HC-KAR

CNR: KAHC010393422020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 15061 OF 2020 (GM-CPC)

BETWEEN:

1. SMT. SANNAMMA
   W/O LATE DODDALINGAPPA
   AGED ABOUT 64 YEARS

2. SRI. SHIVALINGAIAH
   S/O LATE DODDALINGAPPA
   AGED ABOUT 44 YEARS

3. SMT. RATHNAMMA
   W/O SHIVANNA
   AGED ABOUT 41 YEARS

4. SMT. MARAKKA @ MAHALAKSHMAMMA
   D/O LATE DODDALINGAPPA
   AGED ABOUT 37 YEARS

   ALL ARE R/O BELLADAMADAGU VILLAGE
   KASABA HOBLI, MADHUGIRI TALUK
   TUMKUR DISTRICT - 572 132.

...PETITIONERS

(BY SRI. G.S. VENKAT SUBBA RAO, ADVOCATE)

AND:

SRI. T. RAMAPPA @ RAMANNA
S/O THIPPERANGAPPA

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AGED ABOUT 66 YEARS,
R/O THUNGOTI VILLAGE
KASABA HOBLI, MADHUGIRI TALUK
TUMKUR DISTRICT - 572 132.

…RESPONDENT

(BY SRI. HARISH H.V, ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DTD 13.11.2020 PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE AND JMFC MADHUGIRI, IN R.A.NO.65/2018 ON IA NO.15 FILED UNDER ORDER 6 RULE 17 OF CPC, VIDE ANNX-A AND ETC.,

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

Captioned writ petition is filed by the defendants assailing the order passed by the learned Appellate Judge on I.A.Nos.15 and 17, pursuant to the remand order passed by this Court in M.S.A.No.77/2019. By the impugned order, the learned Appellate Judge has allowed the applications and permitted the plaintiff to amend the plaint by incorporating the extent of encroachment as 32 guntas. The learned Appellate Judge has further directed the Trial Court to record the evidence of the

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surveyor and transmit the same to the Lower Appellate Court expeditiously, while keeping the appeal in R.A.No.65/2018 pending consideration.

2. Heard the learned counsel appearing for the petitioners/defendants and the learned counsel appearing for the respondent/plaintiff. This Court has also bestowed its consideration on the order passed by this Court in W.P.No.148468/2020.

3. The respondent/plaintiff instituted a suit in O.S.No.411/2018 seeking a declaration of title and consequential relief of possession in respect of the portion of the suit schedule property allegedly encroached upon by the defendants towards the southern side. At this juncture, it would be appropriate to extract the substantive prayers sought in the plaint, which read as under:

> *"The plaintiff prays for a judgment and decree against the defendant*
>
> *a) For a declaration of plaintiff title over the suit schedule property as a owner.*
>
> *b) For delivery of encroached portion of the suit land on its southern side after ascertaining the same through the*

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process of this honorable court by appointing a technical survey commissioner to the hands of plaintiff through the process of this honorable court.

c) For permanent injunction restraining the defendant his agents and servants or anybody claiming through them from interfering with plaintiff peaceful possession and enjoyment of the suit schedule property.

d) For ascertainment of measne profits in respect of the encroached potion from the date of suit till the date of delivery of possession.

e) For costs of this suit and such other relief that may be granted to the plaintiff in the circumstances of the case of justices."

4. A plain reading of the prayers extracted supra would indicate that the plaintiff has instituted the suit seeking declaration of title over the suit schedule property and consequential relief of possession in respect of the alleged encroached portion. The controversy in the suit, therefore, essentially revolves around the identity, extent and location of the alleged encroachment, apart from the plaintiff's entitlement to the reliefs founded on title.

5. The defendants, on the other hand, have disputed the plaintiff's title and, in the alternative, have specifically set up a plea of adverse possession in paragraph No.8 of the written statement. Thus, the controversy between the parties is not

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confined to a mere dispute regarding title but also involves a substantial factual dispute concerning the actual extent and location of the alleged encroachment.

