HC-KAR

CNR: KAHC010495262022

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. 21517 OF 2022 (GM-CPC)

BETWEEN:

R. RANGANATH
S/O LATE RAMAIAH,
AGED ABOUT 75 YEARS, AGRICULTURIST,
R/O MARABAGHATTA VILLAGE,
HOSADURGA TALUK,
CHITRADURGA DISTRICT - 577 501.

...PETITIONER

(BY SRI. R. GOPAL, ADVOCATE)

AND:

1. SMT. KAMAKSHAMMA
W/O LATE R.SRINIVASAIAH,
(SINCE DEAD BY RESPONDENTS NO.2 TO 5)

2. RAMASWAMY
S/O LATE R. SRINIVASAIAH
AGED ABOUT 55 YEARS,
R/O MARABAGHATTA VILLAGE,
HOSADURGA TALUK
CHITRADURGA DISTRICT - 577 501.

3. SRIDHARA
S/O LATE R. SRINIVASAIAH
AGED ABOUT 46 YEARS,
R/O MARABAGHATTA VILLAGE,
HOSADURGA TALUK,

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CHITRADURGA DISTRICT - 577 501.

4. YASHODAMMA
D/O LATE R. SRINIVASAIAH
AGED ABOUT 48 YEARS,
R/O MARABAGHATTA VILLAGE,
HOSADURGA TALUK,
CHITRADURGA DISTRICT - 577 501.
NOW RESIDING AT SIDDLIPURA VILLAGE
POST HOLEHONNURU, BHADRAVATHI TALUK,
SHIMOGA DISTRICT - 577 201.

5. LAXMIDEVI
D/O LATE R. SRINIVASAIAH,
W/O VENKATESH, AGRICULTURIST,
AGED ABOUT 55 YEARS,
R/O MARABAGHATTA VILLAGE,
HOSADURGA TALUK,
CHITRADURGA DISTRICT - 577 501.

6. RAJAGAOPALA
S/O LATE RAMAIAH
AGED ABOUT 76 YEARS, AGRICULTURIST,
R/O MARABAGHATTA VILLAGE,
HOSADURGA TALUK,
CHITRADURGA DISTRICT - 577 501.

...RESPONDENTS

(VIDE ORDER DATED 30.06.2023, R2 TO R5 ARE TREATED LR'S OF DECEASED R1;
VIDE ORDER DATED 30.06.2023, NOTICE TO R3 IS HELD SUFFICIENT;
R3 - SRIDHARA - HELD SUFFICIENT;
R6 - RAJAGOPALA - SERVED;
VIDE ORDER DATED 21.07.2026, NOTICE TO R4 IS HELD SUFFICIENT, R4 - YASHODAMMA;
VIDE ORDER DATED 21.09.2026, NOTICE TO R2 AND R5 IS HELD SUFFICIENT R2 - RAMASWAMY, R5 - LAXMIDEVI)

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THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DTD. 29.07.2022 PASSED ON I.A. NOS. 7 AND 8 BY THE COURT OF PRINCIPAL CIVIL JUDGE AND JMFC AT HOSADURGA IN O.S.NO.99/2011, VIDE ANNX-G AND ALLOW AND GRANT THE RELIEFS PRAYED FOR IN I.A NOS. 7 AND 8 VIDE, ANNX-D AND E BY QUASHING THE ORDER DTD. 10.01.2019, VIDE ANNX-C PASSED BY PRINCIPAL CIVIL JUDGE AND JMFC AT HOSADURGA IN O.S.NO.99/2011.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, 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 plaintiff assailing the orders passed by the learned Trial Judge on I.A.Nos.7 and 8, vide Annexures-D and E, respectively, and consequently seeking to set aside the order dated 10.01.2019, vide Annexure-C, whereby the suit came to be dismissed. The petitioner also seeks restoration of the suit and consequential reliefs, which were declined by the learned Trial Judge while rejecting I.A.Nos.7 and 8.

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2. Heard the learned counsel appearing for the petitioner. Though the respondents-defendants are served, they have remained unrepresented. Perused the orders impugned in the present petition as well as the remand order passed by the Appellate Court in R.A.No.287/2016.

3. Before proceeding to examine the correctness of the orders impugned, it would be appropriate to extract the operative portion of the remand order passed by the Appellate Court in R.A.No.287/2016, which reads as under:

> *"IA.No.III filed under Order I rule 10(2) of CPC filed by the applicants/ proposed defendant No.3 and 4 is allowed.*
>
> *Consequently the appeal under order 41 rule 1 R/w Section 96 of CPC filed by the appellant / plaintiff is hereby allowed.*
>
> *The judgment and decree of the trail court passed_in O.S. No.99/2011, dated 07/11/2014, on the file of Prl. Civil Judge, Hosadurga is set aside.*
>
> *The proposed defendant No.3 and 4 are permitted to come on record and file the written statements.*
>
> *The matter is remanded to trail court to consider the matter afresh by taking the written statement of the proposed defendants to be filed on record after being impleaded in the suit.*
>
> *The appellant shall pay costs of Rs.10,000/- to the defendant No.1 and 2 on appearance before the trial Court. If plaintiff fails to appear before the trail court; or if appeared, but fails to effect amendment, or fails to pay*

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the costs, the judgment and decree of the trail court shall stand confirmed.

