



CNR: KAHC010294402023

NC: 2026:KHC:46930
W.P. No.12459/2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 29TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.12459/2023 (GM-CPC)

BETWEEN:

1. SMT. K. USHA
AGED ABOUT 29 YEARS
W/O LATE RAJESH
OCCUPATION NILL
RESIDING AT NEW NO.1 (OLD NO.282/A)
12TH MAIN ROAD, 50TH FEET ROAD
BSK 1ST STAGE, 2ND BLOCK
BENGALURU-560050.
2. KUM. JANYA
D/O LATE RAJESH
AGED ABOUT 8 YEARS
RESIDING AT, NEW NO.1 (OLD NO.282/A)
12TH MAIN ROAD, 50TH FEET ROAD
BSK 1ST STGE, 2ND BLOCK
BENGALURU-560 050.
3. MASTER REYARTH
S/O LATE RAJESH
RESIDING AT NEW NO.1 (OLD NO.282/A),
12TH MAIN ROAD, 50TH FEET ROAD
BSK 1ST STAGE, 2ND BLOCK
BENGALURU-560050.

(PETITIONER NOS.2 AND 3 BEING MINORS
ARE REP. BY THE NATURAL GUARDIAN
MOTHER I.E., PETITIONER NO.1)

...PETITIONERS

(BY SRI. ASHOK SESHAGIRI, ADV., FOR
SRI. T. SESHAGIRI RAO, ADV.,)

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA



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AND:

1. SMT. K. UMA
D/O OF LATE SAROJAMMA
AGED ABOUT 48 YEARS
RESIDING AT, NO.10, 4TH CROSS
AMRUTHNAGARA, SAHAKARNAGAR POST
BANGALORE-560 092.
2. SMT. RADHA
D/O LATE SARAOJAMMA
AGED 40 YEARS
RESIDING AT C/O G. SRINIVAS
DOOR NO.24, 13TH MAIN
VRISHABHAVATI NAGAR
KAMAKSHIPALYA, BANGALORE-560 079.

...RESPONDENTS

(BY SRI. ANKITH C, ADV., FOR
SRI. K.B. NAVEEN KUMAR, ADV., FOR R1
SMT. LEELAVATHI N, ADV., FOR
SRI. AMOGH MASUR, ADV., FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND
227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASHING
THE IMPUGNED ORDER DTD 01.06.2023 ONE PASSED BY THE
XXXIX ADDL CITY CIVIL JDUGE BENGALURU ON IA NO. 15 AND
16 FOUND AT ANNEX-A & ETC.

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



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

ORAL ORDER

This writ petition is filed challenging the order dated 01.06.2023 passed on I.A.No.15 and 16 in O.S.No.8262/2012 by the XXXIX Additional City Civil and Sessions Judge, Bengaluru (for short, '***the trial Court***').

2. Heard Sri.Ashok Seshagiri, learned counsel for Sri.T.Seshagiri Rao, learned counsel for the petitioners, Sri.Ankith C., learned counsel for Sri.K.B.Naveen Kumar, learned counsel for the respondent No.1, Smt.Leelavathi N., learned counsel for Sri.Amogh Masur, learned counsel for the respondent No.2 and perused the material available on record.

3. Respondent No.1-plaintiff had filed a suit in O.S.No.8262/2012 for partition and separate possession. In the said suit, respondent No.2-defendant No.2 produced revocation of release dated 20.06.2012 which was marked as Ex.D6 by the trial Court. Later, defendant No.1 filed



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applications in I.A.Nos.15 and 16 seeking prayer to demark Ex.D6 and also to impound the revocation of deed dated 20.06.2012 on the ground that the same is insufficiently stamped. The trial Court under the impugned order rejected the applications on the ground that once the document is marked such objection cannot be raised.

4. It would be useful to refer to the decision of the Hon'ble Supreme Court in the case of **G.M.Shahul Hameed v. Jayanthi R.Hegde**¹ at paragraph No.27 held as under:

"27. *On the face of such an order, it does not leave any scope for doubt that on the date the GPA was admitted in evidence and marked as an exhibit, the trial court did not deliberate on its admissibility, much less applied its judicial mind, resulting in an absence of judicial determination. In the absence of a "decision" on the question of admissibility or, in other words, the trial court not having "decided" whether the GPA was sufficiently stamped, Section 35 of the 1957 Act cannot be called in aid by the respondent. For Section 35 to come into operation, the instrument must have been "admitted in evidence" upon a judicial determination. The words "judicial determination" have to be read into Section 35. Once there is such a determination, whether the determination is right or wrong cannot be examined except in the manner*

¹ (2024) 7 SCC 719



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ordained by Section 35. However, in a case of "no judicial determination", Section 35 is not attracted."

5. The aforesaid decision makes it clear that if an insufficiently stamped instrument is marked by the Court without any judicial determination, then the party can raise the said contention later at any stage.

6. Keeping in mind the enunciation of law laid down by the Hon'ble Supreme Court referred supra, I am of the view that marking of Ex.D6 is a tentative marking and the same should be subject to defendant No.2 making good the stamp duty and penalty. In view of the preceding analysis, I proceed to pass the following:

ORDER

- i. The writ petition is ***allowed***.
- ii. The impugned order dated 01.06.2023 passed on I.A.No.15 and 16 in O.S.No.8262/2012 by the XXXIX Additional City Civil and Sessions Judge, Bengaluru, is set aside. Consequently, I.A.Nos. 15 and 16 are disposed of by directing the trial



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Court to calculate the duty and penalty payable on Ex.D6 and on such calculation, the defendant No.2 shall make good the duty and penalty as calculated. The marking of Ex.D6 is a tentative marking and the question of admissibility of Ex.D6 is kept open subject to the payment of duty and penalty.

No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

BSR
List No.: 1 Sl No.: 49