HC-KAR

NC: 2026:KHC:60035
WP No. 4039 of 2024

CNR: KAHC010072332024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

WRIT PETITION NO. 4039 OF 2024 (GM-RES)

BETWEEN:

M.L PARIMALA
W/O KYATHANGERE SWAMY
AGED ABOUT 41 YEARS
R/AT NO KT200, 2ND CROSS
MARIGOWDA LAYOUT
MANDYA CITY - 571 401

...PETITIONER

(BY SRI. H.C. SHIVARAMU, ADVOCATE)

AND:

1. THE ASSISTANT COMMISSIONER
MANDYA SUB DIVISION
MANDYA - 571 401

2. THE TAHASILDHAR
MANDYA TALUK
MANDYA - 571 401

3. LINGAIAH
S/O LATE ANGADI ERREGOWDA
MIKERI VILLAGE
KIRUGAVALU HOBLI
MALAVALLI TALUK
MANDYA DISTRICT - 571 430

...RESPONDENTS

(BY SRI. RAJAYOGA K, HCGP FOR R1 & R2
SRI. D.L. DHANANJAYA, ADVOCATE FOR R3)

Digitally signed by PANKAJA S
Location: HIGH COURT OF KARNATAKA

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO-DIRECT CALL FOR RECORDS FROM THE R-1 IN CASE NO. M.S.C/106/2022-23 QUASH THE ORDER PASSED BY THE R-1 IN CASE NO. M.S.C./106/2022-23, DTD 16.11.2023 PRODUCED VIDE ANNEXURE-E1.

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

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

ORAL ORDER

This writ petition is filed seeking following reliefs:

> *"i. Call for records from the 1st respondent in Case No.M.S.C/106/2022-23.*
>
> *ii. Quash the order passed by the 1st respondent in Case No.M.S.C/106/2022-23, dated 16-11-2023 produced vide Annexure-E1.*
>
> *iii. ALLOW this petition with costs and to GRANT such other reliefs as this Hon'ble Court deems fit to grant in the circumstances of the case."*

2. The brief facts of the case which are necessary for the disposal of this petition are that petitioner is the daughter of respondent No.3. Out of love and affection towards the petitioner, respondent No.3 executed a registered gift deed

dated 17.12.2009 in her favour in respect of the property bearing Sy.No.257/1, measuring 1 acre 6 guntas, situated at Mikeri Village, Kirugavulu Hobli, Malavalli Taluk, Mandya District. Subsequently, the siblings of the petitioner also executed a registered deed of confirmation dated 04.06.2010. It is the case of the petitioner that, ever since the execution and registration of the gift deed, she, along with her family members, has been in possession and enjoyment of the subject property.

3. Things stood thus, after a lapse of nearly 13 years from the date of execution of the registered gift deed, respondent No.3 filed an application before respondent No.1-Assistant Commissioner under Section 5 and 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, 'the Act, 2007'), seeking cancellation of the aforesaid gift deed. Upon consideration of the oral and documentary evidence available on record, respondent No.1-Assistant Commissioner allowed the said application and proceeded to cancel the registered gift deed by passing the

impugned order dated 16.11.2023. Aggrieved by the said order, the petitioner has preferred this writ petition.

4. Heard the learned counsel for the petitioner, learned HCGP for respondent Nos.1 and 2 and learned counsel for respondent No.3.

5. Apart from raising various other contentions, the learned counsel for the petitioner primarily contended that respondent No.3 had already instituted a civil suit in O.S.No.480/2021 before the Court of the Civil Judge (Jr. Div.) and JMFC, Malavalli, seeking the relief of re-conveyance of the registered gift deed dated 17.12.2009. It is contended that, while the said suit was pending consideration, respondent No.3 simultaneously initiated parallel proceedings under Section 5 and 23(1) of the Act, 2007, before the Assistant Commissioner, seeking cancellation of the very same gift deed. The learned counsel further contended that, despite the petitioner having initially appeared before the Assistant Commissioner, owing to the ill-health of her husband, she could neither appear before the Assistant Commissioner on the subsequent dates of hearing nor communicate the circumstances to her counsel. Without

extending sufficient opportunity to the petitioner, the Assistant Commissioner proceeded to pass the impugned order. Therefore, the learned counsel seeks to set aside the impugned order and remand the matter to the Assistant Commissioner for fresh consideration and adjudication, after affording reasonable opportunity of hearing to both parties.