The parties shall appear before the trail court on 10/01/2019 without expecting any notice from the trail court. The learned trial Judge shall endeavour to dispose of the suit as expeditiously as possible.

Draw decree accordingly.

Send the lower Court records along joint copy of Judgment forthwith."

4. A bare reading of the aforesaid directions issued by the Appellate Court makes it evident that the plaintiff was required to appear before the Trial Court on 10.01.2019, without expecting any further notice, pay costs of Rs.10,000/- to defendant Nos.1 and 2 and take necessary steps to bring the proposed defendant Nos.3 and 4 on record. The Appellate Court, while setting aside the judgment and decree of the Trial Court, had remanded the matter for fresh consideration after permitting the proposed defendants to come on record and file their written statements. Thus, the remand was intended to afford an opportunity to the parties to have the suit adjudicated afresh on merits.

5. However, what is rather disconcerting is that on the very date fixed for appearance, namely, 10.01.2019, the

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learned Trial Judge, without affording any reasonable opportunity to the plaintiff, proceeded to call the matter and, on recording the absence of the plaintiff, dismissed the suit once again. The dismissal was ordered on the ground that the plaintiff had neither deposited the sum of Rs.10,000/- payable to defendant Nos.1 and 2 nor filed applications to implead the proposed defendants. Subsequently, on 23.11.2021, the plaintiff filed I.A.Nos.7 and 8 seeking restoration of the suit and permission to take necessary steps in respect of the impleading applications. The plaintiff also assigned reasons explaining the circumstances which prevented him from complying with the directions issued by the Appellate Court. The learned Trial Judge, however, rejected both applications by a common order, which is now impugned in the present proceedings.

6. The principal relief sought in the suit is one for partition and separate possession. The proceedings disclose that there has been some lack of diligence on the part of the plaintiff in complying with the directions issued by the Appellate Court. At the same time, the circumstances in which the applications came to be filed, particularly the intervening

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COVID-19 pandemic and the extraordinary disruption caused to judicial proceedings during that period, ought not to have been lost sight of by the learned Trial Judge. The applications filed by the plaintiff deserved consideration keeping in view the approach adopted by the Hon'ble Apex Court in extending appropriate procedural indulgence in the backdrop of the pandemic.

7. It is true that the plaintiff cannot claim an indefeasible right to seek restoration without satisfactorily explaining the delay and non-compliance. Nevertheless, the Court, while exercising jurisdiction over proceedings involving adjudication of substantive civil rights, is required to strike a judicious balance between procedural discipline and the need to secure substantial justice.

8. The nature of the suit also assumes significance. The plaintiff is seeking partition and separate possession of the suit schedule properties. It is well settled that the right to seek partition is a recurring cause of action and, even if the present suit is not restored, the plaintiff may, subject to applicable law, institute fresh proceedings seeking partition and separate

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possession. Therefore, permitting the dismissal of the present suit to attain finality would, in the peculiar facts and circumstances, potentially give rise to another round of litigation between the parties, thereby multiplying proceedings without serving any meaningful purpose.

9. In these circumstances, this Court is of the view that the learned Trial Judge ought to have adopted a more pragmatic approach and exercised judicial discretion by imposing appropriate costs rather than shutting out the plaintiff from prosecuting the suit. The failure to comply with the directions of the Appellate Court, though not insignificant, could have been adequately addressed by imposing further costs and making restoration conditional upon such compliance.

10. This Court is, therefore, inclined to extend one more opportunity to the plaintiff, not as a matter of right, but in the interest of substantial justice and to avoid multiplicity of proceedings. However, such indulgence cannot be unconditional. The plaintiff must bear the consequences of the lack of diligence on his part and compensate defendant Nos.1 and 2 by way of further costs. This would adequately balance

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the competing interests of the parties while ensuring that the dispute is ultimately adjudicated on merits.

11. For the foregoing reasons and subject to the conditions indicated hereinbelow, this Court proceeds to pass the following:

ORDER

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

ii. The common order dated 29.07.2022 passed by the learned Trial Judge on I.A.Nos.7 and 8, vide Annexures-D and E, respectively, and the consequential order dated 10.01.2019, vide Annexure-C, are hereby quashed and set aside. Consequently, the suit stands restored to its original file.

iii. The petitioner/plaintiff shall appear before the Trial Court on 14.12.2026. On the said date, the petitioner shall deposit the costs of Rs.10,000/- directed to be paid by the Appellate Court to defendant Nos.1 and 2, together with a further sum of Rs.10,000/- imposed by

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this Court. Upon such deposit, the learned Trial Judge shall permit the petitioner to prosecute the suit in accordance with law and shall proceed with the matter in terms of the remand directions issued by the Appellate Court.

iv. It is made clear that the indulgence extended by this Court is subject to strict compliance with the aforesaid conditions.

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(SACHIN SHANKAR MAGADUM)
JUDGE

HDK
List No.: 1 Sl No.: 17