



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JUNE, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 18561 OF 2025 (GM-CPC)

BETWEEN:

SRI JANARADAHANA SHASTRI
S/O LATE DOMODAR SHASTRI,
AGED ABOUT 75 YEARS,
R/O AT NO. 219, 2ND STAGE,
6TH BLOCK, NAGARBHAVI,
BENGALURU- 560 072

...PETITIONER

(BY SRI. MADHUKAR NADIG, ADVOCATE)

AND:

1. SRI B.M.MAHADEVA
S/O LATE MANCHEGOWDA,
NO. 126, KHATA NO. 109,
KARIOBANAHALLI VILLAGE
ASSESSMENT NO. 109,
YESHWANTHPURA HOBLI, BBMP,
ANDRAHALLI MAIN ROAD,
NAVILU NAGARA,
BANGALORE-560 091
2. SMT. RAMAYA
D/O LATE T. L GAYTHRI
W/O KRISHNA MURTHY, MAJOR
AGE NOT KNOW TO PETITIONER
3. SMT. SOWMYA
D/O LATE T. L GAYTHRI
W/O PRAVEENA,
AGED ABOUT 33 YEARS



NO. 1, 1ST MAIN ROAD,
VIJAYA BANK LAYOUT
VIDYARANAYAPURAM
NEXT TO SAMBRAM COLLAGE
BENGALURU -560 092

4. SMT. MARIGEMPAMMA
W/O LATE MANCHE GOWDA
AGED ABOUT 78 YEARS
II FLOOR, NO. 126,
KHATA NO. 109,
KARIOBANAHALLI VILLAGE
ASSESSMENT NO. 109,
YESHWANTHPURA HOBLI,
ANDRAHALLI MAIN ROAD,
NAVILU NAGARA,
BANGALORE SOUTH TALUK,
BENGALURU- 560 091

5. KAVERI GRAMEENA BANK
TAVAREKERE BRANCH,
KENGARI ROAD, TAVAREKERE,
BANGALORE SOUTH- 562130
REPRESENTED BY BRANCH MANAGER

...RESPONDENTS

(BY SRI.M.B.RYAKHA, ADVOCATE FOR C/R3
SRI.M.D.RANGASWAMY, ADVOCATE FOR R5
R1, R2 AND R4 ARE SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASHING THE IMPUGNED ORDER DATED-25.4.2025 PASSED ON IA NO.1 FILED UNDER ORDER 38 RULE 5 READ WITH SECTION 151 OF CPC IN O.S NO.6887/2023 BEFORE THE LV CITY CIVIL JUDGE AND SESSIONS JUDGE AT BENGALURU IN CCH-56 (ANNEXURE-H) AND ALLOW THE APPLICATION FILED BY THE PETITIONER, IN THE INTEREST OF JUSTICE AND EQUITY.

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



CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

ORAL ORDER

The present writ petition is filed aggrieved by the order dated 25.04.2025 passed in I.A.No.1 under Order 38 Rule 5 read with Section 151 CPC in O.S.No.6887/2023 before LV Additional City Civil and Sessions Judge, Bengaluru (CCH-56).

2. The petitioner before this Court is the plaintiff in the suit. He has filed O.S.No.6887/2023 seeking recovery of an amount of Rs.59.64,323/- with interest at the rate of 18% per annum. He further sought to direct the Respondent No.5 not to release in favour of the Respondents the original title deed with respect to the property. In the said suit, the plaintiff has filed an application under Order XXXVIII Rule 5 read with Section 151 of CPC seeking an order of attachment of the schedule property. The court by order impugned, dismissed the I.A. The court has observed that the plaintiff has filed a suit against defendant Nos.1 to 4 for recovery of a sum of Rs.59,64,323/-. The defendant No.5 is Cavery Gramina Bank. Defendants Nos. 1 to 3 have filed written statements contesting the suit. The plaintiff has filed I.A. No. 1 along with the suit, praying for



