



CNR: KAHC010574682023

NC: 2026:KHC:47044
W.P. No.24581/2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 31ST DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.24581/2023 (GM-CPC)

BETWEEN:

SRI. JITHENDRA P. KHATARIA
S/O PRAKASH KUMAR KHATARIA
AGED ABOUT 43 YEARS
M/S CHANDRABHAN JEWELERS
MAIN ROAD, BELUR TOWN
HASSAN DISTRICT-573115.

...PETITIONER

(BY SRI. P.D. SURANA, ADV.,)

AND:

1. SRI. JAVERILAL
S/O MANGILAL
MAJOR.
2. SRI. VIJAYAKUMAR
S/O MANGILAL
MAJOR.

BOTH ARE DOING BUSINESS
AT PROP. M/S MAHALAKSHMI JEWELERS
AND CLOTH MERCHANTS
MAIN ROAD, BELUR TOWN
HASSAN DISTRICT-573115.

3. SRI. HULIRAJ @ SHASHI KUMAR
MAJOR
PROP. M/S CHAMUNDI JEWELER WORKS
MAIN ROAD, BELUR TOWN

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA



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HASSAN DISTRICT-573115.

...RESPONDENTS

(BY SRI. RAJA L, ADV., FOR R1 & R2
V/O/DTD:31.08.2026 – R3 H/S)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ANNEXURE-R, ORDER DTD 09.10.2023 MADE IN O.S.NO.36/2003 IS RENUMBERED AS O.S.NO.373/2022 ON THE FILE OF THE CIVIL JUDGE AND JMFC AT BELURU, DIRECTING THE PRODUCTION OF ORIGINAL DOCUMENTS AND ISSUE FURTHER DIRECTION IN THE INTEREST OF JUSTICE.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

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

ORAL ORDER

This petition is filed challenging the order dated 09.10.2023 in OS.No.373/2022 by the Civil Judge and JMFC, Beluru (for short 'the trial Court').

2. Sri.P.D.Surana, learned counsel appearing for the petitioner submits that the petitioner filed a suit for eviction, which came to be dismissed. The petitioner thereafter preferred a Regular Appeal, which was also dismissed. Aggrieved thereby, the petitioner preferred a



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Regular Second Appeal before this Court. This Court allowed the appeal by remanding the matter back to the First Appellate Court with a direction to consider the applications filed for production of additional documentary evidence. It is submitted that, after remand, the applications for additional evidence were allowed and the trial Court was directed to take on record the additional evidence and return the file to the First Appellate Court to consider the appeal on merits. It is further submitted that, the trial Court while recording the evidence permitted the defendants to raise the question regarding the title of the petitioner/plaintiff, which is impermissible, as the respondents/defendants in the suit have admitted the attornment of tenancy in HRC proceedings in HRC.No.97/1985. The said proceedings were initiated by Sri.B.Jwalanaiah against the respondents herein and during the pendency of the said proceedings, Sri.B.Jwalanaiah died and his legal representatives (LRs) were brought on record, and they have sold the property



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in favour of the petitioner. In the said proceedings, respondent No.1 herein was examined as DW1, who clearly admitted the sale in favour of the petitioner and also produced certified copies of the sale deeds. Hence, going on the title of the petitioner would not arise. In support of his contentions, he placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Apollo Zipper India Limited v. W. Newman and Company Limited***¹ and the decision of this Court in the case of ***Sri.Parushuram Nemani Kuduchakar and Others v. Smt.Shantabai Ramachandra Kuduchakar and Others***² and seeks to allow the petition.

3. Per contra, Sri.Raja L., learned counsel appearing for respondent Nos.1 and 2 supports the impugned order of the trial Court and submits that the plaintiff claims to be the owner of the property; however, he failed to produce the title documents before the Courts.

¹ (2018) 6 SCC 744

² ILR 2004 KAR 3355



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It is submitted that the suit came to be dismissed and the appeal was also dismissed, for non-production of the title documents. In the Regular Second Appeal, one opportunity was provided to him to produce the documents. However, even after remand, he failed to produce the documents before the trial Court. Hence, considering the said aspect, the trial Court rightly permitted the respondents/defendants to cross-examine the witness with regard to the title of the petitioner. Considering the said evidence, the trial Court, under the impugned order directed PW3 to produce the original documents. The said order does not call for any interference. Accordingly, he seeks to dismiss the petition.

4. I have heard the arguments on both sides and perused the material available on record.

5. The petitioner filed OS.No.36/2003, later renumbered as OS.No.373/2022, against the respondents herein seeking a judgment and decree of eviction and



mesne profits. The said suit came to be dismissed. Thereafter, the petitioner preferred Regular Appeal in RA.No.114/2008, which also came to be dismissed. Aggrieved thereby, the petitioner preferred Regular Second Appeal in RSA.No.1668/2011. This Court, vide order dated 15.03.2022, allowed the appeal and set aside the impugned judgment and decree passed in RA.No.114/2008 passed by the Senior Civil Judge, Belur. The First Appellate Court was directed to consider whether the plaintiff was entitled to place the additional documentary evidence on record and if yes, to proceed with the appeal in accordance with law and pass appropriate orders.

6. It is to be noticed that, after remand and reopening of the appeal pursuant to the order passed by this Court in the aforesaid Regular Second Appeal, the application filed by the petitioner seeking permission to adduce additional evidence came to be allowed by the First



Appellate Court vide order dated 16.09.2022. The First Appellate Court took the documentary evidence produced along with the application on record and directed the office to transmit the entire trial Court records to the trial Court, with a direction to record the additional evidence of the petitioner/plaintiff as sought in IA.Nos.5 and 6. The trial Court was further directed to give an opportunity to the petitioner/plaintiff to adduce additional evidence and to permit the respondents/defendants to cross-examine the petitioner/plaintiff and his witnesses and also permitted them to produce additional evidence, if any, on their behalf. Pursuant to the said order, the trial Court recorded the evidence of the petitioner/plaintiff/appellant.

7. It is further to be noticed that, during the course of recording the evidence, the petitioner/plaintiff raised an objection with regard to the cross-examination of the plaintiff's witness by the defendants on the ground that the defendants cannot cross-examine the plaintiff's



witness or take a stand with regard to the title of the petitioner/plaintiff, as the suit is one for eviction and, in earlier HRC proceedings, the defendant has admitted tenancy under Si.B.Jwalanaiah, whose LRs had sold the property in favour of the petitioner/plaintiff. The trial Court, under the impugned order directed the petitioner/plaintiff to produce the original documents/exhibits and posted the matter for further cross-examination of PW3.

8. It is also to be noticed that HRC.No.97/1985 was filed by Sri.B.Jwalanaiah, the predecessor in title of the property in question, against the very same respondents. In the said proceedings, defendant No.1 in the present suit adduced evidence, which has been produced as Annexure-J to the writ petition. In the said proceedings, Sri.Javerilal, respondent No.1 herein, admitted that the children of Sri.B.Jwalanaiah had sold the suit schedule property in favour of the petitioner herein.



The said sale deeds were referred to and marked as exhibits, as is evident from the evidence of DW1.

9. The contention of the learned counsel for the petitioner is that in view of the aforesaid evidence in HRC.No.97/1985, the respondents are estopped from raising the issue regarding the title of the petitioner, when the suit is one for eviction and the respondents had admitted the relationship of landlord and tenants in the HRC proceedings. At this stage, it would be appropriate to refer to the decision of the Hon'ble Supreme Court in the case of ***Apollo Zipper India Limited*** referred *supra*, in paragraph Nos.42, 57 and 58 has held as under:

"42. Similarly, the law relating to derivative title to the landlord and when the tenant challenges it during subsistence of his tenancy in relation to the demised property is also fairly well settled. Though by virtue of Section 116 of the Evidence Act, the tenant is estopped from challenging the title of his landlord, yet the tenant is entitled to challenge the derivative title of an assignee of the original landlord of the demised property in an action brought by the assignee against the tenant for his eviction under the rent laws. However, this right of a



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tenant is subject to one caveat that the tenant has not attorned to the assignee. If the tenant pays rent to the assignee or otherwise accepts the assignee's title over the demised property, then it results in creation of the attornment which, in turn, deprives the tenant to challenge the derivative title of the landlord. (See Bismillah Be v. Majeed Shah [Bismillah Be v. Majeed Shah, (2017) 2 SCC 274 : (2017) 1 SCC (Civ) 639] , para 24.)

57. *In other words, reading of the aforementioned paras in the respondent's plaint including relief clause (e) would go to show that the respondent was all along willing to accept and indeed actually accepted the ownership of the appellant over the suit premises and, therefore, sought mandatory injunction against the appellant to accept them as tenant. The conduct of the respondent, therefore, disentitles them to now raise a new plea questioning the title of the appellant over the suit premises and a plea of attornment. Both, in our opinion, are wholly misconceived pleas and, therefore, deserve to be rejected.*

58. *As mentioned above, the title of the landlord over the tenanted premises in a suit for eviction cannot be examined like a title suit. Similarly, the attornment can be proved by several circumstances including taking into consideration the conduct of the tenant qua landlord. [Emphasis supplied]*



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10. This Court in the case of **Sri.Parushuram Nemani Kuduchakar and Others** referred *supra*, in paragraph Nos.29, 31 and 32 has held as under:

"29. On the question of estoppel the learned Counsel for the parties have relied on several judgment. In the case of Lazaur Cheeran v. The Most Rev Dr. B.S. Peres by his Attorney Rev. FR. A.J.D. Silva [1970 Mys. LJ 180.] it has been held as under : -

"Estoppels are of infinite variety and Section 115 Evidence Act is not an exhaustive statement of the law of estoppels. Even a wrong representation on a question of law can estop a person making representation if he had succeeded in persuading the Court to accept his representation."

31. *In VENGINELLA PARENDMAVVA vs SRI RAMASHEKARAIHA SWAMY TEMPLE, KOTIPALLI REPRESENTED BY ITS EXECUTIVE OFFICER [AIR 1970 AP 394.] it held as under:—*

"The principle of estoppel would apply when a party seeks to take up in consistent positions as to jurisdiction of Civil Court, AIR 1959 Andhra, Para 9 Foll.

Thus, where a lessee succeeds on the question of jurisdiction before the Tahsildar under the Andhra Tenancy Act and obtains an adjudication that no petition for fixation of fair rent lies against him on the footing that he is not a person governed by that Act he cannot be allowed to question the jurisdiction of Civil Court to entertain a suit for recovery



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of possession of profits filed by lessor only in view of the findings given by the Tahshildar in the previous proceedings under the Andhra Tenancy Act. Case law discussed."

32. *In UNION OF INDIA AND ANOTHER vs M/S. RAJDHANI GRAINS AND JAGGERY EXCHANGE LIMITED [AIR 1973 Delhi 1.], it is held:—*

Thus a person having successfully resisted a suit filed by R for his ejectment from the land in suit on the ground that R was not a Bhumidar and the suit for ejectment was not maintainable in a revenue Court cannot take up inconsistent stand in subsequent suit relating to the same land brought by the successors in interest or R and contend that R was a Bhumidar and the suit for ejectment should have been field in a Revenue Court. He having already taken advantage of his pleas about the status of R and the maintainability of a suit in a Revenue Court by the dismissal of the earlier suit cannot now turn round and take the stand that R was a Bhumidar and the suit was triable in a revenue Court."

11. Keeping in mind the enunciation of law laid down by the Hon'ble Supreme Court and this Court, I am of the considered view that, if the defendants raise a question with regard to the title of the petitioner/plaintiff



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in the suit, the trial Court has to consider at the time of deciding the suit as to whether such a contention can be raised in view of the evidence available in HRC.No.97/1985. The trial Court permitting the defendants to put certain questions to PW3 in cross-examination, by itself, cannot be termed as accepting the case of the defendants. The Appellate Court is required to consider the evidence recorded in HRC.No.97/1985, with regard to the attornment of tenancy while deciding the appeal on merits.

12. Insofar as the direction issued by the trial Court under the impugned order to produce the original documents/exhibits is concerned, it is open to the petitioner/plaintiff to produce the said documents or not. However, non-production of the documents as directed by the trial Court should not be the sole basis for the Court to come to a conclusion that the petitioner/plaintiff has no title over the property, in view of the evidence recorded in



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HRC.No.97/1985. With the aforesaid observations, the writ petition is ***disposed of***. The trial Court is directed to conclude the proceedings as early as possible without any further delay.

Pending applications, if any, stand disposed of.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

ABK
List No.: 1 Sl No.: 12