



CNR: KAHC010274342022

NC: 2026:KHC:50007
WP No. 12521 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 12521 OF 2022 (GM-CPC)

BETWEEN:

1. SHAIK ISMAIL
S/O LATE SHAIK ALI SAHIB
AGED ABOUT 70 YEARS
2. SMT. SYED SANJIDA JAN
W/O SHAIK ISMAIL
AGED ABOUT 58 YEARS

BOTH HAVING COMMON ADDRES
AT NO.E-2, NAL STAFF QUARTERS,
AIRPORT ROAD, KODIHALLI
BENGALURU - 560 017,
AND PRESENTLY RESIDING AT NO.A103
GOPALAN ADMIRALTY AVENUE,
13TH CROSS, 6TH MAIN,
INDIRA NAGAR, II STAGE
BENGALURU - 560 038.

...PETITIONERS

(BY SRI. M.J. ALVA, ADVOCATE)

AND:

1. T. PICHAIKARAN
S/O LATE P. THANGAVELU
AGED ABOUT 52 YEARS
NO.44, KRISHNA REDDY LANE

Digitally signed
by ANNA PURNA G
Location: High
Court of
Karnataka



NC: 2026:KHC:50007
WP No. 12521 of 2022

CNR: KAHC010274342022

GULLAPPA COLONY
BENGALURU - 560 075.

2. T. CHINNAPPAYAN
S/O LATE P. THANGAVELU
AGED ABOUT 48 YEARS

3. SMT. C. LATHA
W/O T. CHINNAPPAYAN
AGED ABOUT 42 YEARS

BOTH HAVING COMMON ADDRESS
AT NO.44, KRISHNA REDDY LANE
GULLAPPA COLONY,
BENGALURU - 560 075,
HAVING THE PRESENT ADDRESS AT
NO.138, 1ST CROSS, 1ST MAIN
NAGAPPA REDDY LAYOUT,
KAGGADASAPURA,
C.V. RAMAN NAGAR POST
BENGALURU - 560 093.

4. SMT. R.T. JAYANTHI
W/O P. KARTHIK
AGED ABOUT 50 YEARS
NO.8, 1ST CROSS,
ARTILLARY ROAD
GOUTHAM PURAM, HALASUR
BENGALURU - 560 008.

5. STATE OF KARNATAKA
REP. BY ITS PRINCIPAL SECRETARY
DEPARTMENT OF REVENUE
VIDHANA SOUDHA,



CNR: KAHC010274342022

NC: 2026:KHC:50007
WP No. 12521 of 2022

BENGALURU - 560 001.

...RESPONDENTS

(BY SRI. KUMAR M.N, CENTRAL GOVT. SENIOR PANEL
COUNSEL, FOR R1;
SRI. MANJUNATH RAYAPPA, AGA FOR R5;
NOTICE TO R2 TO R4 DISPENSED WITH)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE
IMPUGNED ORDER DTD 23.05.2022 PASSED BY THE LEARNED
FIRST ADDL. CITY CIVIL AND SESSIONS JUDGE, CCCH NO.2,
BENGALURU IN OS NO.3391/2010 VIDE ANNEX-A AND ETC.,

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

Captioned petition is filed by defendant Nos.3 and 4
assailing the order dated 23.05.2022 passed by the
learned Trial Court, whereby the application filed by the
petitioners under Order XXXIII Rule 9 of the Code of Civil
Procedure, 1908 (for short, "CPC"), seeking withdrawal of
the permission granted to the plaintiff to prosecute the
suit as an indigent person, has been rejected. The



petitioners-defendants seek to assail the said order, particularly in the backdrop of certain material admissions elicited from the plaintiff in the course of his cross-examination.