attachment of the schedule property. It is the case that the defendants have borrowed the amount and have not repaid it. Defendant Nos.2 and 3 stated that the property sought to be attached before judgment is the exclusive and absolute property of defendant No.2 and 3, and admittedly defendant Nos.2 and 3 are not the parties to the loan transactions alleged to have taken place between the plaintiff and defendant No.1 and his wife. The Court has observed that IA schedule property is already mortgaged to defendant No.5-Bank, and attaching the IA schedule property and creating 2nd charge over the same property is not permissible. Further, there is nothing on record to show that defendant Nos.1 and 4 are trying to alienate the IA schedule property. Defendant No.1 contended that it is an exclusive financial transaction between the plaintiff and the deceased Smt. T.L. Gayathri and also contended that the defendants are residing in the said property and there is no question of alienating the schedule property. The court observed that the issues are yet to be framed and the trial is yet to commence. The attachment before judgment can be issued provided extraordinary circumstances are made out in the case and in the present case no extraordinary



circumstances are made out to attach the I.A schedule property before judgment. The court has also observed that the facts and circumstances of the case are different from the facts and circumstances of the citations laid down by the plaintiff and accordingly the court had dismissed the I.A.No.1 filed under Order 38 Rule 5 read with Section 151 of CPC.

3. Learned counsel appearing on behalf of the petitioner submits that the learned Judge has committed a grave mistake in dismissing the application filed under Order 38 Rule 5 read with Section 151 CPC as the petitioner has shown valuable and valid reasons to invoke the provisions under Order 38 Rule 5 of CPC. It is submitted that the object of invoking the provisions under Order 38 Rule 5 of CPC seeking attachment before judgment is not only to prevent the defendant Nos. 1 to 4 from trying to alienate the suit schedule property during the pendency of the suit, but also to seek protection and safeguard for the plaintiff who has the fear that defendant Nos.1 to 4 may dispose and remove the property to avoid paying debt. It is further submitted that the Court has failed to consider the object of Order 38 Rule 5 CPC and that the order impugned needs to be set aside.



4. Learned Counsel appearing on behalf of the respondents submits that the Court, considering the fact that the I.A schedule property is already mortgaged to defendant No.5 and creating a shadow of the property cannot be done, and that the petitioner has failed to make a reasonable ground to invoke the jurisdiction of the court under Order 38 Rule 5 CPC, rightly dismissed the application and there are no grounds to interfere.

5. Having heard the learned counsels on either side, perused the material on record. Before proceeding with the merits of the matter, it is appropriate to look at Order XXXVIII Rule 5 CPC, which reads as follows:

***"(5). Where defendant may be called upon to furnish security for production of property.—
(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—***

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion



thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

1[(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void.]”

6. This Court has perused the affidavit filed by the petitioner in support of the I.A. It is stated that he recently came to know that defendant Nos.1 to 4 are trying to alienate the schedule property in favour of third parties to deprive his right to recover the amount, and, in that regard, many intending purchasers are visiting the area near the schedule property. As such, he approached defendant Nos.1 to 4, who may strike the deal at any moment. If they succeed in their illegal attempts at alienation, he will not be in a position to recover the amounts from the defendants, and the same would lead to multiplicity of proceedings. Hence, he has come up with the I.A. Admittedly, the suit schedule property is mortgaged to defendant No.5. When the property is mortgaged to defendant No.5, there is no question of selling the property in favour of



third parties. On a close perusal of the reasons stated in support of the accompanying affidavit, it appears that the petitioner, only for the purpose of getting an order under Order 38 Rule 5, has made those statements, and a close perusal of the provision of Order 38 Rule 5 CPC makes it very clear that the grounds raised in support of the I.A cannot be the grounds for the Court to allow the application. Even as per the averments made in the I.A, the petitioner/plaintiff could not prove what has been stated and this Court do not find any reason to interfere. In that view of the matter, this Court is passing the following:

ORDER

- i. Accordingly, the writ petition is ***dismissed***.
- ii. All pending I.As., in the writ petition shall stand closed.

**SD/-
(LALITHA KANNEGANTI)
JUDGE**