

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28<sup>TH</sup> DAY OF SEPTEMBER, 2017

BEFORE

THE HON'BLE MRS. JUSTICE B.V.NAGARATHNA

WRIT PETITION No.41701/2017

AND

WRIT PETITION No.41703/2017 (GM-CPC)

BETWEEN:

SMT. PARVATHAMMA  
WIFE OF LATE SRI.K.G. VISHWANATH  
AGE:60 YEARS  
REPRESENTED BY SPA HOLDER  
SHRI N.A.RAMESH  
OCCUPATION: AGRICULTURIST  
RESIDING AT:KALASIPALYA  
DODDABALLAPUR – 560 102  
BANGALORE RURAL DISTRICT

... PETITIONER

(BY SRI G.S.BHAT, ADV.)

AND:

SMT. KASTHURI  
WIFE OF SRI. G.KRISHNA REDDY  
AGED ABOUT 61 YEARS  
OCCUPATION: HOMEMAKER  
RESIDING AT NO.784  
18<sup>TH</sup> MAIN, 6<sup>TH</sup> BLOCK  
KORAMANGALA  
BANGALORE – 560 036

... RESPONDENT

(BY SRI PRASANNA KUMAR H., ADV. FOR  
SRI MALLIKARJUN REDDY, ADV.)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDERS DATED 26.08.2017 IN I.A.17 IN O.S.241/2009 PASSED BY THE COURT OF PRL. CIVIL JUDGE AND JMFC, GOWRIBIDANUR VIDE ANNEXURE – A AND ORDER DATED 08.09.2017 IN O.S.241/2009 VIDE ANNEXURE – B PASSED BY THE COURT OF PRL.CIVIL JUDGE AND JMFC, GOWRIBIDANUR AND ETC.,

THESE PETITIONS COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

### O R D E R

Though these writ petitions are listed for hearing-Interlocutory Application, the matter is taken up for preliminary hearing and with the consent of learned counsel on both sides, it is heard finally.

2. The petitioner is the plaintiff in O.S.No.214/2009, which is pending before the Court of the Principle Civil Judge and JMFC, Gauribidanur. That suit has been filed by the petitioner seeking the relief of declaration of title and consequential relief of permanent injunction. At the time of trial, plaintiff completed her evidence and thereafter, defendant filed an application under Order XVI Rule 1(2) of Code of Civil Procedure, 1908. By the impugned order dated 26.08.2017, the said

application has been allowed. Being aggrieved, plaintiff has preferred these writ petitions.

3. Learned counsel for the petitioner during the course of his submission brought to my notice the fact that the trial Court directed the witness, who is none other than the vendor of the petitioner to appear before the Court on 15.09.2017 and on that day, when the witness did not appear, has directed issuance of Bailable Warrant to the said witness and subsequently, on 23.09.2017 directed issuance of Non-Bailable Warrant against the witness returnable by 06.10.2017. Petitioner's counsel submits that it was wholly unnecessary for the trial Court to pass such orders, as the witness is unwell and a medical certificate in that regard has been furnished. He further submitted that the said witness could be examined after the defendant is examined and there is no reason whatsoever for examination of the said witness before examination of the defendant. In the circumstances, petitioner's counsel submitted that the impugned order may be modified to that extent.

4. Learned counsel for the respondent has stated that respondent/defendant in the suit has no objection to examine herself first in the suit and thereafter to examine and cross-examine the vendor of the petitioner as a witness.

5. It is noted that although the application has been filed under Order XVI Rule 1(2) and the same has been allowed, in substance, the said application is one under Order XVI Rule 14. The trial Court has also proceeded on the basis as if the summoned witness is a Court witness and not a witness either of the plaintiff or of the defendant. In that view of the matter, the concerned witness was duty bound to respond to the summons issued by the Court. However, it is submitted by petitioner's counsel that the said witness could not attend the Court on the concerned dates of hearing, as he was unwell.

6. In the circumstances, the issuance of Bailable Warrant and thereafter, Non-Bailable Warrant against the said witness is quashed. As the said witness shall be examined as a Court witness after defendant's evidence is

completed, the trial Court shall re-issue fresh summons to the said witness to appear on a particular date and thereafter to examine him in accordance with law and permit him to be cross examined.

7. With the aforesaid observations and directions, writ petitions are disposed of.

In view of disposal of the writ petitions, I.A.No.1/2017 also stands disposed of.

**Sd/-  
JUDGE**

VM