HC-KAR

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 1ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 102022 OF 2025 (GM-CPC)

BETWEEN:

SHRI SANTOSH S/O RAGHAVENDRA MUTALIK DESAI,
AGE: 51 YEARS, OCC. PRIVATE SERVICE,
R/O. H.NO.1817, RAJAJINAGAR,
OPPOSITE SV NEST APARTMENT,
BEHIND MP PRAKASH GODOWN,
HOSPET, TQ. HOSPET,
DIST. VIJAYANAGAR-583201.

... PETITIONER

(BY SRI. DEEPAK S. KULKARNI, ADVOCATE)

AND:

1. SHRI BHIMARAO @ ANANDARAO
   S/O RAGHAVENDRA MUTALIK DESAI,
   AGE: 55 YEARS, OCC. BUSINESS,
   R/O. CTS NO.6553, SECTOR NO.10,
   PLOT NO.1756, MALAMARUTHI EXTENSION,
   ANJANEYANAGAR, BELAGAVI-590016.

2. SMT. SUKANYA W/O RAGHAVENDRA MUTALIK DESAI,
   AGE: 77 YEARS, OCC. HOUSEHOLD,
   R/O. H.NO.1817, RAJAJINAGAR,
   OPPOSITE SV NEST APARTMENT,
   BEHIND MP PRAKASH GODOWN,
   HOSPET, TQ. HOSPET,
   DIST. VIJAYANAGAR-583201.

... RESPONDENTS

(BY SRI. S.M. NAGANURI, ADVOCATE FOR R1;
NOTICE TO R2 IS DISPENSED WITH)

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

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER WRIT OR DIRECTION AND QUASH THE IMPUGNED ORDERS DATED 31-01-2025 PASSED IN O.S. NO-339/2022 BY THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM COURT, BELAGAVI IN RESPECT OF REJECTION OF "(I) I.A. NO-3 FILED U/O-18 RULE 17A OF CPC TO RECALL PW-1 TO LEAD FURTHER EVIDENCE AND (II) I.A. NO-4 FILED U/O-7 RULE 14 R/W SECTION 151 OF CPC TO PRODUCE DOCUMENTS AS PER SEPARATE LIST", COPY FURNISHED AS PER ANNEXURE-A TO THE WRIT PETITION, AS THE SAME IS HIGHLY PERVERSE AND ILLEGAL AND ETC.,

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

ORAL ORDER

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

1. The captioned writ petition is filed by the plaintiff assailing the order passed by the learned Trial Judge rejecting I.A. Nos.3 and 4, whereby the plaintiff's prayer to recall himself for further evidence and to produce additional documents came to be declined. The Trial Court, while rejecting the applications, was of the view that the documents sought to be produced had come into existence subsequent to the institution of the suit and that the plaintiff had not been diligent in producing the said documents at the appropriate stage. On these premises, the

learned Judge declined to exercise discretion and rejected the applications. The said order is under challenge.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents. Perused the material placed on record as well as the impugned order.

3. Learned counsel appearing for the respondents/defendants, while opposing the petition, would contend that the applications are wholly misconceived and are liable to be rejected having regard to the mandate contained in Order VII Rule 14 of the Code of Civil Procedure, 1908. He would submit that the plaintiff was under a statutory obligation to produce all documents in support of his claim along with the plaint and that permitting production of additional documents after closure of the plaintiff's evidence, when the matter has already been posted for defendants' evidence, would seriously prejudice the defence. It is therefore contended that the

learned Trial Judge has rightly exercised discretion in rejecting the applications and that the impugned order does not warrant interference under Article 227 of the Constitution of India.

4. On careful examination of the material on record, this Court is of the considered view that the reasons assigned by the learned Trial Judge cannot be sustained. Before adverting to the rival contentions, it would be apposite to refer to Issue No.3 framed by the Trial Court, which reads as follows:

> *"Whether the plaintiff proves that he has constructed the building in suit Item No.1 property by raising loan from Canara Bank and Dhanashree Co-operative Society?"*

5. The suit is one for partition. While seeking partition and separate possession of his alleged share, the plaintiff has also specifically pleaded that the building standing on Item No.1 of the suit schedule property is his exclusive acquisition and that the same was constructed by availing loans from Canara Bank and Dhanashree Co-

operative Society. Thus, the plaintiff seeks exclusion of the said structure from the pool of joint family properties available for partition.

6. In the light of the pleadings and the issue extracted above, the burden squarely rests upon the plaintiff to establish that the construction raised over Item No.1 is his exclusive property and consequently not liable to be partitioned. The documents sought to be produced relate to the loans admittedly availed by the plaintiff for construction of the building and also to the subsequent discharge of those loans during the pendency of the suit. These documents admittedly came into existence after institution of the suit and, therefore, could not have been produced at the time of filing the plaint. Having regard to the nature of the controversy involved, the documents sought to be produced have a direct bearing on the adjudication of Issue No.3 and are therefore relevant and material for effective adjudication of the dispute.

7. The explanation offered by the plaintiff in the affidavit filed in support of the applications, though not entirely satisfactory, sufficiently discloses that the documents are subsequent developments which could not have been produced earlier. Even assuming that there has been some degree of laxity on the part of the plaintiff in approaching the Court at a belated stage, the same by itself ought not to have weighed with the Trial Court in declining permission to produce documents which are otherwise material for complete and effective adjudication of the issues arising in the suit. The discretion vested in the Court is intended to advance the cause of justice and not to defeat it on technical considerations.

8. This Court is also of the view that the rigour of Order VII Rule 14 of the Code of Civil Procedure, 1908 and the restrictions flowing from Order XVIII Rule 17 cannot be applied with undue technicality in a partition suit, where the primary endeavour of the Court is to effectively and finally determine the rights of the parties. If the additional

evidence sought to be adduced has a direct bearing on the controversy involved, the Court should ordinarily lean in favour of permitting such evidence, subject of course to appropriate safeguards. Though permitting the plaintiff to adduce further evidence at this stage may cause some inconvenience to the defendants, the same can adequately be compensated by awarding costs. In the present case, imposition of costs of ₹10,000/- payable by the plaintiff to the defendants would sufficiently balance the equities between the parties.

9. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

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

(ii) The order dated 31.01.2025 passed on I.A. Nos.3 and 4 in O.S. No.339/2022 by the Court of the Principal Senior Civil Judge and

CJM, Belagavi, vide Annexure-A, is hereby quashed and set aside.

(iii) The plaintiff is permitted to recall himself and adduce further evidence and also to produce the additional documents, subject to payment of costs of ₹10,000/- to the defendants on the next date of hearing before the Trial Court.

(iv) In the event the plaintiff fails to pay the aforesaid costs within the time stipulated, the benefit of this order shall automatically stand withdrawn and the Trial Court shall proceed with the suit in accordance with law.

(v) The plaintiff shall conclude his further evidence within a period of four (4) weeks from the date of receipt of a certified copy

of this order, without seeking unnecessary adjournments.

(vi) Liberty is reserved to the defendants to cross-examine the plaintiff on the additional documents and, if necessary, to adduce rebuttal evidence strictly confined to the additional evidence permitted under this order.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

VNP / CT: BCK
LIST NO.: 1 SL NO.: 6