



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

WRIT PETITION NO. 22311 OF 2019 (GM-CPC)

BETWEEN:

SMT. ARASAMMA
W/O MUNIYAPPA
RESIDING AT NO.44, BYLAMMA HOUSE,
4TH CROSS, AK COLONY,
7TH BLOCK, JAYANAGAR,
BANGALORE-560 082.

...PETITIONER

(BY SRI M.S. CHANDRASHEKAR BABU, ADV.)

AND:

1. SMT. LAKSHMI
HUSBAND NAME NOT KNOWN
TO THE PETITIONER
RESIDING AT YEDIYURE, AK COLONY,
JAYANAGAR, 7TH BLOCK,
BANGALORE-560 082.

2. SMT. MUNIYAMMA
W/O LATE GOVINDAPPA.

3. HEMANTH KUMAR
S/O LATE GOVINDAPPA.

4. SRINAGESH
S/O LATE GOVINDAPPA.

RESPONDENTS NO.2 TO 4 ARE
RESIDING AT NO.44, BYLAMMA HOUSE,
4TH CROSS, AK COLONY,
7TH BLOCK JAYANAGAR,
BANGALORE-560 082.

...RESPONDENTS

(BY SRI A. MADHUSUDHANA RAO, ADV., FOR R-1;
R-2 T- R-4 SERVED & UNREPRESENTED)





THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO-SET ASIDE THE ORDER DATED 26.02.2019 IN I.A.NO.IV, IN O.S.NO.8078/2016 PENDING BEFORE THE ADDITIONAL CITY CIVIL AND SESSION JUDGE BANGALORE (CCH-57) VIDE ANNEXURE-A AND REMAND MATTER FOR FRESH CONSIDERATION.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B GROUP', THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

1. Defendant No.2 in OS No.8078/2016 pending before the Court of Additional City Civil and Sessions Judge (CCH 57), Bengaluru, is before this Court in this writ petition filed under Article 227 of the Constitution of India with a prayer to set-aside the order dated 26.02.2019 passed on IA No.4 in OS No.8078/2016.

2. Heard the learned counsel for the parties.

3. Learned counsel for the petitioner submits that parties to the suit are all members of a joint family. As against the ex-parte judgment and decree passed in OS No.7795/2002 by the Court of XX Additional City Civil Judge (CCH 32), Bengaluru



City, petitioner herein has filed RFA No.729/2008 which is pending consideration before this Court. In the meanwhile, legal representatives of the plaintiff in OS No.7795/2002 have filed the present suit seeking possession of the suit schedule properties, which are also subject matter of RFA No.729/2008. He submits that under similar circumstances, the Co-ordinate Bench of this Court has allowed WP No.8129/2019 which arises from the very same suit and has remanded the matter for fresh consideration of application which was filed to implead the petitioners in WP No.8129/2019 as additional plaintiffs. He submits that the Trial Court has not assigned proper reasons for rejecting IA No.4 filed by the petitioner under Section 10 of CPC. Accordingly, he prays to allow the petition.

4. Per contra, learned counsel for respondent No.2 has opposed the petition. He submits that WP No.8129/2019 arose out of an order passed by the Trial Court in OS No.8078/2016 rejecting IA No.2 filed to permit the petitioners in WP No.8129/2019 to come on record as additional plaintiffs. The subject matter involved in the present petition is totally different. He submits that necessary ingredients so as to invoke



Section 10 of CPC is not present in the present case and therefore, the Trial Court has rightly rejected IA No.4. Accordingly, he prays to dismiss the petition.

5. It is not in dispute that petitioner herein is party defendant No.4 in OS No.7795/2002 and as against the judgment and decree passed in the said suit which was filed for partition, separate possession and mesne profits, the petitioner has filed RFA No.729/2008 which is pending consideration before this Court. In the meanwhile, legal representatives of plaintiff in OS No.7795/2002 have filed the present suit in OS No.8078/2016 with a prayer to direct the defendants to vacate and hand over vacant possession of the suit schedule properties. According to the learned counsel for the petitioner, the suit schedule properties in OS No.8078/2016 and in OS No.7795/2002 are common.

6. Perusal of the impugned order would go to show that the learned trial Judge has not assigned any reasons for rejecting IA No.4, which is filed by the petitioner under Section 10 of CPC to stay the further proceedings in OS No.8078/2016 on the ground that subject matter involved in both the suits and the



parties to both the suits are similar. The trial Judge has virtually proceeded to dismiss the application for the reason that evidence in the suit has already commenced. It is trite that application under Section 10 of CPC can be filed at any stage of the suit and an appeal is considered as continuation of the suit. Under the circumstances, I am of the opinion that the order impugned needs to be set-aside and the matter needs to be remitted to the Trial Court with a direction to the Trial Court to consider IA No.4 afresh and pass orders on the merits of the application after hearing all the parties. Accordingly, the following order:

6. The writ petition is allowed. The order dated 26.02.2019 passed on IA No.4 in OS No.8078/2016 by the Court of Additional City Civil and Sessions Judge (CCH 57), Bengaluru, is hereby set-aside and the matter is remitted to the Trial Court with a direction to consider IA No.4 afresh and pass orders on the merits of the application after hearing all the parties, as expeditiously as possible but not later than a period of two months from the date of receipt of copy of this order.



NC: 2025:KHC:39608
WP No. 22311 of 2019

7. All contentions urged on merits by both the parties are left open.

Sd/-
(S VISHWAJITH SHETTY)
JUDGE

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List No.: 1 Sl No.: 46