



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MRS JUSTICE M G UMA

WRIT PETITION NO. 51994 OF 2017 (GM-CPC)

BETWEEN:

1. SRI. M. P. NARAYANACHAR
S/O SRI M B PUTTASWAMACHAR
AGED ABOUT 63 YEARS
NO.1107, 38TH CROSS
11TH MAIN, 4TH T BLOCK
JAYANAGAR, BENGALURU - 560 011
(SENIOR CITIZENS BENEFIT NOT CLAIMED)

...PETITIONER

(BY SRI. ABHINAV R.,ADVOCATE)

Digitally signed
by PAVITHRA N
Location: high
court of
karnataka

AND:

1. SRI. JASMER PRAKASH
AGED ABOUT 36 YEARS
S/O LATE SRI SUNDRA PRAKASH
NO.19, SULTANPUR ESTATE
MEHRAULLI, NEW DELHI - 110 030
2. MRS RADHA KHOSLA @ RADHA PRAKASH
MAJOR IN AGE
D/O LATE SURENDRA PRAKASH
NO.06, FIRS DRIE CRANFORD
MIDDS, TW5 PD
ENGLAND - TW4 6LE
3. SRI T SATYANARAYANA
S/O LATE S TARASA
AGED ABOUT 63 YEARS
NO.B-10, 8TH E MAIN
4TH BLOCK, JAYANAGAR
BENGALURU - 560 011



4. SRI K T SUBASH
S/O P G THIMMAIAH
AGED ABOUT 51 YEARS
R/A VENKATESHWARA NILAYA
NO.2103/25, 2-A
RAILWAY PARALLEL ROAD
KENGERI SATELLITE TOWN
BENGALURU - 560 060
5. SRI RAVI BANDI
S/O B K VENKATESH
AGED ABOUT 51 YEARS
R/A VENKATESHWARA NILAYA
NO.2103/25, 2-A
RAILWAY PARALLEL ROAD
KENGERI SATELLITE TOWN
BENGALURU - 560 060

...RESPONDENTS

(BY SRI. B C SEETHARAM RAO FOR R3.,ADVOCATE
V/O DTD 13.08.2018, NOTICE TO R1,2,4&5 DISPENSED WITH)

THIS WRIT PETITION FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDERS ON IA NO.10 & 11 DATED 23.9.2017 PASSED BY THE XXXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE [CCH-36] BENGALURU IN O.S.NO.,1696/2010 AT ANNEXURE-G AND G1 TO THE W.P AND ETC.,

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

ORDER

Defendant No.4 in OS No.1696 of 2010 on the file of the learned XXXV Additional City Civil and Sessions Judge (CCH-36), Bengaluru, is impugning the order dated 23.09.2017, allowing IA No.10 filed under Section 151 of CPC seeking re-



opening of the case and permitting defendant No.3 to examine defendant No.4 and also IA No.11 filed under Section XVI Rule 1(3) of CPC for issuance of summons to defendant No.4 to produce the General Power of Attorney deed.

2. Heard Sri. Abhinav R, learned counsel for the petitioner and Sri. B C Seetharam Rao, learned counsel for respondent No.3. Perused the materials on record.

3. Learned counsel for the petitioner submitted that, the plaintiff filed the suit OS No.1696 of 2010 for partition and separate possession of the schedule property. Plaintiff and defendant No.1 are brother and sister and defendant No.2 is their mother. Defendant No.2 died during the pendency of the suit. Defendant No.1 has not contested the suit. Plaintiff led evidence by examining himself as PW-1 and he is fully cross examined. The Trial Court after closing the defendants' evidence, posted the matter for judgment. At that stage, IA Nos.10 and 11 came to be filed. The applications and the affidavits accompanying the applications are very bald and without any details. IA No.10 do not specify as to why defendant No.3 wants to summon defendant No.4. IA No.11



lacks particulars about the documents which defendant No.3 wants to summon defendant No.4 to produce. When the applications are bald and lack particulars, the Trial Court committed an error in allowing the applications.

4. Learned counsel submitted that there is a clear bar for summoning the co-defendants as witness, unless there is a specific reason assigned for the same. Defendant No.3 has not stated anything about the requirement for filing IA Nos.10 and 11. The Trial Court ignored all these facts, allowed the applications. Even the order passed on IA No.10 is a cryptic order, which do not suggest any reasons for allowing the same. When a document is to be summoned, the applicant has to make it clear as to why the said document is to be summoned with particulars of such document. When, even the date of the document is not mentioned and when the petitioner is not a party to the said document, the Trial Court committed an error in allowing the applications. Hence, he prays for allowing the petition.

5. Per contra, learned counsel for the respondents opposing the petition submitted that the suit filed by the



plaintiff is only at the instance of the petitioner who is arrayed as defendant No.4. Defendant Nos.1 and 2 have never contested the matter. Defendant No.2 is the mother of plaintiff and defendant Nos.1 and 2 are her children's. Defendant No.2 died during the pendency of the suit. Admittedly, defendant No.2 sold the schedule property in favour of defendant Nos.5 and 6 on the basis of Power of Attorney deed executed by plaintiff and defendant No.1. Thereafter, defendant Nos.5 and 6 have sold the same property in favour of defendant No.3. Therefore, defendant No.3 is the absolute owner in possession of the property. Now, a collusive suit is filed seeking partition and separate possession at the instance of defendant No.4.

