



CNR: KAHC010338332022

NC: 2026:KHC:47017
W.P. No.15078/2022
C/W W.P. No.9874/2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO.15078/2022 (GM-CPC)

C/W

WRIT PETITION NO.9874/2022 (GM-CPC)

IN W.P. No.15078/2022:

BETWEEN:

1. SRI. S. JOHN DE BRITTO
S/O STANISLAUS
AGED ABOUT 73 YEARS
PROPRIETOR
M/S UNIVERSAL AUTO SERVICES
NO.10, HOSUR ROAD
(DR. M.H. MARIGOWDA ROAD)
DHARMARAM COLLEGE POST
BENGALURU-560029.

...PETITIONER

(BY SRI. UDAYA HOLLA, SENIOR COUNSEL FOR
SRI. VISHWANATH R. HEGDE, ADV.,)

AND:

1. SREE GUNDLU MUNESWARA SWAMY
TEMPLE TRUST (R)
HOSUR ROAD, BENGALURU-560029
REPRESENTED BY ITS SECRETARY.

...RESPONDENT

(BY SRI. M.S. NAGARAJA, ADV.,)

Digitally signed
by RUPA V

Location: HIGH
COURT OF
KARNATAKA



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THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DTD 26.05.2022 PASSED BY THE LEARNED XV ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCCH-3) IN EXECUTION NO.2403/2021 I.E., ANNEXURE-A AS ARBITRARY, ILLEGAL AND UNJUST. AND CONSEQUENTLY DIRECT THE RESPONDENT TO RESTORE PHYSICAL POSSESSION OF THE SCHEDULE PREMISES TO THE PETITIONER AND RETURN ALL THE ARTICLES, INCLUDING CARS, MACHINERIES, TOOLS, EQUIPMENTS, FURNITURES AND FIXTURES AS WERE ILLEGALLY TAKEN AWAY BY THE RESPONDENT TO THE PETITIONER & ETC.

IN W.P. NO.9874/2022:

BETWEEN:

1. SRI. S. JOHN DE BRITTO
S/O STANISLAUS
AGED ABOUT 73 YEARS
PROPRIETOR
M/S UNIVERSAL AUTO SERVICES
NO.10, HOSUR ROAD
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DHARMARAM COLLEGE POST
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...PETITIONER

(BY SRI. UDAYA HOLLA, SENIOR COUNSEL FOR
SRI. VISHWANATH R. HEGDE, ADV.,)

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THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASHING/ SETTING ASIDE THE ORDER DATED 20.04.2022 PASSED BY THE LEARNED XV ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCCH - 3) IN EXECUTION NO. 2403/2021 (I.E. ANNEXURE-A), IN NOT CONSIDERING THE I.A. NO.1 FILED BY THE PETITIONER UNDER ORDER XXI RULE 29 READ WITH SECTION 151 OF THE CODE OF CIVIL PROCEDURE AND ORDERING ISSUANCE OF DELIVERY WARRANT, AS ARBITRARY, ILLEGAL AND UNJUST & ETC.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED ON 27.08.2026, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

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

CAV ORDER

W.P.No.15078/2022 is filed challenging the order dated 26.05.2022 passed in Ex.No.2403/2021 by the XV Additional City Civil and Sessions Judge, Bengaluru (CCH-3) (for short, '***the Executing Court***').

W.P.No.9874/2022 is filed challenging order dated 20.04.2022 passed in Ex.No.2403/2021 by the Executing Court.

2. Sri.Udaya Holla, learned Senior counsel appearing for Sri.Vishwanath R. Hegde, learned counsel



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for the petitioner submits that the Executing Court has committed a grave error in re-issuing the delivery warrant in favour of the decree holder without considering the application of the petitioner-judgment debtor under Order XXI Rule 29 read with Section 151 of the Code of Civil Procedure, 1908 (for short '**the CPC**') seeking stay of the proceedings on the ground that the suit filed by the judgment debtor is pending. It is submitted that the alleged delivery of possession was at midnight which vitiates everything and such delivery of possession is only on paper as is evident from the photographs produced. The impugned orders in both the cases suffer from the material irregularity. In support of his contentions, he placed reliance on the following decisions:

**(a) SHAUKATH HUSSAIN ALIAS ALI AKRAM AND
OTHERS Vs. SMT.BHUNESHWARI DEVI
(DEAD) BY L.Rs. AND OTHERS ¹**

¹ (1972) 2 SCC 731



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**(b) VEERA VAHANA UDYOG PVT. LTD. Vs. THE
KARNATAKA STATE ROAD TRANSPORT
CORPORATION²**

