



CNR: KAHC010550062022

NC: 2026:KHC:43250
W.P. No.23957/2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 12TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.23957/2022 (GM-CPC)

BETWEEN:

SRI. T. MANJUNATH
AGED 54 YEARS
SON OF LATE B.M. THIPPESWAMY
NO.50, NHCS LAYOUT
NEAR KAMALANAGAR WATER TANK
BASAVESHWARANAGAR
BENGALURU 560079.

...PETITIONER

(BY SRI. SRIKANTH, ADV., FOR
SRI. MAHESH A.S. ADV.,)

AND:

1. SRI. PURUSHOTHAMA .P
SON OF PAPAIAH
AGED 45 YEARS
R/AT NO.1424, GATTIGERE
BEML 3RD STAGE, RAJARAJESHWARINAGAR
BENGALURU 560098.
2. THE SECRETARY
THE KARMIKARA RAITARA VASATHI
NIRMANA SAHAKARA SANGHA (KRVNSS)
NO.92, 1ST FLOOR
BULL TEMPLE ROAD
CHAMARAJPET, BENGALURU 560018.
3. SMT. SUBBALAKSHMI
WIFE OF LATE B.M. THIPPESWAMY

Digitally signed
by RUPA V
Location:
HIGH COURT
OF
KARNATAKA



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AGED ABOUT 64 YEARS
NO.50, NHCS LAYOUT
NEAR KAMALANAGAR
WATER TANK
BASAVESHWARANAGAR
BENGALURU 560079.

4. THE COMMISSIONER
BRUHAT BENGALURU MAHANAGARA PALIKE
N R SQUARE, BANGALORE 560002.

...RESPONDENTS

(BY SRI. K.S. MALLIKARJUNA REDDY, ADV., FOR R4
R1 SERVED
R2 TO R4 SERVICE OF NOTICE IS D/W V/C/O DTD:02.12.2022)

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THIS W.P. IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER
DATED 12.09.2022 (ANNEXURE-E) PASSED BY THE TRIAL
COURT ON THE IA NO.6 FILED UNDER SECTION 151 OF THE
CODE OF CIVIL PROCEDURE 1908 INOS.NO.6601/2016
PENDING ON THE FILE LXIX ADDITIONAL CITY CIVIL AND
SESSIONS JUDGE, BENGALURU (CCH-70) & 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



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ORAL ORDER

This writ petition is filed challenging the order dated 12.09.2022 passed on I.A.No.6 in O.S.No.6601/2016 by the LXIX Additional City Civil and Sessions Judge, Bengaluru (CCH-70) (for short, 'the Trial Court').

2. Heard Sri.Srikanth, learned counsel appearing on behalf of Sri.Mahesh A.S., learned counsel for the petitioner and Sri.K.S.Mallikarjuna Reddy, learned counsel appearing for the respondent No.4.

3. The respondent No.1-plaintiff filed a suit in O.S.No.6601/2016 seeking for the following reliefs:

"a) For a declaration that the alleged sale deed dated: 23/8/2012 executed by the secretary of the 1st defendant through his power of attorney holder, vide document No: BSK-1-04907/2012-13, registered in the office of the Sub-Registrar, Banashankari, Bangalore, in favour the 3rd defendant (schedule-B property) is illegal, void ab-initio and not binding on the plaintiff and



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b)Consequently for a declaration that the alleged gift deed dated: 4/1/2016 executed by the 3rd defendant in favour of the 2nd defendant, vide document No: BSK-1-11602/2015-16, registered in the office of the Sub-Registrar, Banashankari, Basavanagudi, in respect of suit schedule-B property is illegal and not binding on the plaintiff and

c)Consequently for a declaration that the plaintiff is the absolute owner of the suit schedule-A property which is none other than the suit schedule-B property by virtue of the gift sale deed dated: 25/1/2016 executed by Smt. Nithu in his favour vide, document No: BSK-1-12365-2015-16, in the office of the Sub-Registrar, Banashankari, Basavanagudi and

d)Consequently for a direction to the 2nd defendant to demolish the illegal construction being put up on suit schedule-B property in turn direct him to vacate, to deliver vacant possession of suit schedule-A property to the plaintiff

e)For a permanent injunction restraining the 2nd defendant, his agents, servants, any other persons acting under him from encumbering the suit schedule-B property in any manner (including



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the act of alienation which is none other than the suit schedule-A property.

f) For a permanent injunction restraining the 2nd defendant, his agents, servants, any other persons acting under him from proceeding with further construction on the suit schedule-B property which is none other than suit schedule-A property.

g) For a permanent injunction restraining the 2nd defendant, his agents, servants, any other persons acting under him from parting with possession of the suit schedule-B property which is none other than suit schedule-A property.

h) For a direction to the 4th defendant to cancel the khatha standing in the name of 2nd defendant in relation to the suit schedule-B property.

h-1) Hold an enquiry with regard to mesne profits from the date of the suit till such time the 2nd defendant actually delivers the physical possession of the schedule-B property which is none other than schedule-A property, to this plaintiff.



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i) Such other orders as this Hon'ble court deem fit to grant in the circumstances of the above case, in the interest of justice and equity".

4. In the said suit, the petitioner-defendant No.2 filed a detailed written statement denying the plaint averments and specifically contending that he had purchased site No.848 in the year 2012 and the site claimed by the plaintiff stated to have been purchased in the year 2014, is site No.1 and both the sites are different and distinct. In the said suit, the plaintiff filed an application under Section 151 of the Code of Civil Procedure, 1908 (for short, 'the CPC'), seeking a direction to the defendant No.2 to deposit the entire advance amount as well as the rents received so far from the tenements of the suit schedule 'B' property which is nothing but suit schedule 'A' property before the Trial Court. The said application was accompanied by an affidavit of the plaintiff. The said application was opposed by the defendant No.2. The Trial Court, under the



impugned order, considered the submissions made on both sides and recorded the finding that the document No.21 made in the name of one Subbalakshmi on 23.08.2012 is false, since the document No.20 discloses that Sri.B.G.Vishweshwaraiah died on 22.12.2011 itself, therefore, it is a sham document and proceeded to allow the application by directing to deposit Rs.48,000/- rent received by the defendant No.2 as mentioned by the plaintiff. It is to be noticed that the one of the reliefs sought in the plaint is for declaration of ownership by the plaintiff and more particularly, the relief at prayer h-1 is to hold an enquiry with regard to the mesne profits from the date of suit till such time the defendant No.2 actually delivers the physical possession of the suit schedule 'B' property which is none other than suit schedule 'A' property. When the main relief is for mesne profits, interjecting with the said relief in the form of allowing the application is impermissible, that too without conducting any enquiry. On perusal of the reliefs sought in the plaint,



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the plaintiff is yet to establish his right over the suit schedule property and if the Court comes to conclusion that the suit schedule 'A' property and the suit schedule 'B' property are one and the same, then he may be entitled for mesne profits as sought in prayer h-1 in the plaint. The Trial Court, in my considered view, has committed a grave error in recording a finding with regard to the correctness of certain document produced by the plaintiff while considering an application to deposit the amount, which is impermissible and such a finding can be recorded only after due inquiry on appreciation of the evidence adduced by the parties.

5. In view of the preceding analysis, I am of the considered view that the impugned order is perverse, contrary to the settled principles of law and calls for interference.



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6. Accordingly, I proceed to pass the following:

ORDER

- (i) The writ petition is ***allowed***.
- (ii) The impugned order dated 12.09.2022 passed on I.A.No.6 in O.S.No.6601/2016 by the LXIX Additional City Civil and Sessions Judge, Bengaluru, is set aside. Consequently, I.A.No.6 filed by the plaintiff under Section 151 of the CPC, is rejected.

No order as to costs.

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

RV
List No.: 1 Sl No.: 34