HC-KAR

NC: 2026:KHC:20801
W.P. No.15250/2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO.15250/2021 (GM-CPC)

BETWEEN:

SMT. SIDDAMMA
W/O LATE LAKSHMANASHETTY
AGED ABOUT 70 YEARS
R/AT NADAKALAMOLE VILLAGE
SANTHEMARAHALLI HOBLI
CHAMARAJANAGAR-571 313.

Digitally signed by RUPA V
Location: HIGH COURT OF KARNATAKA

...PETITIONER

(BY SMT. SUMATHI S, ADV.,)

AND:

1. MARADASHETTY
   W/O LATE KYATHASHETTY
   AGED ABOUT 60 YEARS.

2. RAVIKUMAR
   S/O MARASHETTY
   AGED ABOUT 35 YEARS.

3. MAHADEVASHETTY
   S/O MARASHETTY
   AGED ABOUT 40 YEARS.

4. RANGAMMA
   W/O LATE KARAGASHETTY @ KARAGAIAH
   AGED ABOUT 55 YEARS.

5. JAYARAMA
S/O RANGAMMA
AGED ABOUT 35 YEARS.

6. LAKSHMAMMA
W/O LATE NARAYANASWAMY
AGED ABOUT 40 YEARS.

ALL ARE R/AT NADAKALAMOLE VILLAGE
SANTHEMARAHALLI HOBLI
CHAMARAJANAGARA-571 313.

…RESPONDENTS

(BY SRI. P. NATARAJU, ADV., FOR R1 TO R6
V/O/DTD:27.10.2021 NOTICE TO `R5 IS H/S)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH ANNEXURE-H THE ORDER DATED 22.04.2021 IN M.A.NO.4/2021 ON THE FILE OF THE SENIOR CIVIL JUDGE AND CJM AT CHAMARAJANAGAR. QUASH THE APPEAL IN M.A.NO.4/2021 ON THE FILE OF THE SENIOR CIVIL JUDGE AND CJM AT CHAMARAJANAGAR AS PER ANNEXURE-F BY ALLOWING THIS PETITION & 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 petition is filed challenging the order dated 22.04.2021 passed in MA.No.4/2021 by the Senior Civil Judge and CJM, Chamarajanagar (for short 'the trial Court).

2. Smt.Sumathi S., learned counsel appearing for the petitioner submits that the petitioner has filed a suit for permanent injunction. In the said suit, the petitioner filed an application in IA.No.1 seeking a temporary injunction to restrain the respondents from interfering with possession of the suit schedule property and the trial Court issued notice on the said application. It is submitted that subsequently, the petitioner/plaintiff filed IA.No.2 seeking a restraining order against the respondents/defendants as they were illegally putting up construction on the property. The trial Court, vide order dated 30.03.2021, ordered for appointment of Court Commissioner to measure the property and restrained the respondents/defendants from putting up further construction. It is further submitted that being aggrieved, the respondents/defendants preferred an appeal in MA.No.4/2021 and the petitioner/plaintiff has raised objection with regard to maintainability of the said appeal, which was negated by the Appellate Court and the same is

challenged in this Court. It is also submitted that the Appellate Court has recorded that the appeal was maintainable against an *exparte* order. However, the said order of the trial Court was not *exparte*, but was passed after hearing both the sides. Hence, she seeks to allow the petition.

3. Per contra, Sri.P.Nataraju, learned counsel for respondent Nos.1 to 6 supports the order of the Appellate Court and submits that the Appellate Court has only recorded a finding with regard to maintainability. However, the appeal is still pending consideration and the same is required to be adjudicated on merits by the Appellate Court after hearing both parties. It is submitted that without awaiting the order of the Appellate Court on the impugned order, the petitioner/plaintiff has rushed and filed the writ petition which is not maintainable. Hence, he seeks to dismiss the petition.

4. I have heard the arguments on the both sides and meticulously perused the material available on record.

5. The material on record indicates that the petitioner has filed OS.No.67/2020 seeking the relief of permanent injunction. In the said suit, IA.No.1 was filed to restrain the respondents from interfering with the possession of the plaintiff. On the said application, the trial Court issued notice. Subsequently, the petitoener/plaintiff advanced the case and filed IA.No.2 under Order XXXIX Rule 1 and 2 read with Section 151 of Code of Civil Procedure, 1908 (for short 'CPC') seeking to restrain the respondents/defendants from putting up construction. The defendants filed their objections to the said application. Thereafter, the trial Court, vide order dated 30.03.2021 suo motu, appointed a Court Commissioner by directing the jurisdictional ADLR to measure the property and submit a report, permitting the parties to file memos of instructions. The trial Court in the said order has further directed the defendants that till the Commissioner report

is submitted they are restrained from putting up any further constructions. It is to be noticed that the trial Court did not disposed of IA.No.2 filed by the petitioner/plaintiff but, till the Commissioner's report is received, it has protected the interest of the petitioner/plaintiff. Being aggrieved by the said order, the defendants preferred appeal in MA.No.4/2021. In the said appeal, the petitioner/plaintiff raised an objection regarding maintainability of the appeal, which was negated by the Appellate Court by referring to the decision of the Hon'ble Supreme Court as well as the provisions of law.

6. In the present proceedings, it is to be noticed that the petitioner's interest is protected by the trial Court vide order dated 30.03.2021 by restraining the defendants from putting up any further construction and the said order is under challenge by the defendants before the Appellate Court. Ultimately, the Appellate Court is required to adjudicate the appeal filed by the defendants on its merits. It is also to be noticed that the petitioner/plaintiff

can raise all the contentions before the Appellate Court, including the contention that IA.No.2 is pending adjudication before the trial Court and to seek closure of the appeal proceedings till the trial Court decides IA.No.2 on merits.

7. With the above observations, the writ petition is ***disposed of*** permitting the petitioner to raise the objection before the Appellate Court that although the appeal in MA.No.4/2021 is maintainable, its consideration may be deferred in view of the pendency of IA.No.2 before the trial Court. The finding of the Appellate Court with regard to the maintainability is affirmed. It is made clear that this Court has not expressed any opinion on the merits of the case.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

ABK
List No.: 1 Sl No.: 21