



CNR: KAHC010449152022

NC: 2026:KHC:45983
W.P. No.19652/2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 25TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.19652/2022 (GM-CPC)

BETWEEN:

1. MS. SHARADA A. KULKARNI
W/O LATE A.R. KULKARNI
AGED ABOUT 80 YEARS
REP. BY SPA HOLDER
OF THE PETITIONER NO.2
SMT. NANDINI JOSHI @
NANDINI CHANDRASHEKAR JOSHI.

2. MS. NANDINI JOSHI @
NANDINI CHANDRA SHEKAR JOSHI
W/O LATE CHANDRASHEKAR JOSHI
AGED ABOUT 39 YEARS.

BOTH ARE R/AT GROUND FLOOR
NO.16-B, 19-C MAIN, 10TH CROSS
1ST BLOCK, RAJAJINAGAR
BANGALORE-560010.

3. MR. DEEPAK KULKARNI
S/O LATE A R KULKARNI
AGED ABOUT 47 YEARS
R/A 2209, REAL CATORCE
TEXAS-78746
REP. BY SPA HOLDER OF THE
PETITIONER NO.2
SMT. NANDINI JOSHI @
NANDINI CHANDRA SHEKAR JOSHI.

...PETITIONERS

(BY SRI. ASHOK G.V. ADV.,)

AND:

MR. UDAY KUMAR A. KULKARNI

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA



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S/O LATE A.R. KULKARNI
16-B, 19TH C MAIN ROAD
FIRST BLOCK, RAJAJINAGAR
BENGALURU-560010.

...RESPONDENT

(BY SRI. MADHAV B. KASHYAP, ADV.,)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DTD 14.09.2022 PASSED IN O.S.5203/2016 BY THE 1ST ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, CCH-2 DTD PRODUCED AS ANNEXURE-A & ETC.

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

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

ORAL ORDER

This petition is filed challenging the order dated 14.09.2022 passed on IA.No.5 in OS.No.5203/2016 by the I Additional City Civil and Sessions Judge, Bengaluru, CCH-2, (for short 'the trial Court').

2. Heard Sri.Ashok G.V., learned counsel appearing for the petitioner, Sri.Madhav B. Kashyap, learned counsel for the respondent and meticulously perused the material available on record.



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3. The petitioners filed a suit in OS.No.5203/2016 seeking relief of partition of the suit schedule property by metes and bounds. The suit schedule property is a residential property situated at Rajajinagar, Bengaluru. In paragraph No.3 of the amended plaint, the petitioners averred that late Sri.A.R.Kulkarni had purchased the suit schedule property under a registered sale deed dated 24.03.1966 from his own funds and that the said property was his self-acquired property. The plaintiffs being his legal heirs sought partition of the same. In the said suit, the respondent/defendant filed a written statement, the trial Court framed the issues. The plaintiffs adduced evidence and the matter was posted for cross-examination of PW1. However, the defendant could not cross-examine PW1. Thereafter, the matter was posted for the defendant's evidence, but the defendant failed to adduce evidence. Meantime, on 02.09.2022, the defendant filed an application seeking amendment of the written statement.



4. The application was accompanied by an affidavit of the defendant. The affidavit indicates that plaintiff No.1 had executed a document in favour of the defendant stating that the defendant is entitled to recover the amount spent towards the construction of the house building in the suit schedule property. It was further stated that the defendant had spent amount by raising personal loans from banks, LIC, friends, relatives etc., and the document executed by his mother was misplaced and therefore, the said fact could not be stated in the written statement. In paragraph No.5 of the affidavit, the defendant also stated that plaintiff Nos.1 to 3, in collusion with each other, had deliberately not included the two properties, which are in the name of plaintiff No.3, despite the said properties were joint family properties.

5. At the outset, it is to be noticed that the suit filed by the petitioners/plaintiffs is one for partition, based on the fact that late Sri.A.R.Kulkarni had acquired the suit



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schedule property under a registered sale deed and that the said property was his self-acquired property. The defendant is now contending that plaintiff No.3 has purchased two properties which are the joint family properties. In my considered view, such a contention cannot be allowed to be raised, as the suit is for partition based on the assertion that the deceased father had a self-acquired property and not the joint family property and that, after his death, the plaintiffs are entitled to their shares. No counterclaim has been filed by the defendant, stating that the properties are joint family property.

6. Insofar as the assertion made in paragraph No.4 of the affidavit is concerned, in my considered view, the said assertion cannot be termed as due diligence. If the defendant had incurred expenses towards the construction of the house situated on the suit schedule property, nothing has prevented him from stating the said aspect in the written statement, when the written statement was filed at the initial stage. It is also required



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to be noticed that the defendant failed to cross-examine PW1 and thereafter failed to adduce the evidence. In the absence of any due diligence, without assigning any proper reasons and without taking note of the objections filed by the plaintiffs, the trial Court erred in allowing the application on costs. Hence, the writ petition deserves to be allowed. Accordingly, I proceed to pass the following:

ORDER

- i. The writ petition is ***allowed***.
- ii. The impugned order dated 14.09.2022 passed on IA.No.5 in OS.No.5203/2016 by the I Additional City Civil and Sessions Judge, Bengaluru, CCH-2, is hereby set aside. Consequently, IA.No.5 filed by the respondent is rejected.

No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

ABK, List No.: 1 Sl No.: 22