HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

WRIT PETITION NO. 12382 OF 2022 (GM-CPC)

BETWEEN:

SMT. LOKESHWARI
D/O K.P. SAMBASHIVAIAH
AGED 34 YEARS
SRI SHARADA AKESHAYA NILAYA
NEAR BENAKA PRABHA TRADERS
SRIVAARU LAYOUT, MADHURA NAGAR
3RD STAGE, VARTHUR MUTHSANDRA
MAIN ROAD, BANGALORE - 560 087.

...PETITIONER

(BY SRI MALLIKARJUNA REDDY K.S, ADV.)

AND:

1. KATHYANI M.V
   AGED ABOUT 60 YEARS
   W/O LATE K.P. SAMBASHIVAIAH.

2. SMT. PALLAVI S
   D/O LATE K P SAMBASHIVAIAH
   W/O N PRITHVI RAJ
   AGED ABOUT 32 YEARS.

   BOTH RESPONDENTS ARE
   R/AT NO.615, 2ND MAIN
   KENGERI UPANAGRA
   BANGALORE SOUTH TALUK
   BANGALORE - 560 061.

...RESPONDENTS

(BY SRI LOHITH KUMAR N.S, ADV.)

Digitally signed by NANDINI M S
Location: HIGH COURT OF KARNATAKA

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH/MODIFY THE ORDER DTD.5.01.2022 PASSED ON IA FILED ORDER XXIII RULE 3 R/W SECTION 151 OF CPC BY THE PETITIONER HEREIN IN

O.S.NO.2600/2021 ON THE FILE OF THE CITY CIVIL COURT (CCH-16) AT BENGALURU PRODUCED AT ANNEXURE-A.

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

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

1. Petitioner is before this Court in this writ petition filed under Article 227 of the Constitution of India with a prayer to set-aside the order dated 05.01.2022 passed on an application filed under Order XXIII Rule 3 read with Section 151 of CPC in OS No.2600/2021 by the Court of XVII Addl. City Civil and Sessions Judge, Bengaluru.

2. Heard the learned counsel for the parties.

3. OS No.2600/2021 was filed seeking the relief of partition and separate possession of the suit schedule properties by respondent No.1 herein. Defendants in the suit are the daughters of the plaintiff. The suit was decreed on the basis of the compromise petition filed by the parties before the Court on 16.08.2021. Application under Order XXIII Rule 3 read with Section 151 of CPC was subsequently filed on 04.10.2021 by the petitioner herein, who is defendant No.1 in the suit with a

prayer to recall the order dated 16.08.2021 passed in OS No.2600/2021 wherein the suit was decreed based on the compromise petition submitted by the parties. The said application was opposed by the plaintiff as well as by defendant No.2. The Trial Court vide the order impugned has rejected the said application and aggrieved by the same, defendant No.1 is before this Court.

4. Learned counsel for the petitioner having reiterated the grounds urged in the petition submits that compromise petition was fraudulently filed by misleading defendant No.1. He submits that defendant No.1 had earlier signed a different compromise petition whereas on 16.08.2021 she was made to sign the compromise petition in question in the open Court without even giving time to her to read the contents of the compromise petition. He submits that two other properties belonging to the father of the defendants were acquired and the compensation granted under the acquisition proceedings was not made subject matter of the suit in OS No.2600/2021. The day on which defendant No.1 had filed her vakalath, the compromise petition was also submitted and the suit was

decreed. Therefore, it is apparent that the compromise decree was the outcome of the fraud played by plaintiff and defendant No.2. Accordingly, he prays to allow the petition.

5. Per contra, learned counsel for respondents have argued in support of the order impugned. They submit that there is absolutely no material to show that petitioner had signed any other compromise petition other than the compromise petition based on which the compromise decree was passed in OS No.2600/2021 on 16.08.2021. They submit that petitioner is a literate lady, who has signed the compromise petition after fully reading the same. They submit that it is not the case of the petitioner herein that the amount awarded under the land acquisition proceedings was available for partition and therefore, the Trial Court was fully justified in rejecting the application filed by the petitioner.

6. Perusal of the material available on record would go to show that suit in OS No.2600/2021 was filed with a prayer seeking the relief of partition and separate possession of the suit schedule properties which consisted of 5 items of immovable properties. Plaintiff, who is the mother of the

defendant Nos.1 and 2 had claimed 1/3rd share in the suit schedule properties. After the defendants had entered appearance in the aforesaid suit, compromise petition was filed by the parties to the suit on 16.08.2021 and based on the same, compromise decree was passed in OS No.2600/2021 by the Trial Court on 16.08.2021. Perusal of the compromise decree passed in OS No.2600/2021 would go to show that plaintiff has been allotted item No.4 of the suit schedule properties to her share. Defendant Nos.1 and 2 have been granted two items of land each from the suit schedule properties and remaining one item of land was divided between defendant Nos.1 and 2. The property which was divided between defendant Nos.1 and 2 totally measured 20 guntas and out of the same, 11 guntas was allotted to the share of defendant No.1 and 9 guntas of land was allotted to the share of defendant No.2. From the aforesaid, it appears that equitable partition had taken place between the mother and daughters.

7. Though it is submitted before this Court that defendant No.1 was made to sign on a different compromise petition prior to the date of hearing of the suit and on the date of hearing of

the suit, she was made to sign on some other compromise petition in the open Court, the petitioner has failed to produce any material before this Court in support of such contention, which would *prima facie* prove the contention urged by the petitioner. It appears that petitioner has a grievance that the compensation amount awarded under the land acquisition proceedings in respect of two other properties which belonged to the father was not shared between the parties. As per the averments found in the affidavit filed in support of the application, during his lifetime, the father of defendants had received the compensation amount awarded and there is nothing on record to show that after his death, the said amount was available for partition. Even if it is to be presumed that such amount is available for partition, it is always open for the petitioner to file a fresh suit seeking partition of the compensation amount awarded under the land acquisition proceedings, if such amount is available.

8. Under the circumstances, I am of the opinion that the Trial Court was fully justified in rejecting the application filed under Order XXIII rule 3 read with Section 151 of CPC to recall

the order dated 16.08.2021 passed in OS No.2600/2021, decreeing the suit based on the compromise petition submitted by the parties. I do not find any illegality or irregularity in the said order. Accordingly, the petition is ***dismissed***.

Sd/-
(S VISHWAJITH SHETTY)
JUDGE

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List No.: 1 Sl No.: 31