2. Heard the learned counsel appearing for the petitioners and perused the judgment relied upon by the learned counsel for the petitioners rendered by the Hon'ble Apex Court in the case of ***M.L. Sethi v. R.P. Kapur AIR 1972 SC 2379.***

3. Heard the learned counsel appearing for the respondent-plaintiff and also perused the judgment rendered by the Madras High Court in the case of ***Jayabalan v. Virumandi.***

4. The plaintiff has instituted O.S.No.3391/2010 seeking a declaration that he is the absolute owner in possession of the suit schedule property and consequently seeking a declaration that the sale deed dated 20.08.2003



is a sham document and, therefore, null and void and not binding on him.

5. The records reveal that the plaintiff had filed an application under Order XXXIII of the CPC seeking permission to prosecute the suit as an indigent person. The said application came to be allowed and the plaintiff was accordingly permitted to prosecute the suit as an indigent person.

6. Subsequently, the defendants filed an application under Order XXXIII Rule 9 of CPC seeking withdrawal of the permission so granted. In support of the said application, the defendants placed reliance on the admissions elicited from the plaintiff in the course of his cross-examination. It was specifically contended that the plaintiff possessed substantial resources and had properties in his name even at the time when he instituted the suit and that such material particulars relating to his financial means and properties had not been disclosed



while seeking permission to prosecute the suit as an indigent person. According to the defendants, the permission obtained by the plaintiff was, therefore, liable to be withdrawn in view of the subsequent material brought on record.

7. The learned Trial Judge, however, rejected the said application principally on the ground that the defendants had not placed satisfactory material demonstrating that the plaintiff possessed sufficient means and had the financial capacity to pay the requisite court fee on the market value of the subject matter of the suit. It is in this backdrop that this Court is required to examine the scope and ambit of Order XXXIII Rule 9(b) of CPC, which deals with withdrawal of permission to sue as an indigent person. The same is extracted, which reads as under:

"9A. Court to assign a pleader to an unrepresented indigent person.-(1) Where a person, who is permitted to sue as an indigent person, is not represented by a pleader, the Court may, if the circumstances of the case is so require, assign a pleader to him.



CNR: KAHC010274342022

NC: 2026:KHC:50007
WP No. 12521 of 2022

(2) The High Court may, with the previous approval of the State Government, make rules providing for-

(a) The mode of selecting pleaders to be assigned under sub-rule (1);

(b) the facilities to be provided to such pleaders by the Court;

(c) any other matter which is required to be or may be provided by the rules for giving effect to the provisions of sub-rule (1)."

8. On a plain reading of the scheme contemplated under Order XXXIII Rule 9(b) of CPC, it is evident that the permission earlier granted to a plaintiff to sue as an indigent person is not irrevocable. The provision contemplates withdrawal of such permission where it subsequently appears to the Court that the plaintiff has acquired sufficient means to enable him to continue the suit as an indigent person. Therefore, the enquiry at this stage is not necessarily confined to the financial position of the plaintiff as it existed on the date on which permission was originally granted. The Court is required to examine whether, in the light of the material subsequently brought



on record, the plaintiff continues to satisfy the statutory requirement for prosecuting the suit as an indigent person.

9. The expression employed in Rule 9(b), namely, "it appears to the Court that the plaintiff has acquired sufficient means to enable him to continue the suit as an indigent person", assumes considerable significance. The legislative intent underlying the provision is to ensure that the privilege extended to an indigent litigant is available only so long as the statutory conditions continue to be satisfied. If the material on record demonstrates that the plaintiff has sufficient means to pay the requisite court fee, the continuance of the permission granted under Order XXXIII cannot be justified merely because such permission had earlier been granted.

10. In the present case, therefore, the crucial question is whether the admissions elicited from the plaintiff in the course of his cross-examination, when considered along with the other material placed before the



CNR: KAHC010274342022

NC: 2026:KHC:50007
WP No. 12521 of 2022

Trial Court, constitute sufficient material to conclude that the plaintiff possessed or had acquired sufficient means so as to disentitle him from continuing the suit as an indigent person.

