

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8th DAY OF JANUARY 2007

BEFORE

THE HON'BLE MR. JUSTICE H.N.NAGAMOHAN DAS

W.P.NO. 266/2007(GM-C.P.C.)

BETWEEN

Harish J. Padmanabha
S/o Late C.J. Padmanabh,
Aged about 59 years,
R/o 'KEWGARTH', No.5,
Police Station Road,
Basavanagudi,
Bangalore - 560 004.

... PETITIONER

(By Sri H.N. Shashidhar for Kesvy & Co., Adv.,)

AND

Dr.C.J. Bhaktharam,
S/o late H.C. Javaraiah,
Aged about 73 years,
R/o No.6, Police Station Road,
Basavanagudi,
Bangalore - 560 004.

... RESPONDENT

(By Sri M.Shivaprakash, Adv.)



This W.P. is filed under Articles 226 & 227 of the Constitution of India praying to set-aside the impugned order dated 15.12.2006 passed in O.S.No.17067/2004 on the application filed under Order 26 Rule 1 and 2 of the Civil Procedure Code vide Annex.A by the learned XXVIII Addl. City Civil Judge, Mayo Hall, (CCH.No.29), Bangalore, etc.

This W.P. coming on for preliminary hearing this day, the Court made the following:

ORDER

In this writ petition, the petitioner has prayed for a writ in the nature of certiorari to quash the order dated 15.12.2006 in O.S.No.17067/2004 passed by Civil Judge, Mayo Hall, Bangalore allowing the application filed under O.26 R. 1 and 2 'C.P.C. for appointment of a Court Commissioner to record the evidence of the scribe of the Will.

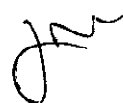
2. Petitioner filed O.S.No.17067/2004 against the respondent for declaration that the Will dated 24.11.1977 as null and void and for consequential reliefs. The respondent filed an application under O. 26 R.1 and 2 C.P.C. to appoint a



Court Commissioner to record the evidence of the scribe of the Will in question. The Trial Court after hearing both the parties passed the impugned order allowing the application of the respondent for appointment of Court Commissioner. Hence this petition.

3. Heard arguments on both the side and perused the entire writ papers.

4. The controversy between the parties is the genuineness and validity of the Will dated 24.11.1977. When the respondent-defendant wants to examine the scribe, the petitioner cannot have any objection for the same. It is for the respondent-defendant to prove his case by examining the concerned witnesses. The Trial Court has not committed any error in appointing the Court Commissioner to record the evidence of the scribe of the Will. No prejudice will be cause to the petitioner if the evidence of the scribe is recorded by



way of a Court Commissioner. I find no justifiable grounds to interfere with the same.

5. Sri H.N.Shashidar, learned counsel for the petitioner contends on various aspects touching the merits of the case. Petitioner is entitled to cross-examine the witness in accordance with law.

6. With the above observations, the writ petition is rejected with no order as to costs. - JV

Sd/-
Judge