



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION No. 19839 OF 2023 (GM-CPC)

BETWEEN:

SRI. G. SANJAY
S/O LATE GOWRISHANKAR
AGED ABOUT 53 YEARS
R/AT No.22 A & B, 6TH MAIN
JAYALAKSHMIPURA
3RD BLOCK, MYSORE - 570 012.

...PETITIONER

(BY SRI T SESHAGIRI RAO, ADVOCATE)

AND:

1. SMT. SATHYAVATHI MEGHADOOTH
D/O LATE GOWRISHANKAR
W/O MEGHDUTH M BALALU
AGED ABOUT 57 YEARS
R/AT DODDATHOTA
DODDA AMARAGOWDANAHALLI VILLAGE
ILLALVALA HOBLI
MYSORE – 571 130.

2. SMT. SWARNALATHA DEVI
W/O LATE GOWRISHANKAR
AGED ABOUT 80 YEARS
R/AT No.22 A & B, 6TH MAIN
JAYALAKSHMIPURA
3RD BLOCK, MYSORE – 570 012.

3. SMT. SHARADHA JAGDISH
D/O LATE GOWRISHANKAR
W/O JAGADEESH
AGED ABOUT 56 YEARS
R/AT No. 302, "SANKALP"
YADAVAGIRI,
MYSORE – 570 020.

...RESPONDENTS

(BY SRI Y K NARAYANA SHARMA, ADVOCATE FOR R1)





NOTICE TO R2 TO R3 IS DISPENSED WITH
V/O DTD. 25.03.2024)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE IMPUGNED ORDER DATED 05/08/2023 PASSED ON IA No. XV IN OS No.329/2011 FOUND AT ANNEXURE-A TO THE WRIT PETITION.

THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. This petition by defendant No.2 in O.S.No.329/2011 on the file of the Principal Civil Judge and J.M.F.C., Mysuru is directed against the impugned order dated 05.08.2023 passed on I.A.No.15, whereby the application filed by respondent No.1 – plaintiff under Order XI Rule 21 CPC., seeking striking off the defence of the petitioner – defendant No.2 on account of non production of documents as directed by the Trial Court and confirmed by this Court and the Hon'ble Apex Court, was allowed by the Trial Court.

2. A perusal of the material on record would indicate that respondent No.1 – plaintiff instituted the aforesaid suit against the petitioner – defendant No.2 and the other defendants for declaration, partition and other reliefs in relation to the suit schedule immovable property. The said suit is being contested by the petitioner – defendant No.2.



3. Prior to commencement of trial, respondent No.1 filed an application I.A.No.13 seeking for a direction to the petitioner to produce certain documents and the said application was allowed by the Trial Court vide order dated 01.12.2014. The said order passed by the Trial Court allowing I.A.No.13 was confirmed by this Court in **W.P.No.5828/2014**, as well as by the Hon'ble Apex Court in **S.L.P.No.5241/2021**. Meanwhile, respondent No.1 – plaintiff filed the instant application I.A.No.15, seeking striking off the defence of the petitioner, on the ground of non compliance of the earlier orders passed by the Trial Court and confirmed by this Court, as stated *supra*. By the impugned order, the Trial Court allowed I.A.No.15, aggrieved by which, the petitioner is before this Court, by way of the present petition.

4. Before advertng to the facts of the instant case, it would be profitable to extract Order XI Rule 21 of CPC, which states as under;

“21. Non- compliance with order for discovery. – 2[(1)] Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence,



if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect and (an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard).

4[(2) Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.]”

5. A plain reading of Order XI Rule 21 of CPC., is sufficient to come to the conclusion that non compliance of an order for production of documents under Order XI Rule 14 of CPC., will not entail striking off the defence as contemplated in the said provision. In fact, the said provision relates to striking off, of the defence of the party, in the event, interrogatories are not answered by the adverse party which is not relatable to Order XI Rule 14 of CPC. Consequently, the Trial Court clearly fell in error in invoking Order XI Rule 21 of CPC, for the purpose of striking off the defence of the petitioner on the ground of non compliance of the order passed on I.A.No.13 directing the petitioner to produce the documents. Under these circumstances, in the light of the provisions contained in Order XI Rule 21 of CPC, which are neither applicable to the facts



of the instant case nor to the order passed on I.A.No.13 under Order XI Rule 14 of CPC., I am of the view that the impugned order passed by the Trial Court deserves to be set-aside and the application filed by respondent No.1 deserves to be dismissed.

6. At this stage, learned counsel for the petitioner submits that the petitioner would make all efforts to secure the documents and in the event it is possible to do so, the petitioner would produce the same before the Trial Court. It is also submitted that in the event if the petitioner is not in a position to produce the documents, liberty may be reserved in favour of the respondents to request the Trial Court to draw inference / adverse inference against the petitioner for non compliance of the order passed on I.A.No.13.

7. In view of the aforesaid facts and circumstances, I deem it just and appropriate to set-aside the impugned order and dispose off I.A.No.15, by issuing certain directions.

8. In the result, the following;

ORDER

- (i) The petition is hereby allowed.
- (ii) The impugned order is hereby set-aside.



- (iii) I.A.No.15 stands dismissed.
- (iv) The submission made on behalf of the petitioner that in the event, the petitioner is in a position to secure the documents, the petitioner would produce the same, is placed on record.
- (v) It is further directed that in the event if the petitioner is not in a position to produce the documents, liberty is reserved in favour of the respondents to request the Trial Court to draw inference / adverse inference against the petitioner for non compliance of the order passed on I.A.No.13 and the Trial Court shall hear both sides on this aspect of the matter and proceed further in the matter.

Sd/-
JUDGE

GH
List No.: 1 SI No.: 11