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Koosappa Gowda vs Harisha

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Court : Karnataka

Decided On : Jun-22-2026

Judge : Vijaykumar a. Patil

Appeal No. : WP/3929/2018

Appellant : Koosappa Gowda

Respondent : Harisha

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JUNE, 2026 BEFORE THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL WRIT PETITION NO.3929/2018 (GM-CPC) BETWEEN:

1. KOOSAPPA GOWDA S/O KUNCHA GOWDA AGED ABOUT 67 YEARS NEKKARE KODI HOUSE KOYYUR VILLAGE

2. SMT. RADHAMMA

W/O KOOSAPPA GOWDA AGED ABOUT 60 YEARS NEKKARE KODI HOUSE KOYYUR VILLAGE Digitally signed DAKSHINA KANNADA DISTRICT. by RUPA

V PETITIONERS Location: HIGH COURT OF (BY SRI. RAKSHITH KUMAR, ADV., FOR KARNATAKA SRI. AJITH ANAND SHETTY, ADV.,) AND:

1. HARISHA W/O KOOSAPPA GOWDA AGED ABOUT 28 YEARS NEKKARE KODI HOUSE KOYYUR VILLAGE -2-

2. KRISHNAPPA GOWDA W/O KUNCHA GOWDA AGED ABOUT 62 YEARS BENNENGALA HOUSE HANTHILA VILLAGE

3. VASU GOWDA S/O KUNCHA GOWDA AGED ABOUT 60 YEARS BENNENGALA HOUSE HANTHILA VILLAGE, BELTHANGADY TALUK

4. SMT. KAVERI D/O KUNCHA GOWDA AGED ABOUT 70 YEARS AJIRA HOUSE BARYA VILLAGE AND POST

5. SMT. SEETHA D/O KUNCHA GOWDA AGED ABOUT 67 YEARS NARYA HOUSE DHARMASTHALA VILLAGE AND POST

6. SMT. BALAKKA W/O THIMMAPPA GOWDA AGED ABOUT 60 YEARS R/AT HANTHARALU HOUSE MACCHINA VILLAGE BALLAMANJA POST -3-

7. SMT. KAMALA D/O KUNCHA GOWDA AGED ABOUT 57 YEARS MALAVANTHIGE VILLAGE DIDUPE POST

8. SMT. KOOSAMMA D/O KUNCHA GOWDA AGED ABOUT 52 YEARS HALE MANE HIREBANDADI VILLAGE AND POST PUTTUR TALUK

9. SMT. GIRIJA D/O KUNCHA GOWDA AGED ABOUT 51 YEARS BAJATHOOR VILLAGE, VALAL POST PUTTUR TALUK

10. SMT. MAMATHA W/O KESHAVA GOWDA AGED ABOUT 36 YEARS AJIRA HOUSE, BARYA VILLAGE AND POST

11. SMT. VANITHA W/O SUDHAKARA K AGED ABOUT 32 YEARS KADEMA HOUSE, KOYYUR VILLAGE

12. SMT. SUMITHRA W/O VISHWANATHA GOWDA AGED ABOUT 60 YEARS KOLMALE HOUSE -4- VEERAKAMBA VILLAGE

13. MOHANA

S/O KOOSAPPA GOWDA AGED ABOUT 23 YEARS KADEMA HOUSE, KOYYUR VILLAGE RESPONDENTS (BY SRI. K. SHASHIKANTH PRASAD, ADV., FOR R3 SRI. VIGNESH V, ADV., FOR R11 TO R13 V/O/DTD:02.06.2026, BRINGING LRS OR DECEASED R2, R4 AND R5 IS D/W R1 AND R6 TO R10 ARE SD AND UNREPRESENTED) THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 4.12.2017 PASSED BY THE HON'BLE PRL. SR. CIVIL JUDGE AND JMFC, BELTHANGADY IN MISCELLANEOUS APPEAL NO.11/2016 AS PER ANNEX-A THEREBY BE PLEASED TO CONFIRM THE ORDER DATED 9.09.2016 PASSED BY THE HON'BLE PRL. CIVIL JUDGE AND JMFC, BELTHANGADY IN O.S.198/2015 & ETC. THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER: CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL -5-

ORAL ORDER

This writ petition is filed challenging the order dated 04.12.2017 passed in M.A.No.11/2016 by the Principal Senior Civil Judge and JMFC, Belthangady.

