



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

WRIT PETITION NO. 11996 OF 2026 (GM-CPC)

BETWEEN:

SRI P GOPAL
S/O. LATE PILLAPPA
AGED ABOUT 66 YEARS
R/AT SUNKADAKATTE
MAGADI MAIN ROAD
VISWANEEDAM POST
BANGALORE-560091.

...PETITIONER

(BY SRI. NARASIMHARAJU., ADVOCATE)

AND:

1. SMT C KAMALAMMA
W/O. LATE M. LINGAPPA
AGED ABOUT 88 YEARS
R/AT ARALIMARADAPALYA
SIRA GATE, TUMKUR-572106.

2. SMT. K.L NAGALAKSHMI
W/O. H.K. RANGASWAMY
AGED ABOUT 63 YEARS
R/AT MAHAMANE COLLEGE
LINK ROAD, 3RD BLOCK
KUVEMPUNAGARA
TUMKUR TOWN.

...RESPONDENTS

(BY SRI.V VISWANATH SETTY., ADVOCATE FOR C/R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET

Digitally signed by
DHANALAKSHMI
MURTHY

Location: HIGH
COURT OF
KARNATAKA



ASIDE THE ORDER OF 3RD ADDL. SENIOR CIVIL JUDGE AND JMFC TUMKUR DATED 09-04-2026 PASSED IN O.S.NO.340/2013 AS PER ANNEXURE-A AND CONSEQUENTLY ALLOW THE APPLICATION FILED BY THE PETITIONER UNDER SECTION 151 OF CPC PERMITTING THE PETITIONER TO LEAD EVIDENCE IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:
CORAM: HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

ORAL ORDER

This writ petition is filed by defendant No. 2 under Articles 226 and 227 of the Constitution of India, challenging the order dated 09.04.2026 passed by the III Additional Senior Civil Judge and JMFC, Tumakuru (hereinafter referred to as "the trial court") on the application filed by the petitioner under Section 151 of the Code of Civil Procedure (for short, "CPC"), seeking to defer the matter until the witness is examined.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.



3. The plaintiff/respondent No.1 filed O.S.No. 340/ 2013 for cancellation of the gift deed and permanent injunction. Upon service of summons, the defendants appeared through their counsel and filed their written statements. Based on the pleadings of the parties, the trial Court framed the issues.

4. Respondent No. 2, who is defendant No. 1, furnished a list of witnesses, which is produced as Annexure-G. One Jayanna was to be examined as DW-3. However, in the meantime, he met with an accident. Therefore, the trial Court directed the petitioner/defendant No. 2 to examine his witnesses.

5. The petitioner/defendant No.2 filed an application seeking to defer the matter until the recording of evidence of Jayanna. The said application was rejected, and the evidence of DW-2 was taken as nil.

6. Defendant No.1 filed a list of witnesses, one amongst them being Jayanna, is a material witness in the



case. Since he met with an accident, the trial court appointed a Court Commissioner to record his evidence. When the Court Commissioner visited the hospital, the doctor issued a letter stating that Jayanna was not in a position to give any statement. The said letter is produced as Annexure-J. The same is extracted below:

"Mr.Jayanna, 58 years/M, with hospital ID – 701010115 has suffered Traumatic Brain Injury in February 2026 and is currently admitted under department of PMR at Aster CMI Hospital for rehabilitation. He is having tracheotomy and has weakness in all four limbs. He is dependent for all his daily activities.

He is not in a clinical state to talk or give any statement.

This is for your kind information."

7. Since the doctor has not specified any time frame within which Jayanna would recover and be in a position to depose, the trial Court cannot be expected to wait indefinitely for his recovery. Therefore, the trial Court has rightly rejected the request of the petitioner/defendant No.



2 to defer the recording of evidence of DW-2. There is no error or illegality in that part of the order passed by the trial court.

8. However, insofar as taking the evidence of DW-2 as nil is concerned, that portion of the order is set aside, and defendant No. 2 is permitted to adduce his evidence on the next date of hearing.

9. If Jayanna recovers before the matter is posted for arguments, the parties are at liberty to move the trial court for recording his evidence, and upon such application being made, the trial court shall permit the same in accordance with law.

With the above observations, the writ petition stands disposed of.

Sd/-
(H.T. NARENDRA PRASAD)
JUDGE

CM
LIST NO.: 1 SL NO.: 35