

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

DATED THIS THE 23RD DAY OF JANUARY, 2020

BEFORE

THE HON'BLE MR.JUSTICE G.NARENDAR

WRIT PETITION No.204309/2018 (GM-CPC)

Between:

Srinivas Gubbal
S/o Basanna Gubbal
Aged about 71 years
Occ: Agriculture
R/o Makhalpet
Raichur.

... Petitioner

**(By Sri Venkatesh C Mallabadi, Advocate
for Sri Ameet Kumar Deshpande, Advocate)**

And:

Y.K. Chandrashekar
S/o Eshwarappa
Aged about 72 years
Occ: Retired Principal
R/o H.No.6-2-70/75
Manik Prabhu Layout
Tq.&Dist: Raichur-586101.

... Respondent

(By Smt Neeva M Chimkod, Advocate)

This Writ Petition is filed under Article 227 of the Constitution of India praying to quash the order dated 14.09.2018 passed on I.A. No.2 in O.S. No.129/2016 by the Addl. Senior Civil Judge, Raichur.

This petition coming on for 'Preliminary Hearing 'B' Group' this day, the Court made the following:-

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. The petitioner is the plaintiff and is before this Court being aggrieved by the rejection of the I.A. No.II preferred under Order 14 Rule 5 of CPC., whereby the petitioner/plaintiff sought for recasting issue No.1 in the following manner:-

“Whether the defendant prove that his late father has purchased the suit property from the late father of the plaintiff through un-registered sale deed Dt:27-10-1950 and on the basis of said sale deed his father was in possession of the suit land after him he is in possession of the suit land”.

The issue No.1 was originally framed as below:-

“1) Whether the plaintiff proves that he is the absolute owner of suit schedule property?”

The issue No.2 is cast as below:-

“2) Whether the plaintiff further proves that he is in possession of suit schedule property as on the date of suit?”

3. The said issues have been framed in the light of the relief sought for by the plaintiff which is as under:-

“The Hon’ble Court may be pleased to allow the suit and may kindly pass the judgment and decree declaring that,

i) That the plaintiff be declared as an absolute owner and possessor of the suit land bearing Survey No.553, Meg.09 acres 35 guntas L.R.23-01 paise which is situated at Yeragere village in Raichur Taluka, Dist: Raichur as described in the suit schedule property in the plaint.”

4. From a reading of the relief sought for and after perusing the pleadings in paragraph 2 of the plaint, this Court is of the considered opinion that the issue Nos.1 and 2 have been rightly framed. Now the application is to recast the issue as stated supra. The proposed changes to the issue No.1, if allowed would virtually amount to shifting the onus of proving the title and possession on to

the defendant and would amount to asking the defendant to demonstrate in the negative which is impermissible in law being contrary to the mandates of Section 101 and 102 of The Indian Evidence Act, 1872 which reads as follows:-

“101.Burden of proof.-Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”

“102.On whom burden of proof lies.-The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

5. The petitioner is the plaintiff and asserts that he is the absolute owner in possession of the suit lands. If that be the plea and the relief being in consonance with the case set up by the petitioner/plaintiff, the onus is cast upon the plaintiff to prove his title and possession.

Hence, the order impugned does not warrant any interference.

The petition being devoid of merits stands ***dismissed.***

Interim order granted earlier stands dissolved.

**Sd/-
JUDGE**

Chs*