6. After conclusion of the trial, the plaintiff appears to have filed two applications. I.A.No.15 was filed under Order VII Rule 17 of the CPC seeking amendment of the plaint to incorporate the measurement and extent of the alleged encroachment, whereas I.A.No.17 was filed under Order XVI Rule 7 of the CPC seeking issuance of summons to the surveyor, who had measured the lands, to appear before the Court and depose in respect of the survey conducted by him. Both applications came to be rejected by the Trial Court. Consequently, the suit instituted by the plaintiff seeking declaration of title and possession came to be dismissed.

7. Aggrieved by the judgment and decree of the Trial Court, the plaintiff preferred an appeal in R.A.No.65/2018 before the Lower Appellate Court. The learned Appellate Judge, by judgment and decree dated 20.08.2019, allowed the appeal and remitted the matter to the Trial Court with certain directions.

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8. The said remand order was questioned by the defendants before this Court in M.S.A.No.77/2019. This Court allowed the miscellaneous second appeal, primarily on the ground that the learned Appellate Judge had erred in casually remanding the matter to the Trial Court without undertaking the requisite exercise in appellate jurisdiction. While setting aside the remand order, this Court restored the appeal to the file of the Lower Appellate Court with a specific direction to reconsider the applications filed by the plaintiff in I.A.Nos.15 and 17 and decide the appeal in the light of the observations made therein.

9. Before proceeding further, it would be appropriate to extract the operative portion of the order passed by this Court in M.S.A.No.77/2019, which reads as under:

ORDER

> *"The appeal is allowed in part and the judgment dated 20.8.2019 in R.A.No.65/2018 on the file of the Prl. Senior Civil Judge and JMFC, Madhugiri is set-aside and the appeal is restored to the board of the Court to reconsider the applications filed by the respondent under Order VI Rule 17 and Order XVI Rule 7 of CPC and decide the appeal in the light of the observations made by this Court.*

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The parties shall appear before the appellate Court without further notice of first hearing on 09.12.2019. The appellate Court shall expedite a decision on the appeal as aforesaid at the earliest, but within an outer limit of six months."

10. A careful reading of the operative portion of the order passed in M.S.A.No.77/2019 would indicate that this Court had specifically directed the Lower Appellate Court to reconsider the applications filed by the plaintiff and decide the appeal in the light of the observations made therein. The direction, however, was required to be understood and implemented in the context of the procedural stage at which the proceedings had reached before the Trial Court.

11. Pursuant to the aforesaid directions, the learned Appellate Judge has proceeded to allow the applications filed by the plaintiff, permitted amendment of the plaint and further directed the Trial Court to receive an additional written statement from the defendants, frame an additional issue, record the evidence of the surveyor and transmit the evidence to the Lower Appellate Court. The correctness of this course adopted by the learned Appellate Judge is called in question in the present proceedings.

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12. The principal contention urged by the learned counsel appearing for the petitioners/defendants is that I.A.Nos.15 and 17 were not applications pending consideration before the Lower Appellate Court. Both applications had been filed before the Trial Court after conclusion of evidence and were rejected by reasoned orders. The suit itself was thereafter dismissed. It is, therefore, contended that the Lower Appellate Court, without first reversing the judgment and decree of the Trial Court on merits, could not have independently entertained and allowed the applications which already stood rejected by the Trial Court.

13. This Court finds considerable force in the aforesaid submission. The direction issued by this Court while disposing of M.S.A.No.77/2019, requiring the Lower Appellate Court to reconsider the applications, cannot be construed as conferring an independent jurisdiction upon the Appellate Court to reopen and allow interlocutory applications which had already been adjudicated and rejected by the Trial Court. The procedural status of these applications assumes considerable significance. They were not pending consideration when the matter reached

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the Lower Appellate Court. On the contrary, the Trial Court had already passed orders rejecting the applications and had thereafter proceeded to dismiss the suit.

