

KABC010383732019



IN THE COURT OF THE III ADDL. CITY CIVIL AND
SESSIONS JUDGE, (CCH-25) AT BENGALURU

DATED: THIS THE 2nd DAY OF JUNE, 2025

PRESENT : Smt. NISHARANI A.C., B.A., LL.B.,
III Addl. City Civil and Sessions
Judge, Bengaluru

O.S.No.9216/2019

PLAINTIFF: Sri. Shankarananda G.,
S/o Gangappa,
Aged about 36 years,
R/at No.807, 2nd Cross,
9th Main, Triveni Road,
K.N. Extension, Yeshwanthapura,
Bengaluru-560022.

(By Sri./Smt. KSN Advocate)

Vs.

DEFENDANTS: 1. Smt. Sneha,
w/o Shankarananda G.,
Aged about 31 years

2. Smt. Sheela R.,
W/o Sampath V.,
Aged about 54 years,

Both are residing at
No.283/1, Ground floor,
1st Main, 12th Cross,
Classic Paradise, Begur Main Road,
Bengaluru-560068

(By Sri./Smt.CJM. Advocate)

**ORDERS ON INTERLOCUTORY APPLICATION No.IV
FILED UNDER ORDER III, RULE 2 R/W SECTION 151 OF
CODE OF CIVIL PROCEDURE BY THE DEFENDANT No.1**

This is a suit filed by the plaintiff seeking the effect of partition and separate possession to allot $\frac{1}{2}$ share out of 50% of share as per JDA dated 30.04.2015 including mesne profits accrued thereto.

2. Plaintiff filed this suit against his wife and mother in law. Plaintiff and Defendant No.1 marriage solemnized on 20.02.2024, out of their wedlock one son was born by name Nihan, in further Plaintiff submits both Plaintiff and Defendant No.1 are working in private company, Defendant No.1 was working as software engineer. On 28.07.2014 both Plaintiff and Defendant jointly purchased eastern portion of the the house list No.81/3 situated in Bommanahalli Village, Bengaluru South measuring East to West 41 feet, North to South $(66+64)/2$ feet in total measuring 2,665 sq.feet. Since then both the plaintiff and defendant No.1 are in peaceful possession and enjoyment over the suit schedule property. Both plaintiff and defendant amicably decided to hold their share and divided as per the terms of registered partition

deed entered into by them on 01.12.2014. Then plaintiff and defendants entered into a registered Joint Development Agreement dated 30.04.2015. As per the terms of JDA owner share is 50% of the built up area of the proportionate car parking spare and common area and 2nd defendant entitled for 50% share built up area of with proportionate car parking spare and common area. Plaintiff and Defendant No.1 executed a registered GPA infavour of Defendant No.2 on 30.04.2015 as per the power of attorney, she was given right with regard to his share, transfer and convey by way of sale etc. Then, in further there was typographical mistake shown in the sale deed dated 28.07.2014 and the same was rectified through registered rectification deed dated 16.12.2016. The construction is completed and Defendant No.1 and 2 are receiving rents from the tenants and let out all the premises for rent. There are some differences in the family therefore both Plaintiff and Defendant No.1 are staying separately and Plaintiff filed one petition for divorce against defendant No.1 in MC.No.3844/2019 before Family Court at Bengaluru which is still pending for consideration. Defendant No.1 and 2 are

the mother and daughter they colluded with each other after construction they let out the houses and all the properties and getting rents. They refused to allot the share to the Plaintiff as per JDA even after several payments and as there was family differences arose on 10.11.2019. The Plaintiff inspite of his repeated approach defendants refused to allot his share as per JDA. Therefore he is constrained to file this suit for partition against Defendant No.1 and 2.

3. The defendant Nos.1 and 2 on the other hand denied specifically the averments of the plaint and they stated that plaintiff harassing the defendant No.1, therefore along with M.C. Petition she has also filed one D.V. Act Petition on the file of CMM in CC.No.6079/2021 which is pending for adjudication and this property was given by defendant No.1 parents as dowry in the name of both plaintiff and defendant No.1. Defendant No.1, 2 and plaintiff entered into JDA dated 30.04.2015 for the sake of her daughter's marriage life. Plaintiff and defendants in order to develop the property entered into a registered JDA on 30.04.2015. Defendant Nos.1 and 2 complied the terms of JDR by allowing 5 flats in

favour of plaintiff and defendant No.1 and remaining 5 flats in favour of defendant No.2. The plaintiff is not entitled 50% share as he prayed for. The plaintiff constantly harassing defendant No.1 therefore, the other matrimonial cases and domestic violence cases against plaintiff are pending for adjudication. In order to help her daughter, save her marriage defendant No.2 constructed apartments/flats by entering into JDA with plaintiff and defendant No.1. Defendant No.2 solely constructed these apartments by virtue of registered GPA executed by plaintiff and defendant No.1. The defendant No.2 is not a necessary party, the suit is to be dismissed as not paid sufficient court, he is not entitled for 50% share as he sought for. Therefore, to dismiss the suit.

4. The present I.A. filed by the defendant No.1 under Order 3 Rule 2 of CPC praying to appoint GPA Holder father of defendant No.1 and husband of defendant No.2 to represent defendant No.1 in this case. In the annexed affidavit stated that in civil and criminal cases defendant No.1 executed GPA in favour of this person and has traveled to

Canada on professional work, therefore, she cannot appear before the Court regularly. Therefore, to allow the I.A.

5. On the other hand, learned counsel for the plaintiff filed objections stating that this I.A. filed to protract the case. In the first instance, I.A. authenticity and legality was questioned, later on they withdrawn that IA and filed this I.A. The signature of defendant No.1 is forged one and there is doubt, whether it is defendant No.1's signature. Therefore, to dismiss the I.A.

6. Heard arguments of both sides and perused the materials available on record.

7. From the contents of the IA and the documents filed by both the parties, the following points arise for my consideration.

1. Whether the defendants made out the grounds to allow the I.A. ?
2. What order?

8. My answer to the above points are as under:

Point No.1 :- In the Affirmative,

**Point No.2 :- As per final order,
for the following;**

:REASONS:

9. **POINT No.1:-** The GPA Holder is none other than the father of the defendant No.1 and husband of defendant No.2. However, he will depose the evidence with respect to facts within his knowledge. The plaintiff can cross examine the GPA Holder. In my humble opinion by appointing this person as GPA Holder to represent the case, no injury or hardship would be caused to plaintiff. Therefore, I answer **point No.1 in Affirmative.**

10. **POINT No.2:-** For the foregoing reasons, I proceed to pass the following,-

ORDER

I.A.No.IV filed by the GPA Holder of
of defendant No.1 under Order 3 Rule 2
r/w Section 151 of CPC is hereby
allowed.

(Dictated to the Stenographer directly on computer, then corrected
and pronounced by me in open court, this the 2nd day of June, 2025)

(NISHARANI. A.C)
III Addl. City Civil & Sessions Judge,
Bengaluru.

