

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MAY 2019

BEFORE

THE HON'BLE MR.JUSTICE S.N.SATYANARAYANA

WRIT PETITION No.51629 OF 2014 (CS-DAS)

BETWEEN:

MANJUNATH
S/O LATE BOMMARAYIGOWDA
AGED ABOUT 37 YEARS
R/A NO.116, PTC LAYOUT
NETAJI NAGAR, ALANAHALLI
MYSURU-570 028.

...PETITIONER

(By Sri MANJUNATHESHWARA, ADVOCATE FOR
Sri G.CHANDRASEKHARAIAH, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY ITS PRINCIPAL SECRETARY
TO GOVERNMENT
DEPARTMENT OF CO-OPERATION
GOVERNMENT OF KARNATAKA
3RD GATE, 6TH FLOOR,
M.S.BUILDING
Dr.B.R.AMBEDKAR VEEDHI
BENGALURU-560001
2. THE ASSISTANT REGISTRAR OF
CO-OPERATIVE SOCIETIES
HUNSUR SUB DIVISION
HUNSUR,
MYSURU DISTRICT-571105

3. THE PRIMARY AGRICULTURE CREDIT
CO-OPERATIVE SOCIETY LIMITED
(FORMERLY KNOWN AS VYAVASAYA
SEVA SAHAKARA BANK NIYAMITHA,
HANAGODU) HANAGODU, HUNSUR TALUK
MYSURU DISTRICT – 571 105
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER
4. SRI BOMMARAYIGOWDA
FORMER MANAGER
THE PRIMARY AGRICULTURE CREDIT
CO-OPERATIVE SOCIETY LIMITED
HANAGODU, HUNSUR TLAUK
SINCE DECEASED BY HIS LRs:
 - 4(a) SMT.JYOTHILAKSHMI
W/O DEVEGOWDA
AGE: MAJOR
R/A 3RD STAGE, KRISHNANAGARA
PANDAVAPURA TOWN
MANDYA DISTRICT – 571 434.
 - 4(b) SMT.SUNITHA
W/O MOHANKUMAR
AGE : MAJOR
R/A HARAE MALLARAJAPATNA
PIRIYAPATNA TALUK
MYSURU DISTRICT – 571 107.
5. SRI N.K.DEVEGOWDA
S/O KALEGOWDA
AGED ABOUT 53 YEARS
R/A KRISHNANAGARA, 3RD STAGE
PANDAVAPURA TOWN
MANDYA DISTRICT – 571 434. ...RESPONDENTS

(By Sri A.K.VASANTH, GA FOR R1 & R2;
Sri SUMANTH KUMAR.S.PATIL, ADVOCATE FOR C/R3;
R-4(a) & (b) and R5 are served but unrepresented)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER PASSED BY R2 ON 19.06.2010 IN SURCHARGE CASE NO.1/2009-10 AT ANNEXURE – A; QUASH THE ORDER PASSED BY THE HON'BLE KARNATAKA APPELLATE TRIBUNAL, BENGALURU ON 18.10.2012 IN APPEAL NO.376/2010 ON ITS FILE AT ANNEXURE-B AS WELL AS THE ORDER PASSED BY THE HON'BLE TRIBUNAL ON 07.03.2014 IN REVIEW PETITION NO.31/2012 ON ITS FILE, AT ANNEXURE-C.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner herein is impugning the order dated 19.06.2010 passed in Surcharge Case No.1/2009-10 on the file of Assistant Registrar of Co-operative Societies, Hunsur Sub-Division, Hunsur. In these proceedings, the petitioner is also impugning the order of Karnataka Appellate Tribunal dated 18.10.2012 in Appeal No.376 of 2010 vide Annexure – 'B' and as well as the order dated 07.03.2014 passed in Review Petition No.31 of 2012 vide Annexure – 'C'.

