HC-KAR

NC: 2026:KHC:59925
WP No. 33243 of 2026

CNR: KAHC010717672026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF OCTOBER, 2026

BEFORE

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

WRIT PETITION NO. 33243 OF 2026 (GM-CPC)

BETWEEN:

1. SMT. INDIRA
   W/O VITTALA KOMBA,
   AGED ABOUT 47 YEARS
   R/AT SHRI SHANISHWARA KRIPA,
   KOTATHATTU, PADUKERE, MALPE,
   UDUPI TALUK, UDUPI DISTRICT-576108

...PETITIONER

(BY SRI. AVINASH H.S., ADVOCATE)

AND:

1. SMT. SHOBHA P KOTYAN
   D/O LATE RADHA BAI A KOTYAN,
   W/O DILIP CHOWDARY
   AGED ABOUT 70 YEARS
   "RADHA SMRUTHI"
   THOTTAM CHURCH ROAD,
   TENKANIDIYUR VILLAGE,
   MALPE POST,
   UDUPI TALUK,
   UDUPI DISTRCT-576108

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

2. SRI. NARAYANA K KOMBA,
S/O LATE K KOMBA
AGED ABOUT 60 YEARS

3. SRI RAMACHANDRA K KOMBA
S/O LATE K KOMBA
AGED ABOUT 67 YEARS

4. SRI JAYA K KOMBA
S/O LATE K KOMBA
AGED ABOUT 60 YEARS

RESPONDENT NO.2 TO 4
R/AT CHANNABASAVESHWARA BAJANA MANDALI,
NERAGI, KODAVOOR VILLAGE, MALPE POST,
UDUPI TALUK,
UDUPI DISTRCT.576108

…RESPONDENTS

(BY SRI. VINAYAK G. GOWDA, ADVOCATE FOR
SRI. AJITH A. SHETTY, ADVOCATE FOR R1)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION QUASHING THE IMPUGNED ORDER DATED 27-08-2026 IN I.A. NO. XI AND XII IN REGULAR APPEAL (ANNEXURE-A), REJECTING THE PETITIONERS APPLICATION UNDER ORDER XVIII RULE 17 READ WITH SECTION 151 CPC AND SECTION 148 READ WITH SECTION 151 CPC AND ETC.

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

The present petition is filed challenging the order dated 27.08.2026 passed in R.A.No.7/2026, whereby the application filed under Order XVIII Rule 17 read with Section 151 of the Code of Civil Procedure,1908, seeking recall of P.W.1 for the purpose of cross-examination, came to be rejected.

2. Learned counsel for the petitioner submits that, though the petitioner was granted an opportunity to cross-examine P.W.1 in the suit, the said opportunity could not be availed of on account of miscommunication regarding the progress of the suit. It is submitted that the suit has since been decreed and, if the petitioner is not permitted to cross-examine P.W.1, it would cause irreparable hardship and deprive the petitioner of an opportunity to establish a valid defence.

2.1 It is further submitted that an appeal is a continuation of the original proceedings and, therefore, the petitioner may be permitted to cross-examine P.W.1 even at the stage of the first appeal.

3. *Per contra*, learned counsel appearing for respondent No.1 submits that the First Appellate Court was justified in rejecting the application. It is submitted that the petitioner was duly represented by counsel and that the failure to cross-examine P.W.1 was not on account of lack of legal representation. The petitioner failed to avail the opportunities granted between 2022 and 2026. In the aforesaid circumstances, it is submitted that the impugned order does not warrant interference.

4. Considered the submissions made by the learned counsel for the parties and perused the impugned order.

5. The application seeking recall of P.W.1 for the purpose of cross-examination has been filed at the stage of the first appeal. A perusal of the record indicates that the petitioner entered appearance in the suit on 26.03.2022. Thereafter, several opportunities were granted to the petitioner to cross-examine P.W.1 and also to adduce evidence on behalf of the defendants. However, the petitioner failed to avail of the said opportunities, and consequently, the suit came to be decreed on 27.01.2026.

6. It is further evident from the record that, during the period from 26.03.2022 till 27.01.2026, the petitioner was afforded ample opportunities, which were not availed of. Undoubtedly, permitting the petitioner to cross-examine P.W.1 at this stage would have a bearing on the findings recorded in the judgment and decree and would seriously prejudice the rights accrued in favour of the other parties.

7. The present case is not one of denial of opportunity but is a case where the petitioner failed to avail of the opportunities duly afforded during the course of trial. The petitioner has not made out any ground warranting interference with the impugned order.

Accordingly, the writ petition stands ***dismissed***.

Sd/-
(K. V. ARAVIND)
JUDGE

VP
List No.: 1 Sl No.: 29