HC-KAR

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 23RD DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 102661 OF 2026 (GM-CPC)

BETWEEN:

RAJESH PRABHAKAR CHINCHANKAR,
AGE. 46 YEARS, OCC. COOLIE,
R/O. TOLNAKA, AMDALLI,
TQ. KARWAR, DIST. UTTARA KANNADA-581 301.

... PETITIONER

(BY SRI. GIRISH A. YADAWAD, ADVOCATE)

AND:

1. YOGESH S/O GIRIRYA PADTI,
   AGE. 55 YEARS, OCC. COOLIE,
   R/O. TOLNAKA, AMDALLI,
   TQ. KARWAR, DIST. UTTARA KANNADA-581301.

2. THE PANCHAYAT DEVELOPMENT OFFICER,
   AMDALLI, TQ. KARWAR,
   DIST. UTTARA KANNADA-581301.

3. THE TAHSILDAR, KARWAR,
   TQ. KARWAR,
   DIST. UTTARA KANNADA-581301.

4. THE DEPUTY COMMISSIONER,
   KARWAR, TQ. KARWAR,
   DIST. UTTARA KANNADA-581301.

... RESPONDENTS

(BY SRI. R.H. ANGADI, ADVOCATE FOR R1;
NOTICE TO R2 TO R4 ARE SERVED)

MOHANKUMAR B SHELAR
Digitally signed by MOHANKUMAR B SHELAR
Location: HIGH COURT OF KARNATAKA

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY SUCH WRIT OR DIRECTION TO QUASH THE ORDER DATED 19.12.2024 PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM COURT, KARWAR IN MA NO.9/2024 VIDE ANNEXURE-E, IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.,

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

ORAL ORDER

(PER: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM)

Learned counsel appearing for the petitioner/defendant No.1, reiterating the specific averments contained in paragraph No.4 of the written statement, vehemently contended that the plaintiff has deliberately suppressed the factum of partition effected among the parties under a registered partition deed. He would submit that the Trial Court, having adverted to the prima facie material placed on record by defendant No.1, had rightly declined to grant an order of temporary injunction. It is further contended that the Appellate Court, while exercising jurisdiction under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 (for short 'CPC') has exceeded the limited scope of appellate scrutiny. According to him, in the absence of a specific finding that the discretion exercised by the Trial Court was arbitrary, capricious or perverse, the Appellate Court could not have substituted its own view and reversed the well-considered order passed by the Court of first instance.

2. Per contra, learned counsel appearing for the respondent-plaintiff vehemently argued and submitted that the

well in question is a common well intended to be enjoyed by the plaintiff and his siblings, namely defendant Nos.1 and 2. He would contend that the plaintiff has an equal right to draw water from the said well and, therefore, the Appellate Court, on appreciation of the prima facie material placed on record, has rightly granted an order of injunction restraining defendant No.1 from exploiting the water for commercial purposes. He therefore sought dismissal of the writ petition.

3. At this juncture, learned counsel for the petitioner fairly submitted that, out of the two wells situated in the property, the dispute essentially relates only to one well. Referring to the registered partition deed, he submitted that the disputed well came to be dug by defendant No.1 subsequent to the partition effected under the registered deed. He, however, fairly submitted that the petitioner has no objection for the plaintiff drawing water from the other well, which admittedly existed prior to the partition among the family members.

4. In the backdrop of the said submission, this Court is of the view that the plaintiff, who has instituted the suit seeking

declaration of his alleged common right over the disputed well by asserting that it is an ancestral well, has to establish the same in the course of a full-fledged trial. A perusal of the pleadings would indicate that the plaintiff has not disclosed the severance in status brought about under the registered partition deed executed among himself and defendant Nos.1 and 2. The Trial Court, on consideration of the prima facie material placed by both the parties, had declined to grant an order of injunction. However, the Appellate Court, while reversing the said order, has failed to assign cogent reasons as to how the discretion exercised by the Trial Court suffered from perversity or arbitrariness.

5. The registered partition deed produced along with the written statement and objections to the application under Order XXXIX Rules 1 and 2 of CPC assumes significance at this stage. Prima facie, the said document does not indicate the existence of the disputed well in the suit property. The Trial Court, having duly adverted to the said registered document and the attendant circumstances, has refused the relief of temporary injunction. The Appellate Court, however, has

brushed aside this material document and substituted its own view without recording any finding that the order passed by the Trial Court suffered from perversity. Such an approach, in the considered view of this Court, is impermissible.

6. In that view of the matter, this Court is of the opinion that the impugned order passed by the Appellate Court cannot be sustained. At the same time, the plaintiff's claim of a common right over the disputed well is a matter which has to be established by leading evidence during the course of trial. Any observations made by the Trial Court while considering the application for temporary injunction and the observations made by this Court in the present proceedings are confined only to the adjudication of the interlocutory dispute and shall not influence the Trial Court while deciding the suit on merits.

7. Accordingly, this Court passes the following:

ORDER

(i) The writ petition is ***allowed***.

(ii) The order dated 19.12.2024 passed in M.A.No.9/2024 by the Principal Senior Civil Judge and CJM, Karwar, is hereby quashed.

(iii) Consequently, the order dated 05.09.2024 passed on I.A.No.1 in O.S.No.117/2024 by the Principal Civil Judge and JMFC-II, Karwar, rejecting the application filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, stands restored.

(iv) All rival contentions of the parties are kept open and shall be adjudicated independently during the course of trial.

(v) Any observations made herein are only for the purpose of examining the legality of the impugned orders and shall not be construed as an expression of opinion on the merits of the case.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

MBS
CT:BCK
LIST NO.: 1 SL NO.: 19