



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JULY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 23150 OF 2025 (GM-CPC)

BETWEEN:

SMT P.SUMA
W/O. CHANDRAPPA
AGED ABOUT 49 YEARS,
RESIDING AT NO.980,
NETRAVATHI NADI ROAD
PIPE LINE, SRINAGAR
BENGALURU-560 050

...PETITIONER

(BY SRI. VAIJAYANTHIMALA B., ADVOCATE)

AND:

SMT LAKSHMI
D/O. NANJAMMA
AGED ABOUT 57 YEARS,
RESIDING AT NO.93,
3RD CROSS, RAMAKRISHNA MUTTA LAYOUT
KEMPEGOWDA NAGARA
BENGALURU-560 019

...RESPONDENT

(BY SRI. V B SHIVAKUMAR, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE RECORDS IN O.S.NO. 1661/2024 ON THE FILE OF IV ADDITIONAL CIVIL JUDGE, BENGALURU RURAL DISTRICT, BENGALURU.

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

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI



ORAL ORDER

The petitioner is aggrieved by the order dated 15.04.2025 passed on an application under Order XXIII Rule 1 of CPC in O.S.No.1661/2014 on the file of II Addl. Civil Judge Bengaluru Rural District, Bengaluru, the petitioner/plaintiff is before this Court.

2. The petitioner filed a suit for an injunction in 2014. Now, the application under Order XXIII Rule 1 of the CPC was filed seeking to withdraw the suit, with liberty to file a comprehensive suit, which was dismissed by the order impugned. The trial Court, while dismissing the application, has observed that on perusal of Order XXIII Rule 1 CPC, it is clear that the satisfaction of the Court is a must for withdrawal of the suit for filing the same on the same cause of action, and the trial Court has to apply its mind while allowing the application. The plaintiffs are very much aware about the written statement contentions of the defendants. When the matter is set forth for arguments, the plaintiff has come up with the present application. At this juncture, the plaintiff cannot take recourse to the provision of Order XXIII Rule 1 CPC on the ground of same cause of action. The object of the rule is not to enable the



plaintiff, if they have failed to conduct the suit with proper care and diligence, to obtain an opportunity of commencing the suit in order to avoid previous bad conduct of the case so as to prejudice the opposite party. The grant of liberty to file a fresh suit on the same cause of action is at the discretion of the trial Court, but such discretion is to be exercised by the Court with caution and circumspection. Merely stating that, the grant of liberty would not prejudice the defendant is not compliance with statutory mandate. The court has observed that the suit was instituted way back in the year 2014 and after 11 years, the plaintiffs now, at this juncture, when the matter is set down for arguments intends to withdraw the suit. The court is not satisfied with regard to the existence of proper grounds, and the court felt that it is not a case where the court can give permission to withdraw the suit and to file a fresh suit on the same cause of action and accordingly, dismissed the case and for arguments, the matter was directed to be called on 25.04.2025.

3. Learned counsel appearing on behalf of the petitioner submits that, initially the suit was filed for injunction and during the pendency of the suit the defendants have



forcibly entered into possession of the property. For recovery of possession, declaration and other reliefs, they have to file a comprehensive suit for injunction. As such, they sought the liberty of the Court to withdraw the suit and file a fresh suit on the same cause of action. The Court has failed to consider the same and without assigning proper reasons, has dismissed the application. Hence, the order impugned needs to be set aside, or else lot of prejudice would be caused to the petitioner/plaintiff.

4. Having heard the learned counsel appearing on behalf of the petitioner, perused the material on record. This is a suit for injunction, of the year 2014. Admittedly, when the matter was set down for arguments, an application under Order XXIII Rule 1 of the CPC was filed seeking to withdraw the suit with liberty to file a fresh suit on the same cause of action. This Court has perused the affidavit that is filed. In the affidavit, it is stated that the defendant has taken advantage of the non-extension of the interim order, taken possession of the suit schedule property illegally, and denied ownership over the suit schedule property; as such, they filed the suit for declaration, possession, and for seeking delivery of the property, and they



need to file a comprehensive suit. Hence, they sought to withdraw the petition. When the defendant filed the written statement and denied the plaintiff's title, they had an opportunity to convert the suit into a comprehensive suit for declaration and injunction, and the second relief sought is that the defendant has taken possession of the property. Nothing has been stated regarding when the possession was taken by the defendant. On the face of it, the petitioner has come before the Court only to overcome the limitation in instituting a fresh suit. The trial Court has rightly considered the objections and the provisions of law and dismissed the application. This Court finds no reason to interfere. In that view of the matter, this Court is passing the following:

ORDER

- i. Accordingly, the writ petition is ***dismissed.***
- ii. All pending I.As., in the writ petition shall stand closed.

**SD/-
(LALITHA KANNEGANTI)
JUDGE**