



CNR: KAHC010349572023

NC: 2026:KHC:42556
WP No. 14625 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO. 14625 OF 2023 (GM-CPC)

BETWEEN:

SHRI. S. KRISHNAMURTHY
S/O LATE SANNASOMIAH,
AGED ABOUT 50 YEARS,
R/AT SHREE VEERANJANEYA
SWAMY TEMPLE (PRASADA ROOM)
HANUMANTHANAGARA,
'C' LAYOUT BANNIMANTAP,
MYSURU - 577 015.

...PETITIONER

(BY SRI. V.B. SHIVA KUMAR, ADVOCATE)

AND:

SHREE VEERANJANEYA SWAMY TEMPLE TRUST (R)
HANUMANTHANAGARA,
C LAYOUT, BANNIMANTAP
MYSURU - 577 015.
REP. BY ITS TRUSTEE AND SECRETARY
SHRI H.N. SRINIVAS.

...RESPONDENT

(BY SRI. SAPPANNAVAR BASAVARAJ SHIVAPPA, ADVOCATE)

THIS WP IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASHING THE ORDER
DATED 20.6.2023 PASSED IN O.S.NO.597/2020 ON THE FILE
OF THE II ADDL CIVIL JUDGE AND JMFC MYSURU WHICH IS

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



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PRODUCED AS ANNEX-A. CONSEQUENTLY ALLOW IA.NO.IX
FILED BY THE PETITIONER UNDER ORDER XXVI RULE 9 R/W
SEC 151 OF CPC IN OS.NO.597/2020 IS AT ANNEX-B.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

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

ORAL ORDER

This writ petition is filed challenging the order dated
20.06.2023 passed in O.S.No.597/2020 on the file of the
III Additional Civil Judge and JMFC, Mysuru (hereinafter
referred to as the 'trial Court' for short).

2. Sri V. B. Shiva Kumar, learned counsel
appearing for the petitioner, submits that the
respondent/plaintiff had filed a suit O.S.No.597/2020
seeking the relief of mandatory injunction, directing the
petitioner/defendant to vacate and hand over the vacant
possession of the suit schedule property to the plaintiff. In
the said suit, the defendant filed an application I.A.No.9



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under Order XXVI Rule 9 read with Section 151 of the Code of the Civil Procedure, 1908 seeking appointment of a Court Commissioner to ascertain the disputed property. It is submitted that the respondent is claiming the property in Survey No.252, whereas the petitioner is in possession of the property in Survey No.253 measuring 4 guntas. It is submitted that in the guise of showing the property in Survey No.252, the respondent is trying to evict the petitioner who is in possession of Survey No.253. Hence, appointment of a Court Commissioner is necessary. However, the trial Court, under the impugned order dated 20.06.2023, has erroneously recorded findings at paragraph Nos.14 and 15 and rejected the application.

3. *Per contra*, Sri Sappannavar Basavaraj Shivappa, learned counsel for the respondent, supports the order of the trial Court and submits that the petitioner had filed another suit in O.S.No.208/2020 against the respondent herein. In the said suit, at paragraph No.5 of the plaint, it is clearly admitted that the petitioner is a



tenant under the respondent by paying monthly rent of Rs.2,000/-. Contrary to the said stand, he filed a written statement in O.S.No.597/2020 contending that he is in possession of a property bearing different survey number. Considering the aforesaid aspect, the trial Court has rightly rejected the application for appointment of a Court Commissioner, which does not call for any interference. Hence, he seeks to dismiss the petition.

4. I have heard the arguments of the learned counsel for the petitioner, learned counsel for the respondent and meticulously perused the material available on record.

5. The respondent-Trust filed a suit in O.S.No.597/2020 against the petitioner herein seeking the relief of mandatory injunction, directing the petitioner to vacate and hand over the vacant possession of the suit schedule property to the respondent. It is to be noticed that the suit schedule property in the said suit is shown as property bearing Survey No.252, House No.419, Mysuru,



measuring East to West 30 feet and North to South 20 feet, within the limits of Mysuru City, with checkbandi. In the said suit, the defendant filed a written statement. In the said written statement, at paragraph No.11, F(1) and K(1), it is averred that the defendant is in possession of Survey No.253 measuring 4 guntas of land.

6. It is required to be noticed that the petitioner herein had filed a suit in O.S.No.208/2020 against the respondent herein seeking the relief of permanent injunction and showing the suit schedule property as Survey No.252. In paragraph No.5 of the plaint in O.S.No.208/2020, the petitioner has stated as under:

"5. The plaintiff submits that the Trust authority have accommodated a small house to the plaintiff, morefully described in the suit schedule for residential purpose of the plaintiff and his family members. The plaintiff is paying the monthly rent of Rs.2,000/- to the said Trust by paying the electricity bill and water bill to the concerned authorities. The plaintiff has renovated the said house by investing more than Rs.6,00,000/- (Rupees Six lakhs) out of his hard earned money and the Trust authorities have not paid a single rupee for the renovation of the house in which the plaintiff is residing."



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7. The aforesaid pleadings on record clearly indicate that the petitioner, in both the suits, is taking different stands. In the suit filed by the respondent, he is contending that he is in possession of Survey No.253, whereas in the suit filed by the petitioner in O.S.No.208/2020, it is contended that the petitioner is a tenant under the respondent by paying a monthly rent of Rs.2,000/- and that the suit schedule property is shown as Survey No.252.

8. Be that as it may, it is required to be noticed that the suit filed by the respondent against the petitioner is for the relief of mandatory injunction, and the burden is on the plaintiff to prove that the defendant is liable to be vacated from the premises. In the said suit, the defendant cannot compel the trial Court to measure the suit schedule property by taking inconsistent pleas in the suit filed by the petitioner and in the suit filed by the respondent, referred supra. Hence, I do not find any good ground to



interfere with the order of the trial Court in the present petition.

9. The writ petition is devoid of merits and the same is ***rejected***.

10. It is also taken note of the fact that this writ petition is filed by suppressing the fact that the petitioner had filed the suit in O.S.No.208/2020 against the respondent herein. Hence, the writ petition is liable to be dismissed with costs of Rs.5,000/-, payable to the High Court Legal Services Committee.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

SHS
List No.: 1 Sl No.: 13