



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR JUSTICE S.G.PANDIT

WRIT PETITION NO. 6939 OF 2021 (GM-CPC)

BETWEEN:

SRI C MARISIDDEGOWDA
AGED ABOUT 60 YEARS,
S/O LATE CHIKKA ANKEGOWDA
R/AT MAVINAHALLI
JAYAPURA HOBLI
MYSURU TALUK AND DISTRICT-570 008.

...PETITIONER

(BY SRI. P NATARAJU, ADV.)

AND:

1. SRI SHIVEGOWDA
AGED ABOUT 68 YEARS
S/O NARASIMHE GOWDA
R/AT MYDANA HALLI
YELAWALA HOBLI
MYSURU TALUK AND DISTRICT-571 130.
2. SMT. RAJAMMA
AGED ABOUT 60 YEARS,
W/O LATE NANJAPPA,
3. SRI MANJUNATH
AGED ABOUT 42 YEARS,
S/O LATE NANJAPPA,
4. SMT. SUNITHA
AGED ABOUT 38 YEARS,
W/O MANJUNATH

Digitally signed by
A K CHANDRIKA
Location: High
Court Of
Karnataka



5. MR. SACHIN
AGED ABOUT 19 YEARS,
S/O MANJUNATH
6. MR. SHASHANK
AGED ABOUT 17 YEARS,
S/O MANJUNATH

RESPONDENT NO.6 IS MINOR
REPRESENTED BY NATURAL GUARDIAN
FATHER SRI MANJUNATH-3RD RESPONDENT.

7. SRI MALLESHA
AGED ABOUT 41 YEARS,
S/O LATE NANJAPPA,
8. SMT. YASHODA
AGED ABOUT 37 YEARS,
W/O MALLESHA
9. MR. BHARATH
AGED ABOUT 17 YEARS,
S/O MALLESHA
10. MR. ARYA
AGED ABOUT 15 YEARS,
S/O MALLESHA

RESPONDENTS NO.9 AND 10 ARE MINOR
REPRESENTED BY NATURAL GUARDIAN
FATHER SRI MALLESHA-7TH RESPONDENT.

RESPONDENTS NO.2 TO 10 ARE
R/AT MEGALAPURA VILLAGE,
YELAWALA HOBLI,
MYSURU TALUK AND DISTRICT-571 130.

...RESPONDENTS

(BY SRI. MANJUNATH PRASAD V., ADV. FOR R1
R2 TO R5, R7 & R8 ARE SERVED & UNREPRESENTED
R6, R9 & R10 ARE MINORS)



THIS PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER PASSED BY THE LEARNED V ADDL. SENIOR CIVIL JUDGE AND JMFC AT MYSURU IN O.S.NO.865/2014 ON IA NO.8 TO 10 DATED 01.03.2021 VIDE ANNEX-G AND MAY BE PLEASED TO ALLOW IA NO.8 TO 10 ON ITS FILE.

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

ORDER

The petitioner/plaintiff in O.S.No.865/2014 on the file of V Additional Senior Civil Judge and JMFC, Mysuru is before this Court, aggrieved by order dated 01.03.2021 rejecting I.A.Nos.8 to 10 filed to re-open the case from the stage of arguments to the stage of further examination of witnesses and to issue witness summons to the witnesses named in the list of witnesses enclosed to the application.

2. Heard learned counsel for the parties and perused the writ petition papers.

3. Learned counsel for the petitioner would submit that the suit of the petitioner/plaintiff is one for declaration of his title based on the sale deed dated 30.03.2007 executed by defendant Nos.2 to 10 and for injunction



against the defendants. Learned counsel would submit that when the suit was at the stage of arguments, the petitioner/plaintiff filed 3 I.As., i.e., I.A.No.8 under Section 151 of CPC to re-open the case for further evidence, I.A.Nos.9 and 10 under Order XVI Rules 1 and 2 of CPC praying to condone the delay in filing the list of witnesses and to issue summons to the witnesses mentioned in the list of witnesses.

4. Learned counsel for the petitioner would submit that the petitioner's suit is for declaration based on the sale deed dated 30.03.2007. Since the petitioner/plaintiff had failed to examine attesting witnesses to the sale deed which was absolutely necessary to prove petitioner's case, the petitioner filed applications seeking permission to examine attesting witnesses to the sale deed, as well as to examine one of the executants, defendant No.3. Learned counsel would submit that the trial Court dismissed the applications only on the ground that applications are filed at belated stage without examining as to whether such



examination of witnesses was necessary to decide the dispute between the parties. Moreover, learned counsel would submit that the defendants had not filed any objections to the I.As and they had submitted to allow the I.As. In spite of their submission to allow the applications, the trial Court failed to consider the I.As in proper perspective and committed an error in rejecting the applications. Thus, learned counsel would pray for an opportunity to examine the witnesses stated in the list of witnesses.

5. The suit of the petitioner/plaintiff is one for declaration of title based on the registered sale deed dated 30.03.2007 executed by defendants No.2 to 10. The petitioner intends to examine the witnesses to the said sale deed. When the prayer of the petitioner/plaintiff is for declaration based on the sale deed, it would be appropriate for the plaintiff to examine the attesting witnesses to the said sale deed. Therefore, the trial Court could not have denied examination of attesting witnesses



to the sale deed i.e., Sl.No.2 and 3 in the list of witnesses Sri.P.Mahadevu and P.Chikkanegowda. It is the contention of the first defendant that he is the owner of the suit schedule property as defendants No.2 to 10 have executed sale deed in his favour, but the defendant Nos.2 to 10 in their written statement have stated that they have executed sale deed in favour of the plaintiff and first defendant has misused the ignorance of defendants No.2 to 10 and got signed the document as registered sale deed. When such being the dispute, it would be appropriate for the petitioner/plaintiff to examine the attesting witnesses to the sale deed.

6. The petitioner's request to examine defendant No.3 i.e., Sri.Manjunath is rejected, since the petitioner cannot compel defendant No.3 to enter the witness box in the facts and circumstances of the case. Hence, the following order:

The writ petition is partly allowed. I.A.Nos.8 to 10 are allowed. Order dated 01.03.2021 on I.A.Nos.8 to 10



in O.S.No.865/2014 on the file of V Additional Senior Civil Judge and JMFC, Mysuru is set aside and consequently, I.A.Nos.8 to 10 are allowed. The petitioner/ plaintiff is permitted to examine further witnesses. The trial Court to issue witness summons to attesting witnesses to the sale deed Ex.P3., i.e., Sri.P.Mahadevu and Sri.P.Chikkanegowda. Petitioner's request to examine Defendant No.3 Sri.Manjunath is rejected.

**Sd/-
JUDGE**

MPK
CT:bms
List No.: 1 Sl No.: 61