ABOUT 79 YEARS
R/AT DHANAGURU VILLAGE
KASABA HOBLI, MALAVALLI TALUK
MANDYA DISTRICT

...PETITIONER

(BY SRI. G. KRISHNA MURTHY, SR. COUNSEL FOR
SRI. NARAYANA V.S. ADV.,)

AND:

SRI. SIDDALINGEGOWDA
S/O SIDDEGOWDA
AGED ABOUT 59 YEARS
R/AT D. HALASAHALLI VILLAGE
KASABA HOBLI, MALAVALLI TALUK
MANDYA DISTRICT.

...RESPONDENT

(BY SRI. UDAY K.S. ADV.,)

- - -



CNR: KAHC010121332022

NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE IMPUGNED ORDER DTD 31.01.2022, IN M.A. NO.03/2020, PASSED BY THE SENIOR CIVIL JUDGE AND JMFC, MALAVALLI VIDE ANNEX-A. CONSEQUENTLY, CONFIRM THE ORDER DTD 07.02.2020 IN O.S.NO.395/2018, ON THE FILE OF PRINCIPAL CIVIL JUDGE, AT MALAVALLI VIDE ANNEX-B ON IA NO.1 FILED UNDER ORDER 39 RULE 1 AND 2 OF CPC, BY ALLOWING THIS W.P & ETC.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED ON 21.07.2026, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

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

CAV ORDER

W.P.No.5618/2022 is filed challenging the order dated 31.01.2022 passed in M.A.No.04/2020 and W.P.No.5553/2022 is filed challenging the order dated 31.01.2022 passed in M.A.No.03/2020, by the Senior Civil Judge and JMFC, Malavalli (for short, 'the Appellate Court').

2. Sri.G.Krishna Murthy, learned Senior counsel appearing for Sri. Narayana V.S., learned counsel for the petitioner submits that the petitioner is the absolute owner and in lawful possession of the suit schedule property,



NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

having inherited it from her deceased husband. It is submitted that the respondent has failed to produce any valid sale deed establishing his ownership, has violated the temporary injunction granted in O.S.No.395/2018 and continued the construction activity. It is further submitted that the respondent's claim is based only on documents such as Paluparikath, conversion, mortgage, and relinquishment deeds, whose evidentiary value cannot be examined at the stage of deciding an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (for short, 'the CPC'). It is also submitted that the Appellate Court wrongly relied on certain documents pertaining to a different property and concluded that the persons other than the petitioner were in possession of the suit schedule property, thereby erroneously setting aside the Trial Court's order of temporary injunction. It is contended that despite the interim injunction granted in O.S.No.395/2018, the respondent continued construction activity in the suit schedule property, altering its nature



NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

CNR: KAHC010121332022

and causing irreparable injury to the petitioner. It is further contended that the respondent has failed to establish a *prima facie* case, whereas the balance of convenience lies in favour of the petitioner and if the temporary injunction is not granted in her favour, she would suffer irreparable harm. It is also contended that the Appellate Court failed to appreciate the material on record in its proper perspective while allowing M.A.Nos.03/2020 and 04/2020.

3. The case of the petitioner before the Trial Court is that the petitioner permitted the respondents and others to make use of the vacant property by retaining lawful possession with her and by misusing the same, the defendant started putting up construction. It is submitted that the photographs produced along with the memo indicate that the police have visited the spot and in violation of the interim order, they continued with the construction which can be noticed from the mahazar



CNR: KAHC010121332022

NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

drawn by the police. It is further submitted that the petitioner challenged the alleged khata in favour of the respondent before the Taluk Panchayat, Malavalli. The said Authority, vide order dated 18.07.2025 ordered to continue the name of the petitioner in the revenue records. In support of his contentions, he placed reliance on the decisions of the Hon'ble Supreme Court in **MOHD. MEHTAB KHANAND AND OTHERS Vs. KHUSHNUMA IBRAHIM KHAN AND OTHERS¹**, and of this court in **SMT. LALITHAKSHI ANNADANAGOUDA Vs. SADASHIVAPPA BASAPPA PATIL AND ANOTHER²**, and submitted that the Appellate Court ought not have exercised its power in substituting its own discretion when the discretion exercised by the Trial Court is legal and proper. It is also submitted that if the respondent is allowed to complete the construction, it would amount to providing protection to the person who has put up the

¹ (2013) 9 SCC 221

² 1983 SCC OnLine Kar 69



NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

construction in violation of the interim order. Hence, he seeks to allow the writ petitions.