14. It is a settled principle that orders passed on interlocutory applications, which are not independently challenged, can be questioned in an appeal against the decree, subject to the provisions of Section 105 of the CPC. A party aggrieved by such interlocutory orders has the liberty to invoke the supervisory jurisdiction under Article 227 of the Constitution of India, where warranted, or assail the correctness of such orders in an appeal against the decree under Section 96 read with Section 105 of the CPC. Therefore, once the Trial Court has rejected the applications and proceeded to render a decree, the Lower Appellate Court is required to examine the challenge to those interlocutory orders in the context of its appellate jurisdiction and not by treating the applications as though they were still pending adjudication.

15. In this backdrop, this Court is of the considered view that the learned Appellate Judge has failed to appreciate the distinction between reconsidering the correctness of orders

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passed on interlocutory applications in an appeal against the decree and independently exercising jurisdiction to allow applications which already stood disposed of by the Trial Court.

16. Unless the judgment and decree of the Trial Court are examined on merits and the reasons assigned therein are found unsustainable, the Lower Appellate Court could not have proceeded to reverse the orders passed on I.A.Nos.15 and 17 pending regular appeal. The applications were not pending. They had already been disposed of by the Trial Court by passing speaking orders rejecting the reliefs sought therein.

17. The procedural course adopted by the Lower Appellate Court has, therefore, given rise to a somewhat complex situation. Though this Court, while disposing of M.S.A.No.77/2019, had directed the Lower Appellate Court to reconsider the applications, it appears that the attention of this Court was not sufficiently drawn to the fact that the applications had already been rejected by the Trial Court and that the suit itself had subsequently been dismissed. Neither of the parties appears to have brought this procedural aspect to the notice of this Court at the relevant stage.

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18. In such circumstances, the direction issued in M.S.A.No.77/2019 necessarily required the Lower Appellate Court to examine the correctness of the orders passed on the interlocutory applications along with the challenge to the judgment and decree. The Lower Appellate Court could not have simultaneously reversed the interlocutory orders and granted consequential directions without first undertaking the appellate exercise and recording its findings on the sustainability of the decree.

19. Having noticed the aforesaid procedural irregularity, this Court is of the view that it would also be necessary to advert to the substantive controversy involved in the suit. The suit instituted by the plaintiff is one for declaration of title and consequential possession founded on an allegation of encroachment. In such suits, where the identity and extent of the alleged encroachment constitute the principal controversy, the Courts are required to examine the matter in the light of the scheme contemplated under Order XXVI Rule 9 of the CPC.

20. There may be cases where the contesting parties rely upon rival title deeds and assert competing claims over

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adjoining properties. In such circumstances, mere examination of the title deeds, without ascertaining the actual measurements, boundaries and physical features of the respective properties, may not furnish an effective answer to the controversy relating to encroachment.

21. The question as to whether one party has encroached upon the property of the other is essentially a matter which requires ascertainment of the physical features and measurements of the properties on the spot. Such an exercise cannot ordinarily be undertaken by the Court by personally visiting the property and conducting a spot inspection. It is precisely for this reason that the CPC contemplates appointment of a Commissioner under Order XXVI Rule 9 of the CPC to undertake a local investigation and place the relevant physical features and measurements before the Court.

22. The report of the Commissioner, together with the evidence recorded during such investigation, would assist the Court in appreciating the actual position obtaining on the spot. Such a report, however, remains subject to the procedure contemplated under the CPC, including the right of the parties

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to raise objections and seek examination of the Commissioner, wherever permissible.

23. It is equally well settled that a litigant ought not to be deprived of the opportunity to place the best available evidence before the Court, particularly when the controversy revolves around the alleged encroachment and its actual extent. In a suit of this nature, the issue of encroachment cannot be satisfactorily adjudicated merely on the basis of rival pleadings and title documents, without appropriately examining the physical identity and measurements of the properties.

24. This Court, in the reported judgment rendered in ***Shadaksharappa v. Kumari Vijayalaxmi and others in W.P.No.201274/2022***, has laid down guidelines as to how Courts are required to deal with suits involving allegations of encroachment and consequential relief of possession. The principles enunciated therein would have considerable relevance while adjudicating the controversy involved in the present proceedings.

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25. It is true that the earlier remand order passed by the Lower Appellate Court in R.A.No.65/2018 was set aside by this Court in M.S.A.No.77/2019. However, a careful reading of the operative portion of the order passed in the miscellaneous second appeal would indicate that the appeal was restored to the file of the Lower Appellate Court for reconsideration of the applications and disposal of the appeal in accordance with the observations made therein.

26. The learned Appellate Judge appears to have proceeded on the assumption that the applications could be independently allowed and consequential directions could be issued without first examining the sustainability of the judgment and decree rendered by the Trial Court.

27. Such an approach is legally impermissible. The controversy arising out of the rejection of the applications in I.A.Nos.15 and 17 is inextricably connected with the merits of the suit and the reasons which ultimately persuaded the Trial Court to dismiss the plaintiff's claim. Therefore, the Lower Appellate Court is required to first examine the judgment and

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decree on merits and record its findings on the grounds urged by the plaintiff in the appeal.

28. If, upon such examination, the Lower Appellate Court comes to the conclusion that the orders passed on I.A.Nos.15 and 17 suffer from perversity or material irregularity warranting interference, it must record appropriate reasons for such conclusion. It is only thereafter, upon setting aside the decree and reversing the consequential findings of the Trial Court, that the Lower Appellate Court can proceed to pass appropriate consequential orders on the interlocutory applications.

29. In the event the Lower Appellate Court, upon an examination of the matter on merits, comes to the conclusion that the plaintiff ought to have been permitted to amend the plaint to incorporate the actual extent of encroachment and that the surveyor ought to have been summoned to depose with reference to the survey report already prepared by him, the Appellate Court would be at liberty to consider an appropriate remand with specific directions to the Trial Court.

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30. The exercise of such appellate jurisdiction, however, must be preceded by a proper consideration of the merits of the judgment and decree under challenge. The Lower Appellate Court cannot keep the appeal pending and simultaneously grant reliefs on interlocutory applications which had already been rejected by the Trial Court, without first reversing the decree and recording its conclusions on the issues arising in the appeal.

31. For the foregoing reasons, this Court is of the considered view that the impugned order passed by the learned Appellate Judge is wholly unsustainable. The learned Appellate Judge has failed to appreciate the procedural consequences flowing from the rejection of I.A.Nos.15 and 17 by the Trial Court and has proceeded to allow the said applications without first undertaking the requisite exercise in appellate jurisdiction. The impugned order, therefore, warrants interference.

32. For the foregoing reasons, this Court passes the following:

ORDER

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

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ii. The order dated 13.11.2020 passed by the Principal Senior Civil Judge and JMFC, Madhugiri, in R.A.No.65/2018 on I.A.Nos.15 and 17, as per Annexure-A, is hereby set aside.

iii. The Lower Appellate Court shall call upon both parties to address their arguments on the merits of the appeal and shall thereafter proceed to decide the appeal in accordance with law.

iv. The Lower Appellate Court shall consider the appeal on its merits, keeping in view the observations made by this Court hereinabove and the law declared by the Co-ordinate Bench in ***Shadaksharappa v. Kumari Vijayalaxmi and others in W.P.No.201274/2022***. Since the survey report is already part of the record, the Lower Appellate Court shall examine the correctness of the orders passed on I.A.Nos.15 and 17 while adjudicating the appeal and, if it finds that the said orders warrant interference, pass appropriate consequential orders in accordance with law. The Lower Appellate Court shall also retain the discretion to determine whether the matter requires a remand to the Trial Court in the light of the principles enunciated in the aforesaid decision. If the Appellate Court is of the opinion that a proper adjudication of the controversy, particularly the issue relating to the extent and location of the alleged encroachment, necessitates a fresh

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consideration by the Trial Court, it shall be at liberty to remand the matter to the Trial Court by issuing appropriate and specific directions, in accordance with law.

vi. The Lower Appellate Court shall dispose of the appeal expeditiously and, in any event, within an outer limit of three months from the date of receipt of a copy of this order.

vii. All contentions of the parties are kept open.

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(SACHIN SHANKAR MAGADUM)
JUDGE

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List No.: 1 Sl No.: 2