**(c) PAYYAVULA VENGAMMA Vs. PAYYAVULA
KESANNA AND OTHERS³**

3. *Per contra*, Sri.M.S.Nagaraja, learned counsel appearing for the respondent supports the impugned orders and submits that both the writ petitions have rendered infructuous as the possession of property was delivered to the decree holder and the same is reported to the Executing Court. It is submitted that if there was any irregularity in taking possession then the judgment debtor would have reported the same to the Executing Court instead of filing a writ petition challenging the said orders, which is impermissible. It is further submitted that the suit filed by the petitioner for adverse possession is now dismissed and therefore, nothing survives for consideration in these petitions. Hence, he seeks to dismiss the petitions.

² ILR 2010 KAR 507

³ (1952) 2 SCC 323



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4. I have heard the arguments of the learned Senior counsel for the petitioners, learned counsel for the respondent and meticulously perused the material available on record. I have given my anxious consideration to the submissions advanced on both the sides.

5. The respondent-decree holder filed a suit in O.S.No.1051/2000 seeking judgment and decree of ejectment. The said suit came to be decreed on 09.08.2005 by directing the petitioner to quit, vacate and deliver the vacant possession of the suit premises to the plaintiff within 90 days and other directions. The petitioner preferred a regular first appeal in RFA.No.1646/2005, which came to be dismissed vide judgment dated 12.11.2021. The petitioner filed a review petition in R.P.No.391/2021, which came to be dismissed on 08.06.2022. The judgment and decree of ejectment has attained finality. The respondent-decree holder filed



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Ex.P.No.2403/2021 and in the said proceedings, the notice of the execution proceedings was served on the petitioner-judgment debtor and he entered appearance. On 20.04.2022, the judgment-debtor along with the demand draft and also an application in I.A.No.1 under Order XXI Rule 29 read with Section 151 of the CPC, seeking prayer to stay the execution of proceedings till disposal of O.S.No.1156/2022. The Executing Court re-issued the delivery warrant recording that the judgment and decree is confirmed by the High Court and if the judgment debtor succeeds in the suit, he can re-claim the possession from the decree holder on the basis of the said decree and rejected the prayer of the judgment debtor and delivery warrant was issued as prayed. On 26.05.2022, the case was advanced by the decree holder. The Court recorded that as per the Bailiff report, the property was locked by the petitioner-judgment debtor, hence, the delivery warrant was returned. The Court ordered to execute the



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delivery warrant by breaking open the door with the help of police.

6. It is not in dispute that the Bailiff filed a report before the Court indicating that the delivery warrant was executed as ordered and the same was reported to the Executing Court. The contentions of the learned Senior counsel for the petitioner that the Executing Court ought to have considered the application filed by the judgment debtor under Order XXI Rule 29 read with Section 151 of the CPC, cannot be considered at this stage in view of the subsequent event. The decision relied on by the learned Senior counsel for the petitioner referred *supra* indicates that it is an obligation on the Executing Court to consider the application and thereafter proceed in the matter. However, in the case on hand, pursuant to the delivery warrant issued by the Executing Court, the delivery warrant was executed and possession was handed over to the decree holder. Hence, non-consideration of the



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application of the judgment debtor may not be relevant at this stage. Insofar as the contention that the delivery warrant was executed at midnight is concerned, the same cannot be accepted as the report submitted by the Bailiff clearly narrates certain facts as to how the process of taking possession continued till night. It is also required to be noticed that the decree holder has not raised any objections before the Executing Court that the Bailiff has not followed a proper procedure to execute the delivery warrant as the decree holder has a right under Section 47 of the CPC, to raise such objections and now the judgment debtor in these petitions cannot contend the same.

7. It is further to be noticed that the suit filed by the petitioner in O.S.No.1156/2022 for the relief of adverse possession against the Bengaluru Development Authority and another, also came to be dismissed vide order dated 04.12.2025. In view of the preceding analysis, I do not find any error or perversity in the



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impugned orders calling for interference, in these petitions. It is needless to observe that if the petitioner succeeds in the regular first appeal filed against the judgment passed in O.S.No.1156/2022 and the relief is pertaining to the same subject matter of the property, he can always re-claim the possession independently.

8. For the aforementioned reasons, I proceed to pass the following:

ORDER

The writ petitions are devoid of merits and the same are hereby ***rejected***.

No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV
List No.: 1 Sl No.: 2