

**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**

DATED THIS THE 18TH DAY OF AUGUST, 2021

BEFORE

THE HON'BLE MR.JUSTICE NATARAJ RANGASWAMY

W. P. No. 202959 OF 2018 (GM-CPC)

BETWEEN:

UMAR FAROOQ
S/O MOHAMMED YUSUF MANIYAR
AGED: 58 YRS
OCC: BUSINESS PRESIDENT/
CHAIRMAN OF THE MOTOR LINE ASSOCIATION
VIJAYAPUR R/O STATION BYE PASS ROAD,
NEAR APMC, VIJAYAPUR.

...PETITIONER

(BY SRI LIYAQAT FAREED USTAD, ADVOCATE - VC)

AND :

- 1 . BHAURAO S/O EKANATH BANDI
AGE: MAJOR R/O SHIKARKHANE
VIJAYAPUR-586101.
- 2 . ALLABAX S/O HUSSAINSAB BAGALKOT
AGE: 72 YRS OCC: RUNNING MOTOR FATTA
GARAGE SPRING WORK STATION BACKROAD,
BIJAPUR.
- 2A. MOHAMAD S/O LATE ALLABAX BAGALKOT
AGE: 46 YRS OCC: TEACHER.
- 2B. ABDUL HANNAN
S/O LATE ALLABAX BAGALKOT
AGE: 42 YRS OCC: BUSINESS
- 2C. MOHEMAD HANIF
S/O LATE ALLABAX BAGALKOT
AGE: 36 YRS OCC: BUSINESS

SL.NO.2A TO 2C ARE R/O ASAR GALLI BIJAPUR
TQ. DIST. BIJAPUR - 586101.

...RESPONDENTS

(BY SRI M J INAMDAR, ADVOCATE FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO, ISSUE THE WRIT IN NATURE OF CERTIORARI AND QUASH THE ORDER DATED 03.09.2018 IN E.P.NO.32/2014 PASSED ON I.A.NO.3 APPLICATION FILED UNDER ORDER XXI RULE 97,99 AND 103 AND ORDER I RULE 10(2) R/W SEC.151 OF CPC IN EXECUTION CASE NO.32/2014 PENDING BEFORE THE PRINCIPAL CIVIL JUDGE, VIJAYAPUR, VIDE ANNEXURE-D. STAY THE ENTIRE PROCEEDINGS IN E.P.NO.32/2014 PENDING BEFORE THE PRINCIPAL CIVIL JUDGE, VIJAYAPUR VIDE ANNEXURE-E TILL THE PENDING DISPOSAL OF THE ABOVE WRIT PETITION, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS WRIT PETITION COMING ON FOR ORDERS THIS DAY, THE COURT PASSED THE FOLLOWING:-

ORDER

This Writ Petition is filed challenging the order passed by Prl. Civil Judge, Vijayapura (henceforth referred to as 'Executing Court') dated 03.09.2018 in E.P. No.32/2014, by which an application filed by the petitioner herein under Order XXI Rules 97, 99 and 103 and Order I Rule 10(2) read with Section 151 of the Code of Civil Procedure, 1908 (henceforth referred to as 'CPC') was rejected.

2. A suit in O.S. No.7/1992 was filed by the petitioner herein for specific performance of an agreement of sale allegedly executed by respondent No.1 herein. The said suit was dismissed following which Regular Appeal No.33/2010 was filed which too was dismissed by the First Appellate Court. The petitioner thereafter filed RSA No.200335/2016 and the same is pending consideration.

3. In the meanwhile, respondent No.2 herein filed O.S. No.642/2009 for perpetual injunction in respect of very same property wherein respondent No.1 sought for a counter claim of recovery of possession of the property. The suit in O.S. No.642/2009 was dismissed and the counter claim filed by respondent No.1 herein was decreed. Respondent No.1 therefore filed E.P. No.32/2014 to enforce the decree of counter claim in O.S. No.642/2009.

4. During the pendency of the execution proceedings, the petitioner herein filed an application under Order XXI Rules 97, 99 and 103 and under Order I Rule 10(2) read with Section 151 of CPC to obstruct the

execution of the decree on the ground that he was placed in possession of the suit property, in respect of which R.S.A. No.200335/2016 was pending consideration before this Court.

5. The Executing Court after considering the contentions held as follows :

"28. Further, as the applicant has already filed second appeal in RSA No.200335/2016, even if the present application is dismissed, no prejudice will be caused to the applicant as every order made under the provisions of Order XXI Rule 97 or 99 shall be subject to the result of the said appeal as per Order XXI Rule 104 of CPC. Therefore, for all these reasons, I am of the considered opinion that the applicant has not proved that he has got just cause to resist the decree holder to take possession of the suit property and as such, the application is liable to be dismissed. Accordingly, I answer point No.1 in the **NEGATIVE**."

6. It is not in dispute that the suit filed by the petitioner herein for specific performance is dismissed and a Regular Appeal preferred therefrom was also dismissed. If the respondent No.1 recovers possession of the suit property from the judgment debtors in E.P. No.32/2014,

the same should not affect the petitioner herein. In case, if the petitioner succeeds in RSA No.200335/2016, the petitioner shall always be entitled to recover possession of the suit property in the manner known to law. Therefore, the Executing Court has rightly dismissed the application filed by the petitioner herein and this Court does not feel it necessary to interfere with the order of the Executing Court. Hence, this Writ Petition lacks merit and the same is dismissed.

7. The recovery of possession of suit property shall always be subject to the outcome of the proceedings in RSA No.200335/2016.

8. In view of the dismissal of Writ Petition, I.A. No.1/2018 does not survive for consideration.

**Sd/-
JUDGE**

hnm