



CNR: KAHC010556502022

NC: 2026:KHC:46095
W.P. No.24013/2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 25TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.24013/2022 (GM-CPC)

BETWEEN:

SMT. SARASWATHAMMA
WIFE OF LATE K.V. GOPAL
AGED ABOUT 62 YEARS
R/AT VENKATAPPA BUILDING
NEAR TRAFFIC POLICE STATION
K R PURAM, BANGALORE 560036.

...PETITIONER

(BY SRI. C.M. NAGABHUSHAN, ADV., FOR
SRI. M.S. VARADARAJAN, ADV.,)

AND:

SMT. LAKSHMIDEVAMMA
WIFE OF K.V. MUNIYAPPA
AGED ABOUT 70 YEARS
R/AT NO 101/1, BEHIND SAI MANDIR
KADUGODI, BANGALORE 560067.

...RESPONDENT

(BY SRI. V. VISHWANATH SHETTY, ADV., FOR C/RESPT.)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR RECORDS IN EXECUTION CASE NO.49/2014 ON THE FILE OF THE IV ADDITIONAL SENIOR CIVIL JUDGE, BANGALORE RURAL DISTRICT. QUASH/SET ASIDE THE ORDER DTD 22.11.2022 PASSED IN THE SAID CASE I.E., EX.NO.49/2014 ON THE FILE OF IV ADDITIONAL SENIOR CIVIL JUDGE, BANGALORE RURAL DISTRICT ANNEXURE-A & ETC.

Digitally signed
by RUPA
Location: HIGH
COURT OF
KARNATAKA



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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 writ petition is filed challenging the order dated 22.11.2022 passed in Execution Case No.49/2014 by the IV Additional Senior Civil Judge, Bengaluru Rural District, Bengaluru (for short, '***the Executing Court***').

2. Heard Sri.C.M.Nagabhushan, learned counsel for Sri.M.S.Varadarajan, learned counsel for the petitioner, Sri.V.Vishwanath Shetty, learned counsel for the respondent and perused the material available on record.

3. The respondent filed a suit in O.S.No.952/2002 seeking relief of declaration that the respondent-plaintiff is the absolute owner in possession and enjoyment of the suit schedule property and consequential relief of permanent injunction. The said suit came to be decreed with cost. The petitioner-defendant preferred the regular



first appeal, which came to be dismissed; thereafter, regular second appeal also came to be dismissed. In other words, the judgment and decree passed in O.S.No.952/2002 has attained finality.

4. The respondent-decree holder initiated the execution proceedings in execution case in Ex.No.49/2014. The Executing Court, by considering various orders passed by it during the pendency of the execution proceedings, after inquiry allowed the execution petition with cost of Rs.10,00,000/-, further directed the petitioner-judgment debtor to demolish the compound wall put up in a portion of decretal property measuring 110 sq.mtrs., and directed the jurisdictional police to render assistance to the decree holder whenever she approaches seeking protection. The Executing Court further ordered the petitioner-judgment debtor No.1 to undergo civil imprisonment for a period of six (06) months.



5. The primary contention of the learned counsel for the petitioner-judgment debtor is that, though the judgment and decree passed in O.S.No.952/2002 by the trial Court has attained finality after the dismissal in regular second appeal, the contention of the petitioner-judgment debtor is that the suit schedule property is unidentifiable and not locatable. Considering such objection, the Executing Court appointed the Commissioner and the Commissioner's report is placed at Annexure-E to the writ petition. The sketch enclosed to the report indicates that the suit schedule property, as per the sale deed of the respondent-decree holder, did not tally in the physical inspection.

6. It is to be noticed that the petitioner-judgment debtor had requested the Executing Court to appoint Assistant Director of Land Records ('**ADLR**') as Court Commissioner to measure the property; however, the Executing Court, at the instance of the respondent-decree holder, appointed the competent officer of the National



Highways Authority of India as a Court Commissioner to measure the property, who submitted the report. It is required to be noticed that the dispute between the parties appears to be with regard to identification of the suit schedule property.

7. The petitioner is contending that the site No.2 formed in Sy.No.41 is not existing and to substantiate the said contention the petitioner has relied on the judgment and decree in O.S.No.491/2011 by contending that the said suit came to be filed by the respondent herein against the Assistant Commissioner, B.V.Papanna and the petitioner herein and in the said judgment, a categorical finding is recorded by the trial Court that the plaintiff in the said suit has failed to substantiate her contentions in the suit in respect of the site situated in Sy.No.41/2. The learned counsel for the respondent herein submits that the judgment in O.S.No.491/2011 is challenged before the Appellate Court in R.A.No.100/2023.



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8. Be that as it may, the parties to the proceedings are seriously disputing the identification of the property and considering the report of the NHAI at Annexure-E and the finding in O.S.No.491/2011, I am of the view that ends of justice would be met if the Executing Court is directed to appoint jurisdictional ADLR as Court Commissioner to inspect the suit schedule property/execution schedule property in the presence of the decree holder as well as the judgment debtor, and measure the suit schedule property by specifically pointing out the existence or non-existence of the suit schedule property in the sketch. The learned counsel appearing on both sides agreed for appointment of Court Commissioner.

9. In view of the aforesaid reasons, the impugned order dated 22.11.2022 passed in Execution Case No.49/2014 by the IV Additional Senior Civil Judge, Bengaluru Rural District, Bengaluru, is set aside.



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10. The Executing Court is directed to appoint the jurisdictional ADLR as Court Commissioner with a direction to complete the exercise of local inspection as observed supra, in a time bound manner and submit the report.

11. It is needless to observe that the parties to the execution proceedings are entitled to file their memo of instructions and also place the title documents and earlier report Ex.P19 on record.

12. With the aforesaid observations, the writ petition is ***disposed of***.

It is made clear that this Court has not expressed any opinion on the merits of the case.

No orders as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE