



CNR: KAHC010483432022

NC: 2026:KHC:46157
WP No. 21068 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO. 21068 OF 2022 (GM-CPC)

BETWEEN:

1. SRINIVASA,
S/O VENKATACHALA,
AGED ABOUT 54 YEARS,
R/OF NO.134, SHYAMARAO GARDEN,
KENCHNAHALLY,
BENGALURU SOUTH,
BENGALURU - 560 098.
2. BHAGYAMMA,
S/O SRINIVASA,
AGED ABOUT 42 YEARS,
R/OF NO.134,
SHYAMARAO GARDEN,
KENCHANAHALLY,
BENGALURU SOUTH,
BENGALURU - 560 098.
3. SOWBHAGYA,
D/O SRINIVASA,
AGED ABOUT 26 YEARS,
4. SHILPA,
D/O SRINIVASA,
AGED ABOUT 23 YEARS,

Digitally
signed by
ANNA PURNA
G
Location:
High Court of
Karnataka



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5. MADHU,
S/O SRINIVASA,
AGED ABOUT 21 YEARS,
PETITIONERS 3 TO 5 ARE
R/AT DEVARAHATTIPALYA VILLAGE,
NARASAPURA, SOMPURA HOBLI,
NELAMANGALA TALUK – 562 123.

6. AJAY,
S/O SRINIVASA,
AGED ABOUT 9 YEARS,
REPRESENTED BY HIS
NATURAL GUARDIAN
AND FATHER SRINIVASA,
S/O VENKATACHALA,
AGED ABOUT 54 YEARS,
R/OF NO.134, SHYAMARAO GARDEN,
KENCHANAHALLY, BENGALURU SOUTH,
BENGALURU – 560 098.

...PETITIONERS

(BY SRI. P.N.HARISH., ADVOCATE)

AND:

SUREPROP INFRA PVT. LTD.
(4) NO.296, 1ST FLOOR,
MATHRUSHREE BUILDING,
OPP. SBI BANK,
RAGHAVENDRA LAYOUT,
ACHARYA COLLEGE ROAD,
CHIKKABANAVARA,
BENGALURU – 560 090.
REPRESENTED BY ITS
MANAGING DIRECTOR,
SRI SURYA BRAMHAVAR,



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AGED ABOUT 39 YEARS,
R/O CHIKKABANAVARA,
BENGALURU – 560 090.

...RESPONDENT

(BY SRI.VIGNESHWARA S SHASTRI, SENIOR COUNSEL FOR
SRI. GURURAJ. R., ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER
DATED 14.9.2022 PASSED BY THE I ADDITIONAL SR CIVIL
AND CJM SHIVAMOGGA IN O.S.NO.33/2020 ON IA NO.5 AS
PER ANNEXURE-D AND THEREBY ALLOW THE IA NO.5 FILED BY
THE PETITIONERS AS PER ANNEXURE - C IN O.S NO.33/2020
ON THE FILE OF I ADDITIONAL SR CIVIL AND CJM
SHIVAMOGGA AND ETC.,

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

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

ORAL ORDER

This writ petition is filed challenging the order dated
14.09.2022 passed on I.A.No.5 in O.S.No.33/2020 on the
file of the Additional Senior Civil Judge and CJM,
Shivamogga (hereinafter referred to as the 'trial Court' for
short).



2. Sri P.N. Harish, learned counsel for the petitioners submits that the respondent filed a suit in O.S.No.33/2020 for specific performance of the agreement of sale and other reliefs. In the said suit, the petitioner/defendant Nos.1 to 5 filed their written statement. Later, defendant No.1 filed an application in I.A.No.5 under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure (for short, 'CPC') seeking amendment of the written statement. The trial Court, vide order dated 14.09.2022, rejected the said application mainly on the ground that the admission made in the earlier written statement is sought to be taken away by an application seeking amendment of the written statement. The learned counsel for the petitioners further submits that defendant No.1 is entitled to take an inconsistent stand in the suit and the said aspect has been lost sight of by the trial Court.

3. It is further submitted that the defendants in the suit have categorically denied the execution of the agreement of sale by stating that the said instrument was



created for the purpose of security. It is now sought to be elaborated in the amended written statement, and the said application for amendment of the written statement is filed at the earliest stage, even before commencement of the trial. Hence, as a matter of course, the application is required to be allowed. Hence, he seeks to allow the petition.

4. *Per contra*, Sri Vigneshwara S. Shastri, learned Senior Counsel appearing for the respondent/plaintiff supports the impugned order of the trial Court and submits that, in the written statement filed by the petitioners/defendant Nos.1 to 5 in the suit, they have clearly admitted that the defendants have received Rs.5,00,000/- from the plaintiff, which admission they intend to take away by the proposed amendment, which is impermissible. It is submitted that the agreement of sale is a registered instrument and all the parties have signed the agreement.



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5. It is further submitted that defendant No.1 is entitled to take an inconsistent stand. However, he is not permitted to take a diagonally opposed stand by withdrawing the admission. Hence, the trial Court has rightly appreciated the law and rejected the application, which does not call for any interference. In support of his contention, he placed reliance on the following two decisions:

- i) **GAUTAM SARUP Vs. LEELA JETLY AND OTHERS¹,**
- ii) **MR. VIJAYA KUMAR Vs MRS. MUNIYAMANNI AND OTHERS².**

Hence, he seeks to dismiss the petitioner.

6. I have heard the arguments of the learned counsel for the petitioners, learned Senior Counsel appearing for the respondent and meticulously perused the material available on record.

¹ (2008) 7 SCC 85

² W.P.No.6786/2012 and W.P.No.7217/2012 (GM-CPC) High Court
Karnataka, DD: 03.07.2012



7. The respondent had filed a suit in O.S.No.33/2020 seeking judgment and decree of specific performance of the agreement of sale dated 12.03.2019. In the said suit, the petitioners have been arrayed as defendants. They filed written statement on 12.07.2021. Subsequently, defendant No.1 filed I.A.No.5 under Order VI Rule 17 read with Section 151 of the CPC seeking to amend the written statement, more particularly at paragraph No.10. The said application was opposed by the plaintiff. The trial Court, under the impugned order dated 14.09.2022, rejected the said application, mainly on the ground that, by way of amendment, defendant No.1 is trying to take away the admission made in paragraph No.10 of the written statement.

8. It is to be noticed that in paragraph No.10 of the written statement, defendant No.1 has taken a stand that the plaintiff has paid Rs.5,00,000/- towards security, an instrument was executed on 12.03.2019, and further, the officials of the plaintiff have recovered a portion of the



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said amount and some amount is still due. A perusal of the application for amendment indicates that the defendants intend to convey that no amount has been paid by the plaintiff to the defendants.

9. In my considered view, the trial Court, taking note of the law on the point, has rightly come to the conclusion that allowing the application could amount to taking away the admission which is on record in the form of a pleading with regard to the payment of Rs.5,00,000/-, which is impermissible. It would be useful to refer to the decision of the Hon'ble Supreme Court in the case of **GAUTAM SARUP** referred to supra, at paragraph Nos.14, 16 and 28:

"14. An admission made in a pleading is not to be treated in the same manner as an admission in a document. An admission made by a party to the lis is admissible against him proprio vigore.

15. xxxxx

16. A thing admitted in view of Section 58 of the Evidence Act need not be proved. Order 8 Rule 5 of the Code of Civil Procedure provides that even a vague or evasive denial may be treated to be an admission in which event the Court may pass a decree in favour of the plaintiff. Relying on or on the basis thereof a suit, having



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regard to the provisions of Order 12 Rule 6 of the Code of Civil Procedure may also be decreed on admission. It is one thing to say that without resiling from an admission, it would be permissible to explain under what circumstances the same had been made or it was made under a mistaken belief or to clarify one's stand inter alia in regard to the extent or effect of such admission, but it is another thing to say that a person can be permitted to totally resile therefrom. The decisions of this Court unfortunately in this regard had not been uniform. We would notice a few of them.

28. What, therefore, emerges from the decisions made hereinbefore is that a categorical admission cannot be resiled from but, in a given case, it may be explained or clarified. Offering explanation in regard to an admission or explaining away the same, however, would depend upon the nature and character thereof. It may be that a defendant is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually destructive of each other."

10. This Court, in the case of **MR. R. VIJAYA KUMAR** referred to supra, at paragraph No.5, held as under:

"5. No doubt, the amendment application is required to be construed liberally and the defendant could also raise inconsistent plea. But if the written statement is already filed and subsequent amendment, if it has any effect of taking away the admission, such amendment could not be allowed. Apart from this, amendment to the written statement is sought at the stage when the matter is set down for evidence and evidence is already commended."

11. Keeping in mind the enunciation of law laid down by the Hon'ble Supreme Court as well as this Court,



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I am of the considered view that the defendant No.1 cannot be allowed to take a diagonal stand as opposed to the stand taken in the written statement. In the written statement, a specific averment is made that the plaintiff has paid Rs.5,00,000/- and, towards security for the said amount, an instrument was executed. Contrary to the same, an amendment is now sought stating that no amount has been paid by the plaintiff, which is impermissible.

12. There is no doubt that defendant No.1 is permitted to take an inconsistent stand. However, in the case on hand, a perusal of paragraph No.10 of the written statement and the application seeking amendment to the written statement does not amount to taking an inconsistent stand, but amounts to taking a diagonally opposed stand and making an attempt to withdraw the admission on record, which is impermissible.



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13. The trial Court has rightly appreciated the law and rejected the application. The same does not call for any interference.

14. The writ petition is devoid of merits and the same is ***rejected***.

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**

SHS
List No.: 1 Sl No.: 13