4. *Per contra*, Sri.Uday K.S, learned counsel for the respondent supports the impugned order of the Appellate Court and submits that the construction of the building was started prior to the filing of the suit in O.S.No.395/2018 and that the said construction is not in violation of the Court order. The respondent had stopped the construction immediately after the Trial Court granted temporary injunction and again it was resumed only after the appeal filed by the respondent was allowed. It is submitted that the respondent has produced cogent material such as conversion, relinquishment deed, sanctioned plan and licence for construction to showcase a *prima facie* case in his favour and the Appellate Court, considering the same has rightly granted the temporary injunction. It is further submitted that the construction was commenced even before filing of the suit. Now, the



CNR: KAHC010121332022

NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

entire construction is completed and only minor works are required to be done. The said assertion is supported by a memo along with photographs. In support of his contentions, he places reliance on the decision of the Hon'ble Supreme Court in the case of ***PRINCIPAL SECRETARY, REVENUE DEPARTMENT, STATE OF TELANGANA AND ANOTHER Vs. B. RANGASWAMY (DEAD) BY LRS AND OTHERS***³ and seeks to dismiss the petitions.

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

In W.P. No. 5553/2022

6. The petitioner instituted O.S.No.395/2008 against Sri.Siddalingegowda-respondent seeking declaration and other consequential reliefs in respect of

³ (2022) 16 SCC 264



NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

the suit schedule property, contending that it is her self-acquired property. It is averred that the husband of the petitioner, Boregowda, had purchased the property bearing Sy.No.191/3 (new Sy.No.131/3A) measuring 1 acre 19 guntas along with 2 acres of kharab land under a registered sale deed dated 31.12.1968, and another extent measuring 30 mola × 60 mola (approximately 4 guntas) in the same survey number under a registered sale deed dated 31.12.1968. During his lifetime, Boregowda sold 24 guntas of land for formation of sites and retained 1 acre 1 gunta along with 2 guntas of kharab land, which, upon his demise, came into the petitioner's possession and enjoyment.

7. In the said suit, the petitioner filed I.A.No.1 under Order XXXIX Rules 1 and 2 read with Section 151 of the CPC, seeking a temporary injunction restraining the respondent from putting up further construction on the suit schedule property. The Trial Court, by order dated



NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

07.02.2020, allowed the application and restrained the respondent from putting up further construction in the suit schedule property till the disposal of the suit.

8. Aggrieved by the said order, the respondent preferred M.A.No.3/2020. The Appellate Court allowed the appeal and set aside the order of temporary injunction vide order dated 31.01.2022, on the ground that both the parties claimed title under registered sale deeds whose validity had not been challenged. The Appellate Court further observed that the petitioner had kept the property vacant and permitted the neighbouring site owners to use it for storage, thereby indicating lack of possession. The Appellate Court also noted that the petitioner had failed to produce the documents establishing the extent of the land sold by her husband and the extent retained by him and further relied on the documents produced by the respondent, including khatha, Form Nos.9 and 11A, standing in the names of the respondent's sons, and the



CNR: KAHC010121332022

NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

building licence issued to the respondent's elder son, H.S. Rakeshgowda, during the years 2018–2019, the validity of which had not been challenged. The Appellate Court considered that the construction comprising a ground floor and two upper floors had substantially been completed, with only plastering work remaining, and held that no *prima facie* case of possession was made out by the petitioner and came to the conclusion that greater irreparable injury would be caused to the respondent if the injunction was to be continued and vacated the injunction order. Aggrieved by the said order, the petitioner has filed the present writ petition.

In W.P.No.5618/2022

9. Sri.Rakeshgowda H.S., son of Siddalingegowda- the respondent in this writ petition instituted a suit in O.S.No.411/2019 before the Trial Court seeking a decree of permanent injunction against the petitioner in respect of the suit schedule property i.e. property bearing No.705-



NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

273-2 and property bearing E-khatha property number 152100302100220258 measuring East to West 12.61 meters and North to South 48.58 meters consists of an RCC residential house and a vacant site with chakkubandis. The respondent contended that the suit schedule property, comprising of an RCC residential house and a vacant site, originally belonged to his great-grandfather and in the family arrangement between the father of the respondent and his brother, divided all the ancestral properties through registered paalu parikath dated 01.12.1998, accordingly the suit schedule property fell into the share of the plaintiff's father. Thereafter, the property is transferred to the respondent, and his brother has also executed a relinquishment deed of his share. It is to be noticed that the land is converted into a non-agricultural land vide ALN No.71/85-86 dated 19.08.1985. The khatha of the property is standing in the name of the respondent, he is paying the taxes regularly and he has



CNR: KAHC010121332022

NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

also obtained a sanction plan to put up the residential house and has started construction.

10. In the said suit, the respondent filed I.A. No. I under Order XXXIX Rules 1 and 2 read with Section 151 of the CPC, seeking a temporary injunction against the petitioner. Upon considering the rival submissions, the Trial Court, vide order dated 07.02.2020, rejected the application for temporary injunction filed by the respondent. Aggrieved by the order of the Trial Court, the respondent preferred M.A.No.4/2020. The Appellate Court, vide order dated 31.01.2022, allowed the appeal and set aside the Trial Court's order on the ground that the respondent had produced sufficient documents, including the panchayath khatha, tax paid receipts, registered partition deed, relinquishment deed, khatha, Form Nos.9 and 11A, approved building plan and licence, which had not been challenged by the petitioner. The Appellate Court further observed that the dispute



CNR: KAHC010121332022

NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

regarding title, identity, boundaries and extent of the respective properties require adjudication in a full-fledged trial and that the respondent had already completed construction of a three-storied building after obtaining statutory approvals, with only plastering work remaining; and that restraining further construction at that stage would cause greater hardship and irreparable loss to the respondent, whereas the petitioner's interests could be safeguarded in the event she succeeded in O.S.No.395/2018 by directing delivery of possession or removal of the construction. Accordingly, the Appellate Court allowed the appeal, set aside the order of the Trial Court dated 07.02.2020 by allowing the application of the respondent for temporary injunction and by restraining the petitioner herein, agents, subordinates or anybody acting on her behalf from interfering with the peaceful possession and enjoyment of the suit schedule property by the respondent in this petition. Aggrieved by the same, the petitioner filed this writ petition.



CNR: KAHC010121332022

NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

11. Having considered the rival submissions and the material placed on record, it *prima facie* appears that there is a dispute with regard to the identification of the property between the parties. The petitioner is claiming that the suit schedule property in O.S.No.395/2018 is a self acquired property and the same is derived through her husband Boregowda. It is averred that the said Boregowda had purchased the property from one Madhegowda to an extent of 1 acre 19 guntas and 2 guntas of kharab in Sy.No.191/3 (new Sy.No.131/3A) under a registered sale deed dated 31.12.1968 and another item in the same survey number measuring East to West – 13 mola and North to South – 60 mola approximately 4 guntas from one Sri.Madappa under a registered sale deed dated 31.12.1968 and both the properties are adjacent properties and since then they are in possession and enjoyment of the same. The plaint averments further indicate that the husband of the plaintiff



CNR: KAHC010121332022

NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

had alienated some portion of the southern side of the suit schedule property in favour of various persons of Halasahalli Village for the purpose of formation of a residential site to an extent of 24 guntas. It was further averred that the husband of the plaintiff retained 1 acre 1 gunta of land along with 2 guntas of kharab land and in the said property, the adjacent purchasers have stored charcoal, manure, dry grass etc. with the permission of the plaintiff and without any right or title, the respondents are interfering with the possession and have illegally started putting up construction. The aforesaid averments make it clear that the petitioner has failed to clearly establish the extent of land retained by her and the extent of land sold. Only a vague assertion is made in the plaint that certain portion of the land is retained and in the absence any such specific factual assertion by the petitioner in the suit, it would be difficult to come to conclusion that the petitioner has retained certain property



NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

and in the very same property retained by the petitioner, the defendant is putting up construction.

12. The records disclose that the respondent has produced a *prima facie* material including the registered partition deed, relinquishment deed, khatha, Form Nos.9 and 11A, sanctioned building plan, conversion order and licence for construction, in support of his claim of possession and construction over the property. The Appellate Court has also noticed that the validity of these documents has not been challenged by the petitioner. Conversely, the petitioner has failed to place satisfactory material to establish the exact extent retained by her husband after alienating portions of the original property or to *prima facie* establish her exclusive possession over the disputed property.

13. The Appellate Court has considered the material on record in the light of the settled principles governing grant of temporary injunction and has assigned cogent



CNR: KAHC010121332022

NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

reasons for concluding that the petitioner failed to establish a *prima facie* case, whereas the balance of convenience and irreparable injury tilted in favour of the respondent who had already undertaken substantial construction after obtaining the necessary statutory approvals as per the documents placed before the Trial Court. The Appellate Court has further observed that in the event the petitioner ultimately succeeds in the suit, appropriate consequential reliefs could always be granted by the Civil Court. Therefore, the reliance placed on the decision of the Hon'ble Supreme Court in the case of **MOHD. MEHTAB KHANAND** referred *supra* and of this Court in the case of **SMT. LALITHAKSHI ANNADANAGOUDA** referred *supra*, have no application to the facts and circumstances of the case as the principle laid down in the aforesaid decisions apply where the discretion exercised by the Trial Court is shown to be legal, proper and founded on a correct appreciation of the material on record. It is to be seen that the Appellate



CNR: KAHC010121332022

NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

Court has not interfered merely because another view was possible, it has assigned cogent reasons demonstrating that the Trial Court failed to consider the material documentary evidence produced by the respondent including the registered partition deed, relinquishment deed, khatha, Form Nos.9 and 11A, conversion order, sanctioned building plan and licence. The Appellate Court has also noticed that the validity of these documents had not been challenged and that the respondent had substantially completed construction after obtaining necessary statutory permissions. Further, it has recorded that the petitioner failed to produce satisfactory material to establish the precise extent retained by her husband after alienation or to *prima facie* establish her possession over the suit property. The Appellate Court has, thereafter, independently assessed the existence of a *prima facie* case, the balance of convenience and the likelihood of irreparable injury before reversing the Trial Court's order. Such an exercise cannot be characterised



NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

CNR: KAHC010121332022

as a mere substitution of discretion but is the one undertaken to correct an erroneous exercise of discretion based on misappreciation of the material evidence. The Appellate Court has rightly observed that such disputed questions cannot be conclusively decided at the interlocutory stage and has made an interim arrangement to ensure that the respondent does not suffer any undue prejudice until the suits are finally decided. Therefore, I am of the view that the order of the Appellate Court does not require any interference.

14. The material on record indicate that the respondent had started putting up construction even prior to the filing of the suit and after the order of the Appellate Court, the construction is completed and the minor works are left out even as per the submissions from both the sides and hence, it would not be proper to direct the respondent to not finish the pending work. It is needless



CNR: KAHC010121332022

NC: 2026:KHC:39334
W.P. No.5618/2022
C/W W.P. No.5553/2022

to observe that the construction of the respondent is subject to the outcome of the pending suits.

15. Hence, the writ petitions are devoid of merits and are accordingly ***dismissed***. Consequently, the pending interlocutory application stands disposed of.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV
List No.: 1 Sl No.: 1