11. The admissions elicited in the cross-examination of the plaintiff assume significance in this regard. The plaintiff has admitted as under:

"4) It is not true to suggest that, my self and defendant No.1 got two properties in the partition. It is not true to suggest that, during the year 2003 partition was effected between myself and the defendant No.1. It is true that, before filing of this suit, I have executed a Gift Deed in favour of my wife of Property No.14 of Kullappa Garden. It is true to suggest that, myself and my brother got partitioned the property under the registered partition deed Dtd: 5-3-2003. Witness volunteers that, we got partitioned the property belonging to my father."

12. The further cross-examination would also be crucial. The same are extracted as under:

"ನಿಡಿ.1 ರಲ್ಲಿ ಕಾಣಿಸಿದ ನೆಲ ಅಂತಸ್ತಿನ ಮನೆಯಲ್ಲಿ ನಾನು ವಾಸವಾಗಿದ್ದೇನೆ. ಇದರಲ್ಲಿ 2 ಮನೆ ಇದೆ. ಅದರ ವಿಸ್ತೀರ್ಣ 40 X 30. ನಾನು ವಾಸವಾಗಿರುವ ಮನೆಯಲ್ಲಿ 3 ಅಂತಸ್ತಿನ ಕಟ್ಟಡ ಇದೆ. ನೆಲ ಅಂತಸ್ತಿನ ಮನೆಯಲ್ಲಿ ನಾನು ವಾಸವಾಗಿದ್ದು ಇನ್ನೂ ಎರಡು ಮನೆಗಳನ್ನು ಬಾಡಿಗೆಗೆ ಕೊಟ್ಟಿದ್ದೇನೆ. ಒಂದೊಂದು ಅಂತಸ್ತಿನಲ್ಲಿ ಒಂದು-ಒಂದು ಮನೆ ಇದೆ. ನಾನು ಬಾಡಿಗೆಗೆ ಕೊಟ್ಟಿರುವಂತಹ ಬಾಡಿಗೆದಾರರು ಒಬ್ಬನ ಹೆಸರು



CNR: KAHC010274342022

NC: 2026:KHC:50007
WP No. 12521 of 2022

ಚಿನ್ನಸ್ವಾಮಿ, ಇನ್ನೊಬ್ಬ ಶ್ರೀನಿವಾಸ ಇದ್ದಾರೆ. ನಾನು ತಿಂಗಳಿಗೆ ತಲಾ 10,000/-
ಬಾಡಿಗೆಯನ್ನು ಪಡೆಯುತ್ತಿದ್ದೇನೆ.

ನನಗೆ 10 ಹಸುಗಳು ಇದ್ದವು. ಒಂದೊಂದು ಹಸುವಿಗೆ 6 ರಿಂದ 7 ಲಕ್ಷ ರೂಗಳಿಗೆ
ಮಾರಾಟ ಮಾಡಿದ್ದೇನೆ. ಹಸು ಮಾರಟ ಮಾಡಿದ ಹಣವಲ್ಲದೆ ನನಗೆ ಬೇರೆ ಹಣ
ಇರಲಿಲ್ಲ. ಈ ದಾವೆಯನ್ನು ಸಲ್ಲಿಸಿದಾಗ ನಾನು ಹಸುಗಳನ್ನು ಕಟ್ಟಿಕೊಂಡು ಹಾಲಿನ
ವ್ಯಾಪಾರ ಮಾಡುತ್ತಿದ್ದೇನು. 10 ಹಸುಗಳು ಸುಮಾರು 20 ಲೀಟರ್ ಹಾಲನ್ನು
ಕೊಡುತ್ತಿತ್ತು. ಹಸುಗಳು ಸುಮಾರು 7 ರಿಂದ 8 ಲೀಟರ್ ಹಾಲು ಕೊಡುತ್ತವೆ ಎಂದರೆ
ಸಾಕ್ಷಿ ಅವುಗಳಿಗೆ ಆಹಾರ ಒದಗಿಸಿದ ಹಾಗೆ ಅವು ಹಾಲು ಹೆಚ್ಚು ನೀಡುತ್ತದೆ ಎಂದು
ಹೇಳುತ್ತಾರೆ."

