



CNR: KAHC010546062022

NC: 2026:KHC:45357
WP No. 23666 of 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. 23666 OF 2022 (GM-CPC)

BETWEEN:

1. SMT. GOWRAMMA
W/O LATE ADIVAPPA
AGED ABOUT 68 YEARS
2. SMT. RAJAMMA
D/O LATE ADIVAPPA
AGED ABOUT 42 YEARS
3. SRI MUTHURAJU
S/O LATE ADIVAPPA
AGED ABOUT 39 YEARS

ALL ARE RESIDING AT ARUDI VILLAGE
SASALU HOBLI
DODDABALLAPUR TALUK
BANGALORE RURAL DISTRICT

...PETITIONERS

(BY SRI. SRIDHAR G., ADVOCATE)

AND:

1. SMT. NARASAMMA
W/O VEERAPPA
AGED ABOUT 49 YEARS
R/AT GARIKENAHALLI VILLAGE
SASALU HOBLI, DODABALLAPUR TALUK
BANGALORE RURAL DISTRICT

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



NC: 2026:KHC:45357
WP No. 23666 of 2022

CNR: KAHC010546062022

2. SMT. CHIKKKAMMA
D/O LATE ADIVAPPA @ ADIVANNA
W/O THIMMAIAH
AGED ABOUT 69 YEARS
R/A HONNAPANAHALLI VILLAGE
MANCHENAHALLI HOBLI
GOWRIBIDANUR TALUK
CHIKKABALLAPUR DISTRICT.

3. SMT. LAKSHMAMMA
D/O LATE ADIVAPPA @ ADIVANNA
W/O NAGANNA
AGED ABOUT 49 YEARS
R/A ARUDI VILLAGE
SASALU HOBLI
DODDABALLAPUR TALUK
BANGALORE RURAL DISTRICT.

...RESPONDENTS

(BY SRI. VENKATESH K.N., ADVOCATE FOR R1;
R2, R3 - SERVED)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH OR SET ASIDE ORDER DATED 31.10.2022 PASSED BY THE PRL. CIVIL JUDGE AND JMFC, GOWRIBIDANUR IN O.S.153/2019 ANNEXURE-A, ALLOW THE IMPEADING APPLICATION FILLED BY THE PETITIONERS UNDER ORDER I RULE X(2) ANNEXURE-H AND ETC.

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



CNR: KAHC010546062022

NC: 2026:KHC:45357
WP No. 23666 of 2022

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

ORAL ORDER

This writ petition is filed challenging the order dated 31.10.2022 passed in OS No.153/2019 by the Principal Civil Judge and JMFC, Gowribidanur (hereinafter referred to as 'the Trial Court').

2. Heard Sri. Sridhar G., learned counsel appearing for the petitioners and Sri. Venkatesh K.N., learned counsel appearing for respondent No.1.

3. Respondent No.1 filed a suit in OS No.153/2019 against respondent Nos.2 and 3, seeking a judgment and decree for specific performance of the registered Agreement of Sale dated 22.11.2018 and also the relief of permanent injunction.

4. In the said suit, the petitioners filed an application under Order I Rule 10(2) read with Section 151 of the Code of Civil Procedure, 1908, seeking to implead themselves as defendants. The said application was



CNR: KAHC010546062022

opposed by the plaintiff. By the impugned order, the Trial Court rejected the application mainly on the ground that the impleading applicants are claiming an independent right over the property, contending that it is joint family property, and that they have filed a suit in O.S. No.94/2019 seeking a relief of declaration to that effect. Therefore, they are neither necessary nor proper parties to such proceedings.

5. Learned counsel for the petitioners has contended that the petitioners have filed a suit in O.S. No.94/2019 against respondent Nos.2 and 3, seeking a relief of declaration that the suit schedule property is the joint family property of the plaintiff and defendant Nos.1 and 2 and consequently, that the registered Agreement dated 22.11.2018 executed by defendant Nos.1 and 2 in favour of defendant No.3 is null and void and liable to be cancelled.

6. It is submitted that the petitioners are specifically contending in the suit filed by them that the



CNR: KAHC010546062022

NC: 2026:KHC:45357
WP No. 23666 of 2022

property was inherited from one Adivappa by the petitioners and respondent Nos.2 and 3 and that, without the knowledge of the petitioners, respondent Nos.2 and 3 executed an Agreement of Sale in favour of respondent No.1 in respect of 1 acre 7 guntas out of 2 acres 24 guntas. If the petitioners are not arrayed as parties in the suit filed for specific performance, their rights would be in jeopardy.

7. In support of his contention, he placed reliance on the decisions of the Hon'ble Supreme Court in the cases of ***Vidur Impex and Traders Pvt. Ltd. and Others Vs. Tosh Apartments Pvt. Ltd. And Others***¹ and ***Sumitbai and Others Vs. Paras Finance Co. and Others***² and seeks to allow the petition.

8. It is to be noticed that the petitioners herein have filed a suit in O.S. No.94/2019, seeking for a relief of declaration that the suit properties are joint family properties and that the plaintiff and defendant Nos.1 and 2

¹ (2012) 8 SCC 384

² (2007) 10 SCC 82



CNR: KAHC010546062022

in the said suit are joint family members and consequently, seeking cancellation of the registered Agreement dated 22.11.2018 executed by defendant Nos.1 and 2 in favour of defendant No.3, i.e., respondent No.1 herein is null and void.

9. It is also to be noticed that, after the filing of the suit by the petitioner, respondent No.1 herein filed O.S. No.153/2019 seeking the relief of specific performance of the Agreement of Sale dated 22.11.2018 and the relief of permanent injunction. In the said suit, an application for impleadment was filed by the petitioners herein, which came to be rejected by the Trial Court vide the impugned order dated 31.10.2022.

10. It is to be further noticed that the petitioners are contending that the entire suit schedule property is joint family property and that Respondent Nos.2 and 3 have no independent right to execute the Agreement of Sale in favour of Respondent No.1.



11. It is to be further noticed that whether the total extent of the property in Survey No.52 of Agrah Hosahalli Village, Tondebavi Hobli, is joint family property or not is required to be gone into in the suit filed by the petitioner in O.S. No.94/2019, and in the said suit, a relief is also sought that the registered Agreement dated 22.11.2008 is null and void and is liable to be cancelled.

12. Considering the said aspect, the Trial Court has rightly come to the conclusion that the petitioners are neither necessary nor proper parties to the suit.

13. It would be useful to refer to the decision of the Hon'ble Supreme Court in the case of ***Vidur Impex***, referred to supra. The Hon'ble Supreme Court, at paragraphs 32, 33, 40 and 41 to 41.5, considered the earlier decision of the Supreme Court in the case of ***Kasturi v. Iyyamperumal*** and held as follows:

"32. In *Kasturi v. Iyyamperumal* [*Kasturi v. Iyyamperumal*, (2005) 6 SCC 733] this Court considered the question whether a person who sets up independent title and claims possession of the



CNR: KAHC010546062022

suit property is entitled to be impleaded as party to a suit for specific performance of contract entered into between the plaintiff and the defendant. In that case, the trial court allowed the application for impleadment on the ground that Respondents 1 and 4 to 11 were claiming title and possession of the contracted property and, therefore, they will be deemed to have direct interest in the subject-matter of the suit. The High Court dismissed the revision filed by the appellant and confirmed the order of the trial court.

33. *While allowing the appeal and setting aside the orders of the trial court and the High Court, this Court referred to Order 1 Rule 10(2) CPC and observed: (Kasturi case [Kasturi v. Iyyamperumal, (2005) 6 SCC 733] , SCC pp. 738-40, paras 7 & 11-12)*

"7. In our view, a bare reading of this provision, namely, second part of Order 1 Rule 10 sub-rule (2) CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are — (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2)



CNR: KAHC010546062022

NC: 2026:KHC:45357
WP No. 23666 of 2022

no effective decree can be passed in the absence of such party.

(emphasis supplied)

41. *Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:*

41.1. *The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.*

41.2. *A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.*

41.3. *A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.*

41.4. *If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.*

41.5. *In a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being*



CNR: KAHC010546062022

NC: 2026:KHC:45357
WP No. 23666 of 2022

joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. *However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment."*

14. The Hon'ble Supreme Court in the case of ***Sumitibai***, referred to supra, at paragraph No.09, held as under:

"Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in Kasturi vs. Iyyamperumal and others - (2005) 6 SCC 733. He has submitted that in this case it has been held that in a suit for specific performance of a contract for sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. In our opinion, the aforesaid decision is clearly distinguishable. In our opinion, the aforesaid decision can only be understood to mean that a third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute. Obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit. That would unnecessarily



CNR: KAHC010546062022

protract or obstruct the proceedings in the suit. However, the aforesaid decision will have no application where a third party shows some semblance of title or interest in the property in dispute. In the present case, the registered sale deed dated 12.8.1960 by which the property was purchased shows that the shop in dispute was sold in favour of not only Kapoor Chand, but also his sons. Thus prima facie it appears that the purchaser of the property in dispute was not only Kapoor Chand but also his sons. Hence, it cannot be said that the sons of Kapoor Chand have no semblance of title and are mere busybodies or interlopers."

15. Considering the aforesaid decisions of the Hon'ble Supreme Court, I am of the considered view that there is no dispute that the petitioners herein are claiming to be co-owners of the property and are not a party to the Agreement of Sale. Applying the test laid down by the Hon'ble Supreme Court in the case of **Kasturi**, referred *supra* upon perusal of the relief sought in the suit for specific performance, it is evident that no relief is sought against the petitioners herein, and in the absence of the petitioners herein, an effective decree can be passed, as



respondent Nos.1, 2 and 3 are the parties to the Agreement of Sale.

16. Keeping in mind the aforesaid principles of law laid down by the Hon'ble Supreme Court, and keeping open all the contentions to be urged with regard to the rights of the petitioners, I am of the view that the impugned order does not call for any interference.

17. However, it is required to be noticed that the petitioners herein have filed a suit for declaration seeking a declaration that the entire property is joint family property and that the Agreement of Sale is null and void, and have sought for its cancellation. Hence, it would be appropriate to club O.S. No.153/2019 filed by respondent No.1 along with O.S. No.94/2019 filed by the petitioners and have them tried together by directing the Trial Court to record evidence in both the cases jointly, after framing appropriate issues.

18. Hence, I proceed to pass the following:



CNR: KAHC010546062022

NC: 2026:KHC:45357
WP No. 23666 of 2022

ORDER

- i. The writ petition is ***disposed of***.
- ii. The impugned order dated 31.10.2022 passed in O.S. No.153/2019 is upheld.
- iii. The suit in O.S. No.153/2019 pending on the file of the Principal Civil Judge and JMFC, Gowribidanur, shall be withdrawn from the file of the said Court and transferred to the Principal Civil Judge and JMFC, Gowribidanur, to be tried along with O.S. No.94/2019 pending on the file of the said Court, as observations supra.
- iv. The contentions raised by the petitioners are kept open.

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

TMP
List No.: 1 Sl No.: 26