



CNR: KAHC010372722020

NC: 2026:KHC:36403
W.P. No.14001/2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 16TH DAY OF JULY, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.14001/2020 (GM-CPC)

BETWEEN:

MRS. REGINA PEARL D'SOUZA
AGED ABOUT 51 YEARS
D/O LATE ANTHONY D'SOUZA
W/O MOHAN F.T. D'SOUZA
R/AT PEARL'S NEST, KALLINAPURA
PUTTUR VILLAGE
SANTHEKATTE POST
UDUPI TLAUK AND DIST 576105.

...PETITIONER

(BY SRI. P.P. HEGDE, SR. COUNSEL APPEARING FOR
SRI. SHARADI S. SHETTY, ADV.,)

AND:

MR. DENNIS CASTELINO
AGED ABOUT 64 YEARS
S/O LATE LIGORY CASTELINO
ADDRESS 362/8, SVT ROAD
OPPOSITE TAPCMS LIMITED
CHURCH COMPOUND, KOPPA
CHIKMAGALUR DIST 577126.

...RESPONDENT

(BY SRI. H.V. MANJUNATHA, ADV.,)

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THIS W.P. IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED
ORDER DTD.26.11.2020 PASSED BY THE ADDITIONAL SENIOR

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA





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CIVIL JUDGE AND ACJM UDUPI IN MA 16/2020 VIDE AENXURE-G & ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 08.07.2026, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

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

CAV ORDER

This writ petition is filed challenging the order dated 26.11.2020 passed in M.A.No.16/2020 by the Additional Senior Civil Judge and ACJM, Udupi, (for short, 'the Appellate Court').

2. Sri.P.P.Hegde, learned Senior counsel appearing for Sri.Sharadri.S.Shetty, learned counsel for the petitioner submits that the respondent herein instituted a suit in O.S.No.391/2020 before the II Additional Civil Judge and JMFC, Udupi, (hereinafter referred to as the 'Trial Court') for mandatory injunction and other reliefs. In the said suit, the respondent filed an application seeking interim mandatory injunction. The Trial Court rejected the said application vide order dated 01.10.2020.



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Subsequently, the said order was challenged before the Appellate Court in M.A.No.16/2020. The Appellate Court reversed the order of the Trial Court without considering the fundamental defects in the case of the plaintiff-respondent. It is submitted that the agreement of sale dated 09.01.2019 is legally invalid as it was cancelled by the petitioner vide legal notice dated 16.07.2020. The said agreement of sale is insufficiently stamped and is liable to be impounded as per the provisions of the Karnataka Stamp Act, 1957 (for short the 'Act'). It is further submitted that the possession of the plaint schedule premises was handed over to the respondent before entering into the agreement of sale itself and the respondent had defaulted in paying the balance amount as per the agreement of sale, he issued Cheques which were dishonored and the proceedings were initiated. It is also submitted that even after cancellation of the agreement, he continued to keep the premises under lock, was not residing in the said place, as he had not paid maintenance,



water charges, electricity charges and hence, electricity connection was disconnected. It is contended that in the year 2021 only, the electricity connection of the plaint schedule premises was disconnected and the respondent kept the premise idle and for these reasons, he may be directed to handover the premises to the petitioner as the petitioner is paying the bank loans and is unable to let out the premises to any other third party. Hence, he seeks to allow the petition by directing the Trial Court to club and dispose of the suits.

3. Sri.H.V.Manjunatha, learned counsel for the respondent supports the order of the Appellate Court and submits that the electricity connection was disconnected at the instance of the petitioner and the electricity being an essential service, the same is required to be restored immediately which has been appreciated by the Appellate Court in the impugned order. It is submitted that the respondent had filed a suit for mandatory injunction in



view of the disconnection of the power supply and also filed a suit for specific performance of the agreement of sale. Until both the suits are adjudicated and disposed of on merits, restoration of electricity connection is a must. It is further submitted that the petitioner has received the remaining balance sale consideration in the criminal proceedings. Hence, he cannot contend that there is cancellation of the agreement of sale. It is also submitted that he has no objection to club both the suits and also for a direction to be issued to dispose of the same in a time bound manner. Till such time, he seeks to restore the electricity connection to the plaint schedule premises and the respondent is ready to pay the electricity dues and any other dues. Hence, he seeks to dismiss the writ petition.

