



CNR: KAHC010399152020

NC: 2026:KHC:51064
WP No. 15206 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 15206 OF 2020 (GM-CPC)

BETWEEN:

1. SRI. K. GOVINDARAJU
AGED 42 YEARS
S/O SRI M KRISHNAPPA
AGRICULTURIST
R/AT 124, ANUR EXTENSION
BYRANAYAKANAHALLI MAIN ROAD
KASABA HOBLI, SIDDALAGHATTA TALUK
CHIKKABALLAPUR DIST.

...PETITIONER

(BY SRI. G.V. DAYANANDA, ADVOCATE)

AND:

1. SRI KONDAPPA
81 YEARS
S/O LATE MOOGAPPA
2. SMT NAGAMMA
66 YEARS
S/O LATE KONDAPPA
3. SMT MUNUIYAMMA
51 YEARS
D/O SRI KONDAPPA
4. SMT MUNIRATHNAMMA
48 YEARS
D/O SRI KONDAPPA

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5. SMT RATHNAMMA
46 YEARS
D/O SRI KONDAPPA
6. SMT JAYAMMA
44 YEARS
D/O SRI KONDAPPA
7. SRI ERAPPA
41 YEARS
S/O SRI KONDAPPA
8. SMT RATHNAMMA
36 YEARS
W/O SRI ERAPPA
9. MASTER PAVAN KUMAR
AGED 13 YEARS
S/O SRI ERAPPA
10. MASTER KIRAN KUMAR
AGED 11 YEARS
S/O SRI ERAPPA

R9 AND R10 REP. BY THEIR
NATURAL GUARDIAN FATHER SRI ERAPPA

ALL ARE R/AT BYRANAYAKANAHALLI VILLAGE
KASABA HOBLI
SIDDALAGHATTA TALUK-562 105.

...RESPONDENTS

(BY SRI. K. HANUMANTHARAYAPPA, ADVOCATE FOR R1 TO R10)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 10.2.2020 PASSED IN IA NO.XIII FILED UNDER ORDER I RULE 10(2) R/W SECTION 151 CPC BY THE SENIOR CIVIL JUDGE AND JMFC SIDLAGHATTA VIDE ANNEXURE-E.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

The petitioner, who is the plaintiff in O.S.No.91/2014 pending on the file of the learned Senior Civil Judge and JMFC, Siddlaghatta, has called in question the order dated 10.02.2020, whereby the learned Trial Judge has rejected the application filed by the petitioner under Order I Rule 10 of the Code of Civil Procedure, 1908, seeking impleadment of Smt.Gowramma, the alleged mortgagee, as a party to the suit.

2. Notice to respondent No.11 is dispensed with.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents-defendants.

4. The petitioner has instituted the suit seeking specific performance of the contract on the basis of the

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Sale Agreement dated 28.02.2013. During the pendency of the suit, the defendants sought amendment of their written statement by bringing on record an assertion that they had created a mortgage over the suit property in favour of Smt. Gowramma. In view of the said subsequent transaction, the petitioner sought to implead the mortgagee as a defendant. The said application has been rejected by the learned Trial Judge.

5. The short question that arises for consideration is;

Whether the alleged mortgagee is either a necessary or a proper party for adjudication of the suit for specific performance?

6. In a suit for specific performance, the principal controversy ordinarily centres around the enforceability of the contract between the contracting parties, including the due execution of the agreement, the plaintiff's readiness and willingness to perform his part of the contract and his entitlement to the discretionary relief of specific



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performance. A person, who is not a party to the agreement cannot, merely by reason of a subsequent transaction, be treated as a necessary party for determining the rights and obligations arising under the agreement.

7. In the present case, the alleged mortgage has admittedly been created during the pendency of the suit. Such a transaction, if otherwise established, would remain subject to the doctrine of *lis pendens* and to the ultimate result of the suit. The subsequent mortgage, therefore, does not enlarge the scope of the controversy in the suit for specific performance nor does it render the mortgagee a necessary party for deciding the enforceability of the Sale Agreement dated 28.02.2013.

8. The burden continues to rest upon the petitioner-plaintiff to establish the due execution and enforceability of the Sale Agreement and to satisfy the requirement of readiness and willingness to perform his part of the

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contract. Even upon establishing these foundational requirements, the petitioner would have to demonstrate his entitlement to the discretionary relief of specific performance. The alleged mortgage transaction has no direct bearing upon these issues.

9. Merely because the defendants have entered into a subsequent transaction in respect of the suit property, the scope of adjudication in a suit for specific performance cannot be expanded so as to compel impleadment of every subsequent transferee or encumbrancer, particularly where the subsequent transaction is itself subject to the result of the pending litigation. The rights, if any, arising out of such subsequent transaction would necessarily abide by the decree that may ultimately be passed in the suit.

10. In that view of the matter, this Court is of the considered opinion that the learned Trial Judge was justified in declining to implead Smt.Gowramma as a party

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to the suit. The impugned order does not suffer from any jurisdictional error, illegality or material irregularity warranting interference in exercise of the writ jurisdiction of this Court.

11. It is, however, made clear that any mortgage or other transaction entered into by the defendants in respect of the suit property during the pendency of O.S.No.91/2014 shall remain subject to the outcome of the said suit and shall be governed by the applicable principles of *lis pendens*. No opinion is expressed on the validity, enforceability or otherwise of the alleged mortgage transaction. The above point is answered in the Negative.

Accordingly, the writ petition stands ***dismissed***.

All contentions of the parties are kept open.

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(SACHIN SHANKAR MAGADUM)
JUDGE