13. On a deeper examination of the aforesaid admissions, this Court is of the considered view that the learned Trial Judge has failed to properly appreciate the scope and mandate of Rule 9(b) of Order XXXIII of CPC. The said provision expressly contemplates withdrawal of the permission earlier granted to the plaintiff to prosecute the suit as an indigent person, where the statutory requirements are no longer satisfied. The reasons assigned by the learned Trial Judge, when examined in the light of the material admissions elicited from the plaintiff himself, do not withstand judicial scrutiny. The very admissions which constitute the foundation of the defendants'



application seeking withdrawal of the permission have not received due consideration. The order under challenge, therefore, proceeds on an approach which is inconsistent with the statutory scheme embodied in Order XXXIII Rule 9(b) of CPC.

14. The learned counsel appearing for the plaintiff, placing reliance on the judgment rendered by the Madras High Court, would contend that the defendants have approached the Court at a highly belated stage, particularly when the plaintiff has already been substantially cross-examined, and that the right to seek withdrawal of the permission, if any, cannot be exercised after the plaintiff has commenced his evidence. This contention, in the opinion of this Court, cannot be accepted. The right conferred under Order XXXIII Rule 9 of CPC is a statutory right and is available when the circumstances contemplated under the provision are brought to the notice of the Court. The mere fact that the suit has progressed or that the plaintiff has commenced or



substantially completed his evidence, by itself, does not extinguish the statutory power of the Court to examine whether the plaintiff continues to satisfy the conditions for prosecuting the suit as an indigent person.

15. The judgment relied upon by the learned counsel for the petitioners also assumes significance in this context. The permission granted under Order XXXIII of CPC carries with it a corresponding consequence in favour of the opposite party, inasmuch as the defendant is subjected to the continuation of litigation without the plaintiff having paid the requisite court fee. The procedure contemplated under Order XXXIII is, therefore, not merely a concession extended to the plaintiff; it creates a statutory framework balancing access to justice for persons without sufficient means with the legitimate rights of the State and the contesting defendants. Where material is brought before the Court indicating that the plaintiff has sufficient means, the defendants cannot be denied an opportunity to seek withdrawal of the



permission merely on the ground that the suit has progressed.

16. It is necessary to emphasise that the object of Order XXXIII of CPC is to ensure that poverty or lack of sufficient means does not, by itself, become an impediment to access to justice. The expression that the doors of the temple of justice should remain open even to a person who has no sufficient means is undoubtedly reflective of the salutary object underlying the provision. However, that principle cannot be divorced from the statutory safeguards incorporated in Order XXXIII itself. The same provision which facilitates access to justice also requires the Court to ensure that the benefit is confined to persons who satisfy the statutory requirements.

17. Therefore, the observations made by the then Hon'ble Chief Justice of Himachal Pradesh that the doors of the temple of justice cannot be closed to a person who has no sufficient means and that the temple of justice should



CNR: KAHC010274342022

remain open to all, just as a temple of God, have to be understood in their proper perspective. Such observations cannot be read as conferring an unconditional or perpetual immunity from payment of court fee upon a person who has once obtained permission to sue as an indigent person. The legislative scheme itself contemplates withdrawal of such permission when the plaintiff acquires or is found to possess sufficient means to continue the litigation otherwise than as an indigent person.

18. There is, therefore, a corresponding obligation on the Court to ensure that the benevolent provisions of Order XXXIII are not invoked or continued merely as a device to avoid payment of the requisite court fee. While the Court must remain conscious of the constitutional and procedural importance of facilitating access to justice for needy and helpless litigants, the same consideration cannot justify permitting a litigant who possesses sufficient means to continue to enjoy the benefit of indigency. The two principles operate together and have to



be harmoniously applied. The benevolent object of Order XXXIII cannot become a shield for misuse of the statutory concession.

19. While the Court must remain conscious of the salutary object of Order XXXIII of CPC and ensure that a needy and helpless litigant is not denied access to the process of justice for want of sufficient means, the same benevolent provision cannot be permitted to be invoked or continued by a litigant who possesses sufficient means to discharge the requisite court fee. The statutory protection intended for persons genuinely unable to bear the expenses of litigation cannot be converted into a means of avoiding the payment of court fee. Therefore, the principles underlying the observations made by the then Hon'ble Chief Justice of Himachal Pradesh cannot be understood or applied in isolation or in a manner that defeats the statutory safeguards incorporated in Order XXXIII of CPC. The object of the provision is twofold: to



facilitate access to justice for persons without sufficient means and, at the same time, to ensure that the concession is not misused by persons who are financially capable of pursuing the litigation in the ordinary course.

20. Viewed in that perspective, the mere fact that the plaintiff has already adduced evidence or has been substantially cross-examined cannot constitute a bar to an application under Rule 9 of Order XXXIII of CPC. If the material on record discloses that the plaintiff possesses sufficient means and thereby attracts the statutory requirement for withdrawal of permission, the Court is duty-bound to examine the same. The stage at which such material is brought to the notice of the Court may have relevance to the factual enquiry, but it cannot, by itself, defeat the substantive statutory right available under Rule 9 of Order XXXIII.

21. In the present case, the learned Trial Judge has, however, failed to examine the matter from this



perspective. The crucial admissions elicited in the cross-examination of the plaintiff, which form the very basis of the defendants' application, have not been properly appreciated in the light of Rule 9(b) of Order XXXIII of CPC. Instead, the learned Trial Judge has proceeded principally on the premise that the defendants have not independently established the plaintiff's capacity to pay the court fee. Such an approach, in the face of the admissions made by the plaintiff himself, amounts to a misreading of the statutory scheme and the material available on record.

22. The question before the learned Trial Judge was not whether the defendants had established a case dehors the plaintiff's own admissions, but whether, on an overall consideration of the material on record, including the admissions elicited in cross-examination, it appeared to the Court that the plaintiff possessed sufficient means to continue the suit as an indigent person. The learned Trial Judge was required to address this statutory test. Failure



to consider the material admissions in the context of the said test renders the impugned order vulnerable.

23. This Court is, therefore, of the considered view that the learned Trial Judge has virtually misread the scope and mandate of Rule 9(b) of Order XXXIII of CPC. The order under challenge fails to adequately consider the material on which the defendants have founded their application and proceeds on an approach which does not accord with the statutory scheme. The defendants cannot be deprived of their right to seek withdrawal of the permission merely because the suit has proceeded to the stage of recording evidence.

24. In that view of the matter, and having regard to the relevant admissions elicited from the plaintiff in cross-examination, which have been extracted supra, this Court is of the opinion that the impugned order warrants interference. The matter, however, requires to be reconsidered by the learned Trial Judge in accordance with



CNR: KAHC010274342022

NC: 2026:KHC:50007
WP No. 12521 of 2022

the statutory parameters prescribed under Order XXXIII Rule 9(b) of CPC.

25. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

- i. The writ petition is ***allowed in part.***
- ii. The impugned order dated 23.05.2022 passed by the learned I Additional City Civil and Sessions Judge, CCH-2, Bengaluru, in O.S.No.3391/2010, produced at Annexure-A, is hereby quashed and set aside.
- iii. The matter is remitted to the learned Trial Judge for fresh consideration of the application filed by defendant Nos.3 and 4 under Order XXXIII Rule 9 of CPC. The learned Trial Judge shall advert to the relevant admissions extracted supra and reconsider the application in



accordance with law and in the light of the observations made hereinabove.

iv. All contentions of the parties are kept open.

v. The learned Trial Judge shall endeavour to dispose of the application expeditiously, without being influenced by any of the observations made by this Court on the merits of the application.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE