



CNR: KAHC010498972022

NC: 2026:KHC:45555
W.P. No.21640/2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 24TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.21640/2022 (GM-CPC)

BETWEEN:

SRI. G. RAVIKIRAN
S/O M.S. GURUMURTHY
AGED ABOUT 47 YEARS
R/AT NO.1, GURU KRUPA, 5TH CROSS
IST STAGE, KAVERINAGAR
HANIYAMBADI ROAD
MANDYA-571401.

...PETITIONER

(BY SMT. DEEPA PRASAD, ADV., FOR
SRI. RAGHAVENDRA S, ADV.,)

AND:

SRI. M.S. GURUMURTHY
SINCE DEAD LR'S OF
DEFENDANT NO.1 AND 2
ARE ALREADY ON RECORD.

1. SMT. SHOBHADEVI
W/O M.S. GURUMURTHY
AGED ABOUT 74 YEARS.
2. SRI. G. RAGHUNANDAN
S/O M.S. GURUMURTHY
AGED ABOUT 43 YEARS.

R1 & R2 ARE R/AT
GURU KRUPA, 5TH CROSS
IST STAGE, KAVERINAGAR

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA



CNR: KAHC010498972022

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W.P. No.21640/2022

HANIYAMBADI ROAD
MANDYA-571401.

...RESPONDENTS

(R1 & R2 ARE SERVED & UNREPRESENTED)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE IMPUGNED ORDER ON I.A.NO.IX DTD 28.03.2022 AND VII, VIII DTD 10.08.2022, PASSED IN O.S.NO.33/2018, ON THE FILE OF II ADDL. SENIOR CIVIL JUDGE, MANYDA VIDE ANNEXURE-J AND K AND CONSEQUENTLY ALLOW THE WRIT PETITION & 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 seeking the following reliefs:

"i) Issue a Writ of Certiorari or any other appropriate writ or order to set-aside the impugned order on IA.No.IX dated 28.03.2022 and VII, VIII dated 10.08.2022, passed in O.S.No.33/2018, on the file of II Additional Senior Civil Judge, Mandya, vide Annexure 'J and K', and consequently allow the writ petition, in the interest of justice;

ii) Issue any such other appropriate writ or order or direction as deemed fit under the circumstances of the case in the interest of justice."



2. Smt.Deepa Prasad, learned counsel appearing for Sri.Raghavendra S., learned counsel for the petitioner submits that the petitioner filed a suit for partition and separate possession and other consequential reliefs. In the said suit, defendant No.1, who is the father of the petitioner/plaintiff, died during the pendency of the proceedings, and defendant Nos.2 and 3 are contesting the suit. It is submitted that defendant Nos.2 and 3 filed a written statement contending that defendant No.1 had executed a Will dated 07.11.2016 and after noticing the same, the plaintiff tried to secure a copy of the Will. It is further submitted that, as defendant No.3 did not produce the Will during his evidence, the plaintiff, after obtaining a certified copy of the Will, filed three applications seeking to reopen the case, to lead further evidence of PW1 and to recall DW1 for the purpose of further cross-examination with regard to the Will. However, the trial Court dismissed all the applications on the ground that sufficient opportunity had already been provided to the plaintiff to



NC: 2026:KHC:45555
W.P. No.21640/2022

cross-examine DW1, which the plaintiff has failed to avail, and that no sufficient cause had been shown. It is also submitted that the certified copy of the Will was obtained later and due to pandemic, the suit could not proceed further; hence, one opportunity may be granted to the plaintiff to adduce further evidence. Accordingly, she seeks to allow the petition.

3. Despite the service of notice, there is no representation for the respondents.

4. I have heard the arguments of the learned counsel for the petitioner and meticulously perused the material available on record. I have given my anxious consideration to the submissions advanced before this Court.

5. The plaintiff has filed a suit in OS.No.33/2018 seeking the relief of partition and separate possession and other consequential reliefs. Admittedly, defendant No.1 in



NC: 2026:KHC:45555
W.P. No.21640/2022

CNR: KAHC010498972022

the suit has passed away and defendant No.2 is the mother and defendant No.3 is the younger brother of the plaintiff. The plaintiff has adduced evidence and has been cross-examined. Thereafter, defendant No.3 was examined as DW1 and was partly cross-examined. Subsequently, the plaintiff filed applications in IA.Nos.7 to 9 seeking to reopen the stage of plaintiff's evidence in order to place the Will dated 07.11.2016, alleged to have been executed by defendant No.1 in favour of the plaintiff and defendant No.3 and also sought to cross-examine DW1.

6. It is to be noticed that the trial Court, while rejecting the application seeking recall of DW1 for further cross-examination has referred to several dates to indicate that sufficient opportunity was provided to the plaintiff to cross-examine DW1. It is further to be noticed that defendant Nos.2 and 3, in the written statement, have clearly stated about the Will. However, defendant No.3 has



CNR: KAHC010498972022

not produced a copy of the Will during his evidence. It is also to be noticed that the suit is one for partition, and execution of the Will has come to the light during the pendency of the suit. Hence, I am of the view that one opportunity needs to be provided to the plaintiff to place the certified copy of the Will before the Court and the plaintiff should also be afforded an opportunity to further cross-examine DW1 on the aspect of the Will. However, the same should be on terms. Accordingly, I proceed to pass the following:

ORDER

- i. The writ petition is ***allowed***.
- ii. The impugned orders dated 28.03.2022 and 10.08.2022 passed on IA.Nos.7 to 9 in OS.No.33/2018 by the II Additional Senior Civil Judge and JMFC, Mandya are hereby set aside. Consequently, applications filed by the plaintiff in IA.Nos.7 to 9 are allowed.



**NC: 2026:KHC:45555
W.P. No.21640/2022**

CNR: KAHC010498972022

- iii. The plaintiff is permitted to lead further evidence.
- iv. It is needless to observe that the defendant has every right to cross-examine PW1 on the further evidence led by the plaintiff.
- v. The plaintiff is permitted to cross-examine DW1, subject to the plaintiff paying cost of Rs.2,500/- to defendant No.3.

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

ABK
List No.: 1 Sl No.: 25