HC-KAR

NC: 2026:KHC:60478
WP No. 7181 of 2026

CNR: KAHC010154682026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE K. V. ARAVIND

WRIT PETITION NO. 7181 OF 2026 (GM-CPC)

BETWEEN:

1. SRI.CHANDRAIAH,
   SON OF LATE CHANNIGANNA @ MALLAIAH,
   AGED ABOUT 67 YEARS,
   RESIDING AT BAGENHALLI VILLAGE,
   KOTHAGERE HOBLI, KUNIGAL TALUK,
   TUMAKURU DISTRICT,
   PINCODE - 572 130

2. SRI. MANJUNATHA C.,
   SON OF CHANDRAIAH,
   AGED ABOUT 39 YEARS,
   RESIDING AT BAGENHALLI VILLAGE,
   KOTHAGERE HOBLI, KUNIGAL TALUK,
   TUMAKURU DISTRICT - 572 130

...PETITIONERS

(BY SRI. PUNITH C., ADVOCATE)

Digitally signed by VINUTHA B S
Location: High Court of Karnataka

AND:

SRI.CHANNEGOWDA @ KARIYAPPA,
SON OF LATE CHIKKAIAH,
AGED ABOUT 83 YEARS,
RESIDING AT BAGENHALLI VILLAGE,
KOTHAGERE HOBLI, KUNIGAL TALUK,
TUMAKURU DISTRICT - 572 130

...RESPONDENT

(BY SRI. MUNIRAJA M., ADVOCATE)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO-SET ASIDE THE IMPUGNED ORDER DATED 01.04.2025 PASSED ON I.A.NO.1 UNDER ORDER 39 RULE 1 AND 2 OF THE CPC IN O.S.NO.481/2022 BY THE LEARNED PRL.CIVIL JUDGE AND JMFC KUNIGAL AS PER ANNX-F AND THE IMPUGNED ORDER DATED 29.10.2025 PASSED IN MA NO. 32/2025 BY THE LEARNED ADDL. SENIOR CIVIL JUDGE AND JMFC KUNIGAL AS PER ANNX-H.

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

CORAM: HON'BLE MR. JUSTICE K. V. ARAVIND

ORAL ORDER

This petition impugns the order dated 01.04.2025 passed on I.A. No. 1 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure in O.S. No. 481/2022, and the order dated 29.10.2025 passed in M.A. No. 32/2025, whereby the Trial Court restrained the petitioners from alienating or creating any encumbrance over the suit schedule property during the pendency of the suit.

2. Learned counsel appearing for the petitioners submits that the suit schedule property has already been partitioned under the registered partition deed dated 02.06.1958. It is contended that the suit schedule property fell to the share of Chikkaiah, the father of the plaintiff, whereas Channiganna was allotted the 'B' schedule property under the said partition deed.

2.1 It is further submitted that the suit was instituted by misrepresenting the facts before the Trial Court and suppressing the existence of the registered partition deed. The Trial Court, without examining the said partition deed, proceeded on the basis of the alleged revenue entries indicating that the suit schedule property stood in the joint names of the parties.

2.2 Learned counsel further submits that the partition deed has been acted upon by the parties and that one of the parties has executed a sale deed in favour of the plaintiff's son on the basis of the partition deed dated 02.06.1958. It is contended that the execution of the registered partition deed was well within the knowledge of the plaintiff and that the

averments made in the plaint are contrary to the said deed and amount to misrepresentation.

3. Per contra, learned counsel appearing for the respondent submits that, although a partition was effected on 02.06.1958, the suit schedule property was retained as joint family property and, accordingly, the revenue entries continued to reflect the property as jointly held. It is contended that, in view of the revenue entries, it is for the Trial Court to adjudicate whether the suit schedule property is available for partition.

3.1 Learned counsel further submits that the revenue entries carry a statutory presumption and make out a prima facie case for granting a temporary injunction restraining alienation of the suit schedule property or the creation of third-party rights therein. It is contended that the creation of third-party rights ought to be avoided during the pendency of the suit, as otherwise it would lead to multiplicity of proceedings.

4. Consider the submissions made by the learned counsel for the parties and perused the documents on record.

5. The suit is founded on the pleadings that the suit schedule property was excluded from the oral partition, retained as joint family property, and continued to be used as such. Although the Courts below examined the registered partition deed dated 02.06.1958, they proceeded to record a finding regarding the identity of the suit schedule property with reference to the said partition deed, a matter that was neither pleaded nor relied upon by the plaintiff.

5.1 Both the Courts, while passing the impugned orders, have thus travelled beyond the pleadings of the parties. The issue that arises for consideration is whether such a course was justified.

5.2 A prima facie perusal of the registered partition deed dated 02.06.1958 indicates that the suit schedule property was allotted to Channiganna, the father of the petitioners herein, and was described as 'B' schedule property in the said partition deed. The partition has evidently been acted upon, as the plaintiff's son purchased one of the items allotted under the partition deed by way of a sale deed dated

22.01.2016. The said sale deed prima facie establishes that the registered partition deed was acted upon by the parties.

5.3 The plaint averments suspiciously fail to refer to the registered partition deed, despite the parties having acted upon it. The plaint not only suffers from suppression of a material fact but also contains misleading averments. Both the Courts failed to appreciate this aspect and proceeded to pass the impugned orders based on the identification of the suit schedule property, which was never an issue in the pleadings.

5.4 This Court is of the view that the impugned orders are without basis and contrary to the material on record, having been passed under the influence of misrepresented facts. In the circumstances, both the impugned orders are liable to be set aside.

6. Accordingly, the following:

ORDER

i. Writ petition is ***allowed***.

ii. The impugned order dated 01.04.2025 passed on I.A.No.1 under Order XXXIX Rule 1 and 2 of CPC in O.S.No.481/2022 and order dated 29.10.2025 passed in M.A.No.32/2025 are hereby set aside.

Sd/-
(K. V. ARAVIND)
JUDGE

NMS
List No.: 1 Sl No.: 7