NC: 2026:KHC:22327
W.P. No.13482/2022

HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO.13482/2022 (GM-CPC)

BETWEEN:

SMT. K. KARIYANNA
S/O LATE KARIYANNA
AGED 68 YEARS
REP BY HIS GPA HOLDER
SRI. B.M. KARUNESH
S/O LATE B.M. MADAIAH
AGED 73 YEARS
R/AT VILLA NO.46
PALM MEADOWS
RAMAGONDANAHLLI
VARTHUR MAIN ROAD
BENGALURU 560069.

...PETITIONER

(BY SRI. VENKATARAMANA K.S. ADV.,)

Digitally signed by RUPA V
Location: HIGH COURT OF KARNATAKA

AND:

SRI. P.H. LAKSHMANA
S/O LATE RAMAIAH
SINCE DEAD BY LR'S.

1. SMT. MUNILAKSHMAMMA
   W/O LATE P.H. LAKSHMANA
   MAJOR.

2. SMT. SARASWATHAMMA
   D/O P.H. LAKSHMANA
   AGED 39 YEARS.

3. SMT. INDIRAMMA
D/O P.H. LAKSHMANA
AGED 37 YEARS.

4. SRI. MARUTHI
D/O P.H. LAKSHMANA
AGED 35 YEARS.

5. SMT. SHAMALA
D/O P.H. LAKSHMANA
AGED 32 YEARS.

ALL ARE R/AT GUNJUR VILLAGE
VARTHUR HOBLI
BANGALORE EAST TALUK
BENGALURU-560069.

…RESPONDENTS

(BY SRI. D.R. RAJASHEKARAPPA, ADV., FOR R1 TO 5)

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THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DTD 18.06.2022 PASSED IN O.S.NO.116/2013 BY THE PRINCIPAL CIVIL JUDGE (SR.DN), BANGALORE RURAL DISTRICT, BANGALORE VIDE ANNEXURE-D & ETC.

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

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

ORAL ORDER

This writ petition is filed challenging the order dated 18.06.2022 passed in O.S.No.116/2013 by the Principal Civil Judge (Senior Division), Bengaluru Rural District, Bengaluru (for short, 'the Trial Court').

2. Sri.K.S.Venkataramana, learned counsel appearing for the petitioner submits that petitioner has filed a suit for specific performance of the agreement dated 13.06.2008 and other relief. In the said suit, the respondents filed a written statement. The proceedings were conducted during the COVID period. The respondents have raised an objection for marking of the sale agreement on the ground that the said agreement is insufficiently stamped. It is submitted that the Trial Court deferred the evidence and posted the matter to hear on stamp duty on 22.12.2020 and thereafter, the matter was adjourned for the same stage on many occasions. However, suddenly on 26.03.2021, the matter was posted for plaintiff's evidence. Thereafter, on other dates, the

order sheet is not clear as to whether the matter was posted for arguments on insufficiency of the stamp duty or for evidence. However, the plaintiff has filed a memo indicating that he would pay the stamp duty and the matter was adjourned on 03.02.2022. Again, on 03.02.2022, the matter was adjourned to 19.03.2022 to hear on stamp duty. Thereafter, on 18.06.2022, the Trial Court proceeded to dismiss the suit recording that the counsel for the plaintiff was absent. It is further submitted that the issue with regard to insufficiency of stamp duty was neither adjudicated nor considered despite filing of the memo. However, the Trial Court incorrectly posted the same for evidence during the COVID period and as the counsel for the plaintiff could not be present on the said day, the suit came to be dismissed. Hence, the present petition is filed seeking to set aside the order dated 18.06.2022 and to restore the suit.

3. *Per contra*, Sri.D.R.Rajashekarappa, learned counsel appearing for the respondents-defendants

vehemently opposed the writ petition and submits that the present writ petition is not maintainable as the petitioner is required to file a miscellaneous petition under Order IX Rule 9 of the Code of Civil Procedure, 1908, seeking to set aside the order of the Trial Court.

4. I have heard the arguments of the learned counsel for the petitioner, learned counsel for the respondents and perused the material available on record.

5. The material on record indicates that the petitioner filed a suit in O.S.No.116/2013 for the relief of specific performance of the agreement dated 13.06.2008 and other consequential reliefs. The said suit was duly opposed by the respondents by filing a written statement. The order sheet indicates that the trial in the suit has commenced after framing the issues and during the course of trial, the defendants raised an objection with regard to the marking of the agreement of sale on the ground that the said agreement is insufficiently stamped. The Trial

Court stopped the said proceedings and posted the matter for hearing on the issue with regard to the stamp duty. The Trial Court consistently posted the matter for hearing on the said issue. However, in between, the order sheet indicates that the matter was posted for plaintiff's evidence without there being any hearing on the issue with regard to the insufficiency of the stamp duty raised by the defendants. It is to be noticed that in the meanwhile, the plaintiff has also filed a memo indicating that he would make good the stamp duty.

6. Be that as it may, the Trial Court has considered the objection raised by the defendants relating to insufficiency of the stamp duty on the agreement by considering the memo filed by the petitioner and has incorrectly posted the matter for plaintiff's evidence and on 18.06.2022, it has proceeded to reject the suit on the ground that the counsel for the plaintiff was not present. In my considered view, the Trial Court has not followed the procedure correctly. However, though the matter was

posted for hearing the issue with regard to insufficiency of the stamp duty, the objection raised by the defendant was never considered and adjudicated by the Trial Court. In the absence of such consideration, posting the matter for plaintiff's evidence and dismissing the same would be contrary to the settled position and procedure of the Court. The Trial Court ought to have heard the plaintiff as well as the defendants on the issue with regard to the insufficiency of the stamp duty, recorded its finding and thereafter, ought to have provided an opportunity to the plaintiff to make good the stamp duty and penalty, if any. Without doing so, the Trial Court posted the matter for plaintiff's evidence and for the absence of the counsel for the plaintiff during the COVID period, proceeded to reject the suit which is uncalled for.

7. Insofar as the contention of the learned counsel for the respondents that the petitioner is required to file a miscellaneous petition under Order IX Rule 9 of the CPC, the same is required to be rejected as the Trial Court itself

has committed a grave error in skipping the stage of the proceedings. Hence, it is a fit case to exercise the jurisdiction under Article 227 of the Constitution of India.

8. For the aforementioned reasons, I proceed to pass the following:

ORDER

(i) The writ petition is allowed.

(ii) The impugned order dated 18.06.2022 passed in O.S.No.116/2013 by the Trial Court is set aside. The suit is restored to file.

(iii) The Trial Court shall continue the proceedings from the stage of hearing on the insufficiency of the stamp duty and thereafter, regulate its proceedings.

No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV
List No.: 1 Sl No.: 25