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



5. The respondent-plaintiff filed a suit in O.S. No.391/2020 seeking the relief of mandatory injunction directing the petitioner-defendant to reconnect the power supply to R.R.No.KLPR50622 allotted to the plaint schedule premises by MESCOM and for a relief of perpetual injunction against the defendant. It is contended that the plaintiff and the defendant entered into an unregistered agreement of sale dated 09.01.2019 for a total consideration of Rs.38,50,000/-, out of which an advance amount of Rs.1,00,000/- was paid and rest of the sale consideration amount was to be paid in installments and till filing the date of filing the plaint the plaintiff had paid a total sum of Rs. 16,00,000/- towards the sale consideration. The agreement indicates that the possession was handed over to the respondent by the petitioner much prior to entering into the agreement of sale. Clause 2 of the agreement of sale states that the possession of the apartment has been delivered by the vendor to the purchaser on 12.12.2018 due to the



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personal request of the purchaser citing his daughter's wedding and upon agreeing that all the charges applicable would be paid by the purchaser every month as mutually agreed.

6. The contention of the petitioner is that the respondent-plaintiff could not adhere to the terms of the agreement of sale by paying the balance sale consideration amount as agreed. Hence, he was compelled to cancel the agreement. The said contention was refuted by the other side stating that the agreement of sale was never cancelled as the petitioner has received further balance sale consideration in the criminal proceedings. The aforesaid contentions with regard to the cancellation of the agreement of sale is required to be gone into by the Trial Court in a suit filed by the respondent for specific performance of the contract.



7. The respondent filed a suit for mandatory injunction contending that at the instance of the plaintiff, the electricity connection was disconnected from the suit schedule premises which was denied by the petitioner by contending that due to default in paying the dues, the electricity connection is disconnected. In the said suit, the plaintiff filed an application under Order XXXIX Rule 1 to 3 and Section 94(E) read with Section 151 of the Civil Procedure Code, 1908 (for short 'CPC'). The said application came to be dismissed by the Trial Court vide order dated 01.10.2020 stating the reasons that the application filed and the relief sought for in the plaint is one and the same and if the application is allowed, it would amount to virtually deciding the suit without a trial. The said order was subsequently challenged in M.A.No.16/2020 wherein the Appellate Court allowed the appeal and granted mandatory injunction to the plaintiff. The said order of the Appellate Court is assailed in this petition.



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8. Considering the rival contentions advanced by the petitioner as well as the respondent, I am of the considered view that whether the contention that possession is handed prior to the agreement, whether the plaintiff is in physical possession even after the electricity connection is disconnected in the year 2021 till this day, whether the unregistered agreement of sale requires to be impounded, whether the agreement of sale is in force or cancelled, the prayer in the counter claim filed by the petitioner in O.S.No.391/2002 for judgment and decree for handing over the vacant possession of plaint schedule property to the defendant and direction to the plaintiff-respondent to pay mesne profits at the rate of Rs.20,000/- per month from the date of counter claim till plaintiff hand over the vacant possession of the suit schedule property are required to be gone into by the Trial Court in the suits pending before it. The material on record creates an ambiguity with regard to the physical possession of the



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respondent in the suit schedule property even after the electricity was disconnected in the year 2021 as the plaintiff is vehemently contending that the respondent has kept the plaint schedule premises under lock. It is also required to be noticed that till this day, the respondent has not cleared the electricity bills of the plaint schedule premises though it is contended that now he will clear and pay all other dues. In my considered view, the restoration of power connection after nearly more than 4 years from its disconnection may not be appropriate. The aforesaid chronology of events makes it clear that the respondent is not physically residing in the premises after the disconnection of the power supply by the Authorities. Again, the aforesaid findings are restricted only to the extent of deciding this petition and not on the merits of the suit.

9. It is to be further noticed that the suit of the respondent for mandatory injunction in O.S.No.391/2020



is pending before the II Additional Civil Judge and JMFC, Udupi, and the suit in O.S.No.96/2023 filed for specific performance of the agreement of sale is pending before the II Additional Senior Civil Judge and ACJM, Udupi, and both the suits are arising out of the same property, between the same parties and hence, it would be appropriate to try both the suits in the same Court by clubbing the same with a direction to expeditiously dispose of the same.

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

ORDER

- (i) The writ petition is allowed.
- (ii) The impugned order dated 26.11.2020 passed in M.A.No.16/2020 by the II Additional Senior Civil Judge and ACJM, Udupi, is set aside.
- (ii) The suit in O.S.No.391/2020 on the file of the II Additional Civil Judge and JMFC, Udupi is



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withdrawn from the file of the said Court and made over to the Court of II Additional Senior Civil Judge and JMFC, Udupi, to club and try with O.S.No.96/2023 pending on its file.

(iii) The Trial Court shall dispose of both the suits as expeditiously as possible with an outer limit of 10 months from the date of receipt of copy of this order.

No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV
List No.: 1 SI No.: 2