2. Brief facts leading to this writ petition are as under:

Petitioner herein is admittedly the son of Bommarayigowda who was working as Secretary with the third respondent, namely, the Primary Agriculture Credit Co-operative Society Limited (erstwhile known as Vyavasaya Seva Sahakara Bank Niyamitha, Hanagodu). It is stated that petitioner's father was secretary of the said Society from 20.01.1984 to 26.06.2007. The records would indicate that in an Audit, which was conducted for the years 2005-06 and 2006-07, it is noticed that there is large scale misappropriation of funds in the third respondent Society wherein the misappropriation, which is stated to have been committed by the petitioner's father Bommarayigowda is assessed to an extent of Rs.29,34,649/-. It is based on the said report, Surcharge proceedings was initiated against the petitioner's father in Surcharge Case No.1/2009-10 under Section 69 of the Karnataka Co-operative Societies Act, 1959. In the said proceedings, it is stated that an application was filed by the third respondent, seeking to attach the property which is standing in the name of the petitioner on the premise that the said property was acquired by Bommarayigowda out

of the amount misappropriated by him from the third respondent Society.

3. In the said proceedings, while granting ad-interim ex-parte order, notice was issued to the petitioner on the said application. Wherein, he entered appearance through counsel, placed his objection contending that the said property is his self-acquired property, which is acquired out of the income derived from the business conducted by him between the years 1998 and 2001 and also contended that the order of attachment before judgment which was passed by the Court below is erroneous and the same is required to be recalled in as much as there is no liability on the petitioner herein to the alleged misappropriation said to have been done by Bommarayigowda at the first instance and secondly, the properties which are sought to be attached being the exclusive self-acquired property of the petitioner, the same could not be subjected to attachment and one more ground is that he is not a party to the proceedings, hence, the attachment proceedings could not have been initiated against him.

4. After hearing the learned counsel for the petitioner herein in the said proceedings, the order of attachment which was passed was confirmed. The same was subject matter of challenge before the Karnataka Appellate Tribunal by the petitioner herein and another person by name, N.K.Devegowda who is the son-in-law of Bommarayigowda, where certain allegations were made against him also by stating that the properties which are purchased by Bommarayigowda were acquired not only in the name of the petitioner, Manjunatha but also in the name of N.K.Devegowda. However, the appeal which was filed by them in Appeal No.376 of 2010 on the file of the Karnataka Appellate Tribunal is dismissed by judgment dated 18.10.2012 which was subsequently sought to be reviewed by filing a review petition in R.P.No.31 of 2012, which also came to be dismissed by order dated 07.03.2014 and thereafter, this writ petition is filed contending that serious injustice is caused to the petitioner herein by the Assistant Registrar of Co-operative Societies, Hunsur while considering the application of the third respondent herein in the said Surcharge Proceedings for causing attachment of the property standing in his name and

also in confirming the same without impleading him as party to the said proceedings, which is not looked into by the Karnataka Appellate Tribunal in the appeal as well as in the Review Petition. Therefore, he sought to quash the said Surcharge Proceedings by allowing this writ petition.

5. Heard the learned counsel for the petitioner as well as the learned Government Advocate appearing on behalf of Respondent Nos.1 and 2 and also learned counsel appearing for Caveator/Respondent No.3.

6. On going through the material available on record, it is clearly seen that the said enquiry is still at the initial stage. Based on the information that is furnished, the Assistant Registrar of Co-operative Societies has passed the ad-interim attachment order before judgment and has simultaneously issued notice to the petitioner to enquire whether the said property was acquired by the delinquent employee Bommarayigowda who was working with the third respondent in the name of his son, i.e., the petitioner herein or the said property is exclusive property of the petitioner. The same is required to be considered in an enquiry to be

conducted before the Assistant Registrar of Co-operative Societies where the said matter is pending for consideration. Therefore, the present petition filed challenging the order of attachment before judgment passed in the said proceedings is pre-mature in nature. Therefore, correctness or otherwise of the same cannot be considered unless a full-fledged enquiry is conducted into the same.

7. With such observations, this writ petition is disposed of reserving liberty to the petitioner herein to participate in the proceedings initiated by the third respondent against his father Bommarayigowda, which is in Surcharge Case No.1/2009-10. In the said proceedings, the Assistant Registrar of Co-operative Societies is called upon to implead the petitioner herein as one of the respondent and thereafter, to conduct an enquiry and dispose of the same in accordance with law.

With the above observations, this writ petition is disposed of.