



CNR: KAHC010418812019

NC: 2026:KHC:43702
W.P. No.30823/2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 17TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.30823/2019 (GM-CPC)

BETWEEN:

1. SRI. KUDPI RAMADEVI PRASAD SHENOY
S/O LATE KUDPI KESHAVA SHENOY
AGED ABOUT 43 YEARS
R/AT D.NO.3-E25/2144A
"VIVEK VAIBHAV", KADRI TEMPLE ROAD
KADRI, MANGALORE-575002
DAKSHINA KANNADA.
- 1(a) KUDPI SAMATHI ALIAS GEETHA SHENOY
W/O LATE KUDPI KESHAV SHENOY
AGED ABOUT 72 YEARS.
- 1(b) KUDPI RAMADEVIDAS SHENOY
S/O LATE KUDPI KESHAVA SHENOY
AGED ABOUT 51 YEARS.

BOTH ARE R/AT. #14-4-4, 374/3
CHALUKYA APARTMENTS, DON
BOSCO HALL ROAD, FALNIR
HAMPANKATTA
MANGALORE (D) -575001.

[AMENDED AS PER ORDER DTD:08.01.2024]

...PETITIONERS

(BY SRI. B.M. ARUN, ADV., FOR P1 (a &b))

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA



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AND:

1. SRI. VIJAYA KUMAR TALEPPADI
S/O LATE RAMAKRISHNA RAO
AGED ABOUT 65 YEARS
R/A C/O B.N. RADHAKRISHNA RAO
FLAT NO.501, SRI LAKSHMI RESIDENCY
KADRI TEMPLE ROAD
MANGALORE-575004
DAKSHINA KANNADA.

...RESPONDENT

(BY SRI. M. SUDHAKAR PAI, ADV., FOR RESPONDENT
SRI. S. PRAKASH SHETTY, ADV., FOR APPLICANT
IN IA 1/2021)

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THIS W.P. IS FILED UNDER ARTICLE 226 AND 227 OF
THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR
RECORDS PERTAIN TO MISC NO.72/2015 BY THE COURT OF
2ND ADDL SENIOR CIVIL JUDGE AND CJM, MANGALORE.
QUASH THE ORDER ANNEXURE-H MADE IN MISC APPLICATION
NO.72/2015 PASSED BY THE COURT OF 2ND ADDL SENIOR
CIVIL JUDGE AND CJM, MANGALORE, D.K. & ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON
11.08.2026, COMING ON FOR PRONOUNCEMENT OF ORDER,
THIS DAY, THE COURT MADE THE FOLLOWING:

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



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CAV ORDER

This petition is filed challenging the order dated 05.03.2019 passed in Misc.A.No.72/2015 by the II Additional Senior Civil Judge and CJM, Mangaluru, D.K. (for short, 'the Appellate Court').

2. Sri.B.M.Arun, learned counsel appearing for the petitioners submits that the original petitioner-plaintiff filed a suit against the Commissioner, Mangaluru City Corporation, seeking a declaration that the proposal for widening of the road as per the notice dated 02.02.2013 is illegal, unlawful, null and void and also sought relief of permanent prohibitory injunction as the property was purchased by the plaintiff under a registered sale deed dated 26.11.2007 and without due process the Corporation intends to widen the road. In the said suit, the Trial Court granted temporary injunction and later the respondent, who is a third party, filed an application seeking to vacate the order of temporary injunction. The



said application was rejected by confirming the temporary injunction granted in favour of the plaintiff.

3. It is submitted that without seeking impleadment in the suit, the respondent has filed the application seeking to vacate the temporary injunction and the Trial Court rejected the same by recording that the plaintiff has established a *prima facie* case of his lawful possession and enjoyment over the suit schedule property. However, the respondent filed an appeal challenging the order of the Trial Court and the Appellate Court, contrary to the settled principles of law, recorded the finding that the respondent is the title holder of the property by referring to the litigations pending between the parties before different Courts. It is further submitted that the Appellate Court has recorded the finding on the ownership, which was beyond the scope of the appeal and hence, the impugned order calls for interference.



