



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 3RD DAY OF JUNE, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.23659/2021 (GM-CPC)

BETWEEN:

HARISH
AGED ABOUT 54 YEARS
S/O LATE APPANNA
R/O. HEGGUDLU VILLAGE
BANAKAL HOBLI AND POST
MUDIGERE TALUK
CHIKKAMAGALURU DISTRICT 577132.

...PETITIONER

(BY SRI. CHIDAMBARA G.S. ADV.,)

AND:

KRISHNAPPA
AGED ABOUT 73 YEARS
S/O LATE APPANNA
R/O. HEGGUDLU VILLAGE
BANAKAL HOBLI AND POST
MUDIGERE TALUK
CHIKKAMAGALURU DISTRICT 577132.

...RESPONDENT

(RESPONDENT – KRISHNAPPA - SD)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SETTING ASIDE THE ORDER DATED 09.11.2021, VIDE ANNEXURE-C PASSED BY THE COURT OF THE ADDL. CIVIL JUDGE AND JMFC AT MUDIGERE IN O.S.NO.110/2016 IN SO FAR AS IT RELATES TO MARKING OF ALLEGED DOCUMENT DATED 28.01.2015 AS EX.P10 & ETC.





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

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This petition is filed challenging the order dated 09.11.2021 passed in O.S.No.110/2016 by the Additional Civil Judge and JMFC, Mudigere, insofar as it relates to marking of the document dated 28.01.2015 as Ex.P10.

2. Though served, there is no representation for the respondent.

3. Sri Chidambara G.S., learned counsel appearing for the petitioner submits that the petitioner is the defendant in a suit filed by the respondent for the relief of declaration that the plaintiff in the suit is the absolute owner and has right over 'A' schedule property as per the partition deed dated 28.01.2015 and during the course of examination-in-chief of PW-2, a photocopy copy of the alleged partition deed dated 28.01.2015 was produced



which was marked by the Trial Court subject to the production of the original deed. It is submitted that the document in question is a suit document which is admittedly unregistered and not stamped and being a xerox copy, the Trial Court ought not have marked the same. Hence, he seeks to set aside the impugned order by allowing the petition.

4. I have heard the learned counsel for the petitioner and meticulously perused the material available on record.

5. The respondent herein has filed O.S.No.110/2016 seeking a declaration that the plaintiff is the absolute owner and has right over the 'A' schedule property as per the partition deed dated 28.01.2015 and further prayer to partition the 'A' schedule property and allot a share. The petitioner has filed written statement denying the assertions made in the plaint. During the course of the evidence of PW-2, document dated 28.01.2015 was



produced. At that time, the petitioner has raised an objection that the alleged partition deed is neither stamped nor registered and a photocopy is produced. The Trial Court overruled the said objection under the impugned order and marked the said document as Ex.P10. It is to be noticed that the Trial Court has rightly recorded the reason that the covenants of the alleged partition deed dated 28.01.2015 indicate that there was earlier a partition and based on that, this deed was written, and proceeded to overrule the objection of the defendant-petitioner herein with regard to the registration of the instrument. It is to be further noticed that admittedly the instrument which the plaintiff intended to mark was a photocopy, which the Trial Court ought not have allowed to mark in the absence of production of the original before it. Hence, I am of the considered view that unless the plaintiff produces the original of the alleged partition deed dated 28.01.2015, he cannot be allowed to mark the photocopy of the said document.



6. For the aforementioned reasons, I proceed to pass the following:

ORDER

- (i) The writ petition is allowed.
- (ii) The impugned order dated 09.11.2021 insofar as marking of the alleged partition deed dated 28.01.2015 is concerned, is set aside.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE