HC-KAR

NC: 2026:KHC:17175
WP No. 33854 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

WRIT PETITION NO. 33854 OF 2024 (GM-CPC)

BETWEEN:

1. SMT. THIMMAMMA
   W/O LATE MUNIKALAIAH
   AGED ABOUT 85 YEARS

2. SMT. LALITHAMMA
   W/O H N PRAKASH
   AGED ABOUT 53 YEARS

3. H N PRAKASH
   S/O NARAYANAPPA
   AGED ABOUT 61 YEARS

   PETITIONERS NO.1 TO 3 ARE R/AT NO.20A
   7TH CROSS, MATHRU LAYOUT
   YELAHANKA UPANAGARA
   BENGALURU NORTH-560064

...PETITIONERS

(BY SRI. VIJAYA KUMAR K., ADVOCATE)

Digitally signed by DHANALAKSHMI MURTHY
Location: HIGH COURTOF KARNATAKA

AND:

SRI KRISHNARAJ
S/O LATE MUNIKALAIAH
AGED ABOUT 63 YEARS
BILIDEVALAYA, KASABA HOBLI
KUNIGAL TALUK
TUMKUR DISTRICT-572130

...RESPONDENT

(BY SRI.PHANIRAJ KASHYAP., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS IN O.S.NO. 42/2015 PENDING ON THE FILE OF THE ADDITIONAL SENIOR CIVIL JUDGE, AT KUNIGAL, AND SET ASIDE THE ORDER DATED: 29.11.2024 PASSED ON I.A.NO.VI, FILED BY THE RESPONDENT, UNDER ORDER 18 RULE 3 READ WITH SECTION 151 OF THE CODE OF CIVIL PROCEDURE (ANNEXURE-A) AND CONSEQUENTLY DISMISS THE IA NO. VI (ANNEXURE-F) BY ALLOWING THIS WRIT PETITION AND ETC.

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

CORAM: HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

ORAL ORDER

This writ petition is filed by defendant Nos. 1 to 3 under Article 227 of the Constitution of India, challenging the order dated 29.11.2024 passed on I.A. No. VI, filed under Order 18 Rule 3 r/w. Section 151 of the Code of Civil Procedure in O.S.No.42/2015, whereby the application filed by the respondent/plaintiff has been allowed.

2. The respondent/plaintiff filed a suit in O.S.No. 42/2015 for partition and declaration. Based on the pleadings of the parties, the trial court has framed the following issues:

"1) Whether the plaintiff proves that suit schedule properties are joint family properties of him and defendant Nos.1 and 2?

2) Whether the plaintiff further proves that himself and defendant Nos.1 and 2 are in joint and constructive possession over the suit schedule properties?

3) Whether the plaintiff further proves that to defeat his legitimate share in the suit schedule properties, the defendant Nos.1 and 2 has created gift deed as alleged in paragraph No.12 of the plaint?

4) Whether the defendants prove that the suit schedule properties are exclusive properties of defendant No.1?

5) Whether the plaintiff proves the cause of action to file the suit?

6) Whether the plaintiff is entitled for the relief as sought for?

7) What order or decree? "

3. The respondent/plaintiff filed an application stating that, insofar as issue No.4 is concerned, the burden lies on the petitioners/defendants; therefore, the petitioners/ defendants must adduce evidence first and thereafter, the the respondent/plaintiff must be given an opportunity to

lead rebuttal evidence. Accordingly, the trial court has passed the following order:

> *"IA No.VI filed by the plaintiff under Order 18 Rule 3 r/w. Section 151 of CPC is hereby allowed.*
>
> *The defendants are directed to lead evidence first and plaintiff is given an opportunity to lead rebuttal evidence on issue No.4.".*

4. Learned counsel for the petitioners/defendants submits that, even though the burden in respect of issue Nos. 1 to 3 lies on the respondent/plaintiff, the trial court has directed that Issue No.4 be decided first.

5. A plain reading of the impugned order makes it clear that the respondent/plaintiff must first adduce evidence in respect of issue Nos. 1, 2, 3, 5, and 6. Thereafter, issue No. 4 shall be considered. While considering issue No. 4, the petitioners/defendants shall adduce evidence first, and an opportunity shall be given to the respondent/plaintiff to lead rebuttal evidence on the said issue No.4.

6. With the above clarification, the writ petition stands disposed of.

The trial court is directed to dispose of the suit as expeditiously as possible, and in any event, within one year from the date of receipt of a certified copy of this order, provided there is no stay of the said proceedings granted by any other court of law.

In view of the disposal of the main matter, all pending applications stand disposed of.

Sd/-
(H.T. NARENDRA PRASAD)
JUDGE

CM
LIST NO.: 1 SL NO.: 98