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4. Sri.Prakash Shetty, learned counsel appearing for the applicant seeking to be impleaded in the proceedings submits that the property originally belonged to Gulabi Bai-mother of Sri.U.Prabhakar Nayak and the said Sri.U.Prabhakar Nayak is stated to be the beneficiary under the Will executed by his mother and the said Will was never produced before the Court in any of the proceedings. It is submitted that the impleading applicant filed a suit for partition, which came to be decreed and now the appeal is pending before this Court. The brother of the impleading applicant - Sri.U Prabhakar Nayak, without disclosing the impleading applicant's right over the property, in collusion with the respondent, sold the property. It is further submitted that there was a collusive suit between the respondent and his vendor and the impleading applicant entered appearance in the execution proceedings by objecting the execution proceedings filed by the respondent, which was dismissed, later challenged before the Appellate Court and now the regular second



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appeal is pending. In the said proceedings, the parties are directed to maintain *status quo* and if these aspects are considered, the impugned order of the Appellate Court challenged in the writ petition calls for interference. It is also submitted that the respondent is not a necessary party to the suit filed by the plaintiff for injunction. The Hon'ble Supreme Court and this Court in cases of ***KASTURI VS. IYYAMPERUMAL AND OTHERS¹***, ***KHETRABASI BISWAL VS. AJAYA KUMAR BARAL AND OTHERS²*** and ***SURESHKUMAR M JAIN Vs. R.RATHAN ROY³***, have clearly held as to who are the necessary and proper parties to the suit.

5. It is contended that the impleading applicant being the co-sharer of the family property, is required to be impleaded in the present proceedings as the Trial Court decreed the suit filed by him for partition, which is also the subject matter of the regular second appeal pending

¹ (2005) 6 SCC 733

² (2004) 1 SCC 317

³ 2009 SCC Online Kar 255



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before this Court. It is further contended that these proceedings are initiated by the respondent through one power of attorney holder – B.N.Radhakrishna Rao at whose instance, these litigations have been started and being pursued. It is also contended that the respondent had filed a police complaint against his vendor, which was not entertained and later a private complaint was filed before the Magistrate, which also came to be dismissed. Hence, he seeks to allow the application seeking impleadment and also allow the writ petition.

6. Sri.M.Sudhakar Pai, learned counsel appearing for the respondent supports the impugned order of the Appellate Court and submits that the petitioner, without disclosing certain facts, filed a suit for injunction against the Corporation and got the temporary injunction. It is submitted that the respondent is the owner of the property and without disclosing the said aspect, the suit is filed against the Corporation without making the respondent a



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party to the suit. It is further submitted that the respondent purchased the property from his vendor Sri.U.Prabhakar Nayak in the year 2005 and he filed a suit against his vendor for eviction, which was decreed. The vendor challenged the said decree before the Appellate Court, which was dismissed and thereafter, the regular second appeal filed by the vendor also came to dismissed on 20.09.2010 and thereafter, the respondent had filed an execution case to take possession against Sri.U.Prabhakar Nayak, which is pending.

7. It is also submitted that the impleading applicant, claiming to be the sister of Sri.U.Prabhakar Nayak filed a suit for partition, which was decreed. The Appellate Court reversed the same and now the second appeal is pending before this Court. It is contended that in the execution case filed by the plaintiff against Sri.U.Prabhakar Nayak to execute the decree of eviction, an application was filed by the impleading



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applicant as an objector, which was dismissed. The same was challenged in an appeal, which was dismissed and a second appeal was filed, which is pending.

8. It is further contended that the plaintiff on the strength of the sale deed of the year 2007, filed a suit for injunction against the Corporation. In the year 2007, the vendor - Sri.U.Prabhakar Nayak had no right to sell the property as the vendor had already sold the property to the respondent in the year 2005 and by suppressing all these facts, the suit was filed by the plaintiff in collusion with the vendor of the respondent. Hence, an application for impleading was filed, which is pending, however the Trial Court rejected the application for vacating the order for temporary injunction, which was reversed by the Appellate Court. It is further contended that the respondent, as a third party to the suit, can maintain the appeal challenging the order of temporary injunction granted by the Civil Court. In support of the said



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contention, he placed reliance on the decision of the Division Bench of this Court in the case of **PARIJATHA AND ANOTHER Vs. KAMALAKSHA NAYAK AND OTHERS**⁴. It is also contended that the impleading applicant is neither a necessary nor a proper party to the proceedings. Hence, he seeks to dismiss the appeal.

9. I have heard the arguments of the learned counsel for the petitioner, learned counsel for the impleading applicant in I.A.No.1/2021, the learned counsel for respondent and meticulously perused the material available on record. I have given my anxious consideration to the submissions advanced on both the sides.

10. The material on record indicates the following facts:

a) The petitioner-plaintiff had filed a suit in O.S.No.1207/2014 against the Commissioner, Mangaluru City Corporation, seeking the relief of declaration that the

⁴ 1981 SCC Online Kar 319



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proposed road widening as per notice dated 02.02.2013 is illegal, unlawful, null and void and the relief of permanent prohibitory injunction from interfering with the peaceful possession of the plaint schedule property by the plaintiff. The assertion of the plaintiff is that he purchased the suit schedule property on 26.11.2007 and the defendant-Corporation without any acquisition proceedings intended to demolish a portion of the property for road widening.

b) The plaintiff filed an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 (for short, 'the CPC') seeking temporary injunction and the Trial Court vide order dated 22.11.2014 passed an interim order to maintain *status quo*. The respondent, who is a third party to the said suit filed an application in I.A.No.5 under Order XXXIX Rule 4 of the CPC, seeking to vacate the interim order. The Trial Court, on consideration of I.A.No.3 filed by the plaintiff and I.A.No.5 filed by the third party, allowed the application of the plaintiff by granting



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temporary injunction against the defendants from entering, encroaching or in any way interfering with the peaceful possession and enjoyment of the plaint schedule property by the plaintiff and rejected I.A.No.5 filed by the third party seeking to vacate the order of temporary injunction vide order dated 01.09.2015. The records indicate that the respondent also filed an application seeking to be impleaded in the said suit, however, the same is pending consideration before the Trial Court.

c) The respondent challenged the order of the Trial Court granting temporary injunction before the Appellate Court in M.A.No.72/2015. The Appellate Court, vide impugned order dated 05.03.2019, allowed the appeal, which is challenged by the plaintiff in the instant petition.

d) The contention of the petitioner-plaintiff is that without impleading the respondent in the suit, the application filed by the respondent for vacating the order of interim injunction is not maintainable and further the



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Appellate Court proceeded to record a finding with regard to the title and ownership over the property, which is impermissible. To consider this submissions of the learned counsel for the plaintiff as well as the impleading applicant, certain other facts are required to be taken note of.

e) It is admitted that the respondent purchased the property from Sri.U.Prabhakar Nayak vide registered sale deed dated 26.10.2005, however, his vendor did not deliver the physical possession. The respondent filed O.S.No.330/2007 against his vendor Sri.U.Prabhakar Nayak seeking the relief of possession. The said suit came to be decreed vide judgment and decree dated 30.07.2008. The said Sri.U.Prabhakar Nayak assailed the judgment and decree before the Appellate Court in R.A.No.117/2008 and the said appeal was dismissed. Being aggrieved, Sri.U.Prabhakar Nayak filed a regular second appeal in R.S.A.No.97/2009, which came to be



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dismissed on 20.09.2010. The relief of mandatory injunction sought by the respondent against his vendor was decreed and the same has attained finality. Pursuant to the said decree by the Trial Court which was also affirmed by this Court, the respondent filed an Ex.P.No.132/2016 against his vendor Sri.U.Prabhakar Nayak seeking possession of the premises. In the said execution petition, the impleading applicant filed an application under Order XXI Rule 97 to 101 read with Section 151 of the CPC, objecting to the said execution. The said application was dismissed on 02.11.2016 and the same was challenged by the impleading applicant in R.A.No.110/2017 and the appeal was also dismissed on 01.01.2018. The impleading applicant assailed both the orders in RSA No.206/2018, which is pending.

f) Meanwhile, the impleading applicant claiming to be the sister of Sri.U.Prabhakar Nayak filed a suit in O.S.No.339/2005 seeking the relief of partition and in the



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said suit, the respondent was impleaded and later the suit came to be decreed, which was assailed by the respondent in R.A.No.127/2010, which was allowed and the order of the Appellate Court was assailed by the impleading applicant in R.S.A.No.871/2016, which is pending.

11. The material on record indicates that the respondent purchased the property in question from Sri.U.Prabhakar Nayak under the registered sale deed dated 26.10.2005 and later, the very same Sri.U.Prabhakar Nayak sold the very same property in favour of the petitioner on 26.11.2007. The contention of the respondent that Sri.U.Prabhakar Nayak was not having the right to sell the property in favour of the plaintiff in the year 2007 as he had already sold the property to the respondent in the year 2005, is a matter which is required to be gone into in the pending suit. It is required to be noticed that the suit of the plaintiff is for a bare injunction and when the respondent in the present petition is raising



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an objection with regard to the title of the plaintiff, whether the said suit is maintainable or not, is also required to be gone into by the Trial Court. The records indicate that two appeals of the respondent are pending before this Court as referred *supra*, one arising out of suit for partition and another from the order of the Execution Court. In my considered view, until the impleading applicant establishes her right over the suit schedule property, she is neither a necessary nor a proper party in the present petition. It is also required to be noticed that the impleading applicant has not filed any application seeking to be impleaded in the suit filed by the petitioner for injunction.

12. The application filed by the respondent for impleadment is admittedly pending in a suit filed by the plaintiff for injunction against the Corporation and in the said suit, the application for vacating stay filed by the respondent was rejected, which was reversed by the



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Appellate Court on appreciating the fact that the plaintiff is a subsequent purchaser of the property and the respondent herein has purchased the property on 26.10.2005. The aforesaid proceedings indicate that the suit filed by the respondent for possession against his vendor has attained finality and he has filed execution proceedings to take possession, which is pending and in view of the same, filing of a suit by the petitioner against the Corporation claiming to be the purchaser of the property without arraying the respondent and obtaining injunction, has been taken note of by the Appellate Court before allowing the appeal.

13. The Division Bench of this Court in the case of **PARIJATHA AND OTHERS**, referred *supra* at paragraph 15 has held as under:

"15. For the forgoing reasons, we hold that order 43 Rule 1(r) of the Code does not allow the filing of an appeal from an *exparte* interim order of temporary injunction granted under Rule 1 or 2 of order 39, but the remedy of the aggrieved person



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is to move the trial court under Rule 4 of order 39 of the code in the first instance. We further hold that even a stranger to the suit or proceeding can maintain such an application. We hereby over-rule the decisions of single judges taking a view in favour of the permissibility of an appeal against an interim ex parte order of temporary injunction, to wit, Keshavchand Gopalchand Gujjar v. Ningappa Pandappa Kolakar [1969 (2) Mys. Law Journal 525.] , Bhima Ningappa Khot v. Ratnabai [C.R.P. No. 3056 of 1978/6 d. d. 6-2-1979.] , and Mahila Samaja v. Smt. Varija Aithal [C.R.P. 2705/78 d. d. 5-2-1980.].”

14. The aforesaid enunciation of law laid down by the Division Bench of this Court makes it clear that even a stranger can maintain an application under Order XXXIX Rule 4 of the CPC. Hence, I do not find any error in the Appellate Court entertaining the application filed by the respondent and allowing the appeal by vacating the order of interim injunction.

15. The Appellate Court, considering the finality of the decree in O.S.No.330/2007 for delivery of possession



in favour of the respondent, pendency of the proceedings with regard to the title of the plaintiff and also suppression of the earlier sale deed, has rightly recorded the finding that the plaintiff failed to prove the *prima facie* case, balance of convenience to grant temporary injunction in his favour and also held that the plaintiff will not be put to any hardship. The Appellate Court, by considering the pending litigation between the parties, has rightly allowed the appeal. I do not find any good ground to interfere with the order passed by the Appellate Court in view of the peculiar facts and circumstances of the case.

16. Insofar as the decision relied on by the learned counsel for the impleading applicant in the case of **KASTURI**, referred *supra*, the same will not aid the impleading applicant as the suit in the aforesaid case was for specific performance, whereas in the instant case, the suit is for injunction and the sale deed relied on by the plaintiff was executed subsequent to the sale deed executed in favour of the respondent. The other decisions



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relied on by the learned counsel for the impleading applicant are distinguishable in view of the peculiar facts and circumstances of the instant case.

17. It is also to be noted that this Court cannot be expected to conduct a roving enquiry into the title of the parties as the scope of this petition is very limited. Hence, any contentions with regard to the title and ownership of the suit schedule property have to be raised in the appropriate proceedings and the aforesaid findings recorded by this Court are limited to the instant petition and the same shall not come in the way of the Trial Court deciding the suit on its merits.

18. For the aforementioned reasons, the writ petition is devoid of merits and is hereby ***dismissed***. Consequently, the pending interlocutory applications stand disposed of.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE