

IN THE HIGH COURT OF KARNATAKA AT BENGALURUDATED THIS THE 23rd DAY OF APRIL 2019

BEFORE

THE HON'BLE MR. JUSTICE B. VEERAPPAWRIT PETITION No.1813/2018 (GM-CPC)
c/w. WRIT PETITION No.1814/2018 (GM-CPC)

BETWEEN

THE SCHOOL DEVELOPMENT AND
MAINTENANCE COMMITTEE
MEENUKUNTE HOSUR VILLAGE,
JALA HOBLI,
BENGALURU NORTH TALUK-560 085.REPRESENTED BY ITS PRESIDENT
SRI A NAGARAJ
S/O LATE ANJINAPPA,
AGED ABOUT 63 YEARS.

... PETITIONER (COMMON)

(By Sri.R.S.RAVI, ADVOCATE FOR
Sri.CHANDRAPPA V, ADVOCATE)

AND

SRI. M K MUNIRAJU
S/O LATE KALAPPA,
AGED ABOUT 50 YEARS,
R/AT MEENUKUNTE HOSUR VILLAGE,
JALA HOBLI,
BENGALURU NORTH TALUK-560 085.

... RESPONDENT (COMMON)

(By Sri.SRINIVAS, ADVOCATE FOR
Sri.S VENUGOPALA, ADVOCATE FOR C/R)

WRIT PETITION No.1813/2018 IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER PASSED ON I.A.NO.IV FILED UNDER ORDER 18 RULE 17 R/W SECTION 151 OF CPC IN O.S.NO.306/2010 DTD 28.11.2017 VIDE ANNEX-J ON THE FILE OF THE ADDL. CIVIL JUDGE AND JMFC AT DEVANAHALLI.

WRIT PETITION No.1814/2018 IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER PASSED ON I.A.NO.V FILED UNDER ORDER 18 RULE 17 R/W SECTION 151 OF CPC IN O.S.NO.306/2010 DTD 28.11.2017 VIDE ANNEX-J ON THE FILE OF THE ADDL. CIVIL JUDGE AND JMFC AT DEVANAHALLI.

THESE WRIT PETITIONS COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The plaintiff filed these writ petitions against the common order passed by the trial court dated 28.11.2017 made in O.S. No.306/2010 rejecting the application filed under Section 151 of CPC and under Order XVIII Rule 17 read with Section 151 of CPC to reopen the case from the stage of arguments and to lead further chief-examination of P.W.1, respectively.

2. The plaintiff filed the suit for permanent injunction in respect of suit schedule property based on the gift deed dated 20.09.1971 executed by the father of the plaintiff and his brothers. The defendant filed written statement denying the plaint averments and contended that the alleged gift deed was not at all executed by the defendant. There is no acceptance of gift deed and sought for dismissal of the suit. After completion of the evidence, when the matter was posted for arguments, at that stage, the plaintiff filed the aforesaid two applications on the ground that he filed the suit for permanent injunction against defendant and the case was set down for arguments of the plaintiff. At the time of filing the suit, he has furnished some documents which have been marked as exhibits. He wanted to produce some more documents for better adjudication of the case. Therefore, he sought to produce the same along with the applications. Non production of the documents before the trial Court is neither intentional nor deliberate. It was purely bonafide.

Therefore, it is just and proper to re-open and recall P.W.1 to lead further chief examination in the case.

3. The said applications were opposed by the defendant by filing objection and specifically contended that the plaintiff concluded his evidence long back. Thereafter, the defendant lead his evidence examining himself as D.W.1 and the plaintiff cross examined D.W.1 on 21.01.2017. The matter was posted for argument on merits. The plaintiff, who took several adjournments to argue the matter on merits has now filed present applications, which are highly belated. The plaintiff has stated that he wanted to produce some more documents, which they have not produced. At least they have not specified which documents they are going to produce and when the matter is posted for arguments. The matter cannot be re-opened and sought for dismissal of both applications.

4. The trial Court, considering the applications and objections filed, by impugned order dated 28.11.2017

rejected both applications with cost of Rs.300/-. Hence, the present writ petitions are filed.

5. I have heard the learned counsels for the parties to the lis.

6. Sri. R.S. Ravi, learned counsel for the petitioner contended that the impugned order passed by the trial Court rejecting the applications filed by the plaintiff to recall P.W.1 for further chief examination and to reopen the case, cannot be sustained. He further contended that trial Court ought to have come to a conclusion that the suit has been filed in respect of school building and ought to have permitted the petitioner to produce the documents to substantiate his contention and it ought not have rejected the applications on technicality. He further submits that the trial Court ought to have given an opportunity to the plaintiff to substantiate his case by producing the relevant documents for further adjudication of the case. Mere production of the documents in no way prejudices the case of the defendant on merits and will not

deprive the rights of the parties. Therefore, he sought to allow the writ petition.

7. Per contra, Sri. Srinivas, learned counsel for the respondent sought to justify the impugned order and contended that the suit was filed for permanent injunction and the applications filed when the matter was posted for arguments are not maintainable. The applications were filed only to drag the proceedings and to harass the defendant. Therefore, he sought to dismiss the writ petitions.

8. Having heard the learned counsel for the parties, it is undisputed fact that the suit filed by the plaintiff is for permanent injunction in respect of the suit schedule property which is described in the schedule to the plaint mainly on the basis of the alleged gift deed dated 20.09.1971. The defendant filed written statement denying the plaint averments including the gift deed and sought to dismiss the suit. It is also an undisputed fact that after completion of evidence on both sides, the matter

was posted for arguments. At that stage, the present applications came to be filed. Though there was delay in filing the applications and producing the documents to substantiate the case of the plaintiff, the trial Court ought to have given an opportunity to the plaintiff to produce the documents to substantiate the case instead of rejecting the applications on technical ground. It is also an undisputed fact that the suit is filed in respect of the immovable property and the rights of the parties cannot be deprived based on technicality. The Courts must do substantial justice to parties by disposing of matters on 'merits'. The expression 'sufficient cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub-serves the ends of justice.

9. Admittedly, the present suit is filed by the plaintiff for permanent injunction. It is for the plaintiff to prove his case based on the oral and documentary evidence on record. No prejudice will be caused to be defendant if an opportunity is given to the plaintiff. It is not the case of

the defendant that the plaintiff is dragging the matter unnecessarily by seeking adjournments. Though the applications were filed at the belated stage, when the matter was posted for arguments, the trial Court ought to have allowed the applications with cost and the same has not been done.

10. In view of the aforesaid reasons, writ petitions are allowed. The impugned order passed by the trial Court dated 28.11.2017 made in O.S.No.306/2010 is hereby quashed. The I.As. filed by the plaintiff under Section 151 of CPC and under Order XVIII Rule 17 read with Section 151 of CPC to reopen the case from the stage of arguments and to lead further chief-examination of P.W.1, are hereby allowed and the trial Court shall permit the plaintiff to lead further evidence and to produce documents subject to payment of cost of Rs.2,500/- on each applications, (i.e., Rs.5,000/-) to be paid to the defendant on the next hearing date. The plaintiff shall proceed with further chief examination if any on

27.04.2019 or any date to be fixed by the learned trial
Judge in accordance with law.

Writ petitions are disposed of accordingly.

**Sd/-
JUDGE**

Cs/-