2. Though the notice is served on respondent Nos.1, 6 and 10, they remained absent.

3. The brief facts of the case are that the

respondent No.1 has filed a suit in O.S.No.198/2015 for the relief of partition and separate possession with regard to the suit schedule properties against the petitioners and the respondent Nos.2 to 13. In the said suit, the defendant Nos.1 and 10 have filed an application under

Order XXXIX Rule 1 and 2 read with Section 151 of the

Code of Civil Procedure, 1908 (for short, 'the CPC') seeking prayer against the plaintiff by way of temporary injunction restraining the plaintiff from putting up any new construction in the plaint 'D' schedule property till the disposal of the suit. The

Trial Court, after considering the -6- submissions on both sides, vide order dated 09.09.2016 allowed the application by restraining the plaintiff from putting up any new construction in the plaint 'D' schedule property till the disposal of the suit. The plaintiff assailed the order of the Trial Court before the Appellate Court. The Appellate Court, in M.A.No.11/2016 vide order dated

04.12.2017 allowed the appeal by setting aside the order

dated 09.09.2016 passed in O.S.No.198/2015 and

consequently, I.A.No.6 filed by the petitioner under Order

XXXIX Rule 1 and 2 read with Section 151 of the CPC, was dismissed.

4. Sri.Rakshith Kumar, learned counsel for

Sri.Ajith Anand Shetty, learned counsel for the petitioners- defendant Nos.1 and 10 submits that the Appellate Court has incorrectly understood the decision of the Full Bench and recorded the finding that the prayer sought by the defendant Nos.1 and 10 falls under Order XXXIX Rule 1C of the CPC. It is submitted that the case of the defendant Nos.1 and 10 falls within Order XXXIX Rule 1(a) of the -7- CPC. It is further submitted that now this Court has granted the order of status quo in the present proceedings which is in force and if the same order is continued till disposal of the suit, ends of justice would be met.

5. Sri.K.Shashikanth Prasad, learned counsel

appearing for the respondent No.3 submits that the order

of status quo can be continued and seeks to dispose of the writ petition.

6. I have heard the arguments of the learned counsel appearing on both the sides and perused the material available on record.

7. The Trial Court, considering the rival

submissions, entertained the application filed by the defendant Nos.1 and 10 restraining the plaintiff from putting up any construction in the plaint D schedule property by recording the reason that any construction put up by the plaintiff would cause prejudice to the other -8- parties as the suit is for partition and the plaintiff would seek allotment of the share if the suit is decreed. The Appellate Court reversed the said finding under the impugned order mainly on the ground that the application filed by the defendant Nos.1 and 10 does not fall within the ambit of Order XXXIX Rule 1(a) of the CPC but it falls under Order XXXIX Rule 1(c) of the CPC. The Full Bench of this Court in the case of SMT.SHAKUNTALAMMA AND OTHERS Vs. SMT.KANTHAMMA AND OTHERS1 has opined the correct legal position by referring the statutory provisions. Paragraph 33 of the aforesaid judgment reads as under: 33. The correct legal position as is clear from the statutory provision is as under:

(i) Both the plaintiff and the defendant can maintain an application under Order XXXIX Rule 1(a) of the Code for the reliefs set out in the said provision;

(ii) Insofar as relief under Order XXXIX Rule 1(b) and (c) is concerned, such a relief is availableonly to the plaintiff and the defendant cannot maintain an 1 ILR 2014 KAR 6025 -9-

> application for the said reliefs in a suit filed by the plaintiff, irrespective of the fact that his right to such relief arises either from the same cause of action or a cause of action that arises subsequent to filing of the suit. However it is open to the defendant to maintain a separate suit against the plaintiff and seek relief provided under Order 39 Rule 1(b) and (c) of the Code.

(iii) In cases which do not fall under Order

> XXXIX Rule 1 of the Code, the Court has the inherent jurisdiction to grant the relief of injunction in its discretion, if it is satisfied that such an order is necessary to meet the ends of justice or to prevent abuse of process of the court and nothing in this Code shall limit or otherwise affect such

inherent power of the court.

8. It is to be noticed that the defendant Nos.1 and

10 have filed an application seeking prayer to restrain the plaintiff from putting up of new construction in the schedule D property till the disposal of said suit. In my considered view, such a relief sought by the defendant Nos.1 and 2 falls within Order XXXIX Rule 1(a) of the CPC, and not under other clauses. - 10 -

9. Be that as it may, it is to be noticed that this Court vide order dated 01.02.2018 has granted an interim

order staying the impugned order dated 04.12.2017, in

effect, the order of the temporary injunction granted by the Trial Court is in force. It is submitted at the Bar that now the suit is at the trial stage. I am of the considered view that instead of recording the finding with regard to the entitlement of granting injunction or correctness of the impugned order, it would be appropriate to direct the parties to maintain status quo with regard to possession till disposal of the suit.

10. Hence, I proceed to pass the following:

ORDER

(i) The writ petition is allowed.

(ii) The impugned order dated 04.12.2017 passed in M.A.No.11/2016 by the Principal Senior Civil Judge and JMFC, Belthangady, is set aside. - 11 -

(iii) The parties to the suit are directed to maintain status quo with regard to the possession till the disposal of the suit.

(iv) It is made clear that this Court has not made any observation with regard to the merits of the case. Sd/- (VIJAYKUMAR A. PATIL) JUDGE RV List No.: 1 Sl No.: 14

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