6. Learned counsel submitted that defendant No.4 was through out present before the Court, even though plaintiff was never present except on the date when he was examined. The Trial Court noted the same in its order. Moreover, defendant No.4 had filed the suit OS No.1522 of 1995 seeking specific performance of the contract against the plaintiff in the present suit and also against defendant Nos.1 and 2. Defendant No.3 was impleaded in the said suit. The suit came to be dismissed. The same was challenged by defendant No.4 even before the



Hon'ble Supreme Court, where SLP No.24001 of 2008 came to be dismissed vide order dated 15.09.2008. It is only thereafter, the present suit came to be filed.

7. Learned counsel further submitted that, defendant No.3 had filed an HRC seeking possession of the property. The said petition came to be allowed and possession of the property was ordered to be delivered in favour of defendant No.3. The same was not challenged.

8. Learned counsel submitted that, defendant No.4 in OS No.1522 of 1995 deposed about the General Power of Attorney deed executed by the plaintiff and defendant No.1 in favour of defendant No.2 and also stated that, on the basis of the same, defendant No.2 sold the property. Ex-D.28 is the letter dated 06.12.1993, where defendant No.4 endorsed that he has received the said original General Power of Attorney deed. But cleverly, the said General Power of Attorney deed was never produced before the Court. Defendant No.4 has not lead any evidence before the Trial Court and therefore, defendant No.3 filed the applications IA Nos. 10 and 11 which were rightly allowed by the Trial Court. There are no reason to



interfere with the same. Hence, he prays for dismissal of the petition.

9. It is not in dispute that the plaintiff and defendant No.1 are brother and sister. Defendant No.2 is their mother. Defendant No.2 died during the pendency of the suit and defendant No.1 is not contesting the suit. It is the contention of defendant No.3 who is the only contesting party that the present petitioner i.e., defendant No.4 is behind the screen in filing the suit and he is taking interest in representing the plaintiff on all the dates of hearing, being present before the Court.

10. It is the specific contention of defendant No.3 that defendant No.4 had filed OS No.1522 of 1995 seeking specific performance of the contract, wherein defendant No.3 got himself impleaded. It is not in dispute that the said suit came to be dismissed and the judgment and decree dismissing the suit was confirmed in SLP No.24001 of 2008. It is the specific contention of defendant No.3 that only after dismissal of the SLP, the present suit came to be filed by the plaintiff at the instance of defendant No.4.



11. It is also not in dispute that defendant No.3 filed an HRC seeking possession of the schedule property. It is stated that the said petition was already allowed and the same was not challenged by any of the parties. It is stated that the plaintiff is the permanent resident of Delhi and in his absence, it is defendant No.4 who was attending the Court on every date of hearing and after conclusion of the evidence of plaintiff, the matter was posted for defendants' evidence. The contention of defendant No.3 that he was under the impression that defendant No.4 will enter the witness box and that he will have the opportunity to cross examine him, cannot be denied. When defendant No.4 submitted that he has no evidence to lead in the suit, these applications came to be filed.

12. It is the contention of defendant No.3 that, plaintiff and defendant No.1 have executed Power of Attorney in favour of their mother defendant No.2, authorising her to sell the property. It is stated that on the basis of the said Power of Attorney deed, defendant No.2 sold the property in favour of defendant Nos. 5 and 6 who in turn sold the property in favour of defendant No.3. Therefore, it is defendant No.3 alone who



is contesting the suit. It is his specific contention that in the earlier proceedings i.e., in OS No.1522 of 1995, petitioner had made specific reference to the said general Power of Attorney executed by the plaintiff and defendant No.1 in the present suit in favour of defendant No.2, on the basis of which, there was sale of the property in favour of defendant Nos. 5 and 6.

13. Learned counsel for the respondents also drawn my attention to the copy of Ex.D-28 - letter dated 06.12.1993, wherein, it is stated that defendant No.4 endorsed that he has received the original General Power of Attorney deed, executed in favour of defendant No.2. It is under such circumstances, defendant No.3 who is the subsequent purchaser of the property is summoning defendant No.4 to produce the original General Power of Attorney deed and tender himself for evidence. I do not find any reason to reject the claim of defendant No.3, as he is the contesting defendant and his interest in the schedule property is at stake. When he has taken specific defence in order to substantiate the same, he is intending to summon defendant No.4 and also summon him to submit the General Power of Attorney deed which *prima facie* appears to be in the custody of defendant No.4.



14. Learned counsel for the petitioner places reliance on the decisions of this Court in ***Mallangowda and others v/s Gavisiddangowda and another***¹ and ***Principal, Basavaprabhu Kore College of Arts and Sciences v/s Virupaxappa Channabasappa***², in support of his contention that, the co- defendants cannot be summoned as witnesses by the other defendants. But in these decisions, under the facts and circumstance of the case, the Court formed an opinion that the party to the suit cannot be summoned by other party, but the co-ordinate Bench of this Court in ***Virupaxaappa Channabasappa(supra)*** made it clear that no hard and fast rule can be laid down preventing the party from summoning the opposing party as his witness. It is also held that the Court is required to scrutinize the facts and circumstances of each case before passing any order on such application.

15. I have gone through the affidavits filed in support of IA Nos. 10 and 11 and considered the same in light of the contentions taken by the petitioner and respondents. I find

¹ AIR 1959, Mysore 194

² 1975 (2) Kant LJ 15



considerable force in the contention taken by defendant No.3 to summon defendant No.4 to produce the document in question and to tender himself for examination. I do not find any reason to reject the claim of defendant No.3 or to interfere with the impugned order, as the same does not suffer from any illegality or perversity.

16. Hence, I proceed to pass the following:

ORDER

The writ petition is ***dismissed***.

**Sd/-
JUDGE**

SPV
List No.: 1 SI No.: 1