6. The prayer sought by the petitioner is vehemently opposed by the learned counsel appearing for respondent No.3 as well as the learned HCGP appearing for respondent Nos.1 and 2. Both the learned counsel, jointly submitted that, despite sufficient opportunities having been afforded to the petitioner, she failed to participate in the proceedings on the subsequent dates of hearing. It is further contended that, though the petitioner initially appeared before the Assistant Commissioner and filed her statement of objections, she deliberately remained absent on the subsequent dates of hearing and thereby failed to avail the opportunities afforded to her. In such circumstances, having been left with no other alternative, the Assistant Commissioner proceeded to pass the impugned order. They would further contend that the Assistant Commissioner,

upon due consideration of the documents available on record, has passed a reasoned order, which does not warrant interference by this Court in exercise of its writ jurisdiction. Accordingly, they seek dismissal of the writ petition.

7. I have given my anxious consideration to the submission made by the learned counsel for the respective parties and also perused the documents on record including the impugned order passed by the Assistant Commissioner.

8. On careful scrutiny of the impugned order, it is evident that, though the petitioner initially appeared before the Assistant Commissioner and filed her statement of objections, she subsequently remained absent. Accordingly, on 05.10.2023, the Assistant Commissioner issued summons to the petitioner and posted the matter for further consideration on 02.11.2023. On the said date, respondent No.3 remained absent. Nevertheless, the Assistant Commissioner proceeded to pass the impugned order, allowing the application filed by respondent No.3. It is also not in dispute that respondent No.3 had already instituted a civil suit, as stated supra, seeking

substantially similar reliefs, which is pending consideration before the competent Civil Court.

9. It is contended by the learned counsel for the petitioner that the Assistant Commissioner ought to have taken note of the pendency of the aforesaid civil suit instituted by respondent No.3 in respect of the same subject matter. It is further contended that the petitioner is in possession of relevant documents to demonstrate that the application filed by respondent No.3 was actuated by an ulterior motive. Since no sufficient opportunity is granted to the petitioner, she could not place all the relevant documents before the Assistant Commissioner for consideration. It is also an admitted position that the siblings of the petitioner had executed a registered deed of confirmation dated 04.06.2010 in respect of the subject property. Despite the same, the Assistant Commissioner has proceeded to adjudicate the application without issuing notice to the other siblings who had executed the said deed of confirmation.

10. In the aforesaid circumstances, I am of the considered view that the matter requires reconsideration at the

hands of the Assistant Commissioner, particularly in the backdrop of the civil proceedings pending between the parties and the registered deed of confirmation executed by the siblings of the petitioner. The petitioner ought to be afforded a reasonable opportunity to place all relevant documents and materials on record so as to enable the Assistant Commissioner to adjudicate the matter afresh, after considering the rival contentions of the parties in accordance with law.

11. It is submitted by the learned counsel for respondent No.3, the petitioner, having obtained an order of injunction against respondent No.3, continues to remain in possession and enjoyment of the subject property. He would further contend that there is every likelihood of the petitioner alienating the subject property during the pendency of the proceedings upon remand, thereby giving rise to complications in the matter. The apprehension expressed by respondent No.3, in this regard, can be suitably addressed by directing the petitioner not to alienate or create any third-party rights over the subject property until the Assistant Commissioner disposes

of the application upon remand. Accordingly, I proceed to pass the following:

O R D E R

i. The writ petition is ***allowed***.

ii. The impugned order dated 16.11.2023 passed in Case No.MSC/106/2022 by the Assistant Commissioner is hereby set aside.

iii. The matter is remitted back to the Assistant Commissioner for fresh consideration.

iv. All the contention of the parties are left open.

v. Until disposal of the application, the petitioner shall not alienate the subject property and respondent No.3 is at liberty to file a necessary application for interim maintenance by the petitioner.

SD/-
(RAJESH RAI K)
JUDGE