



NC: 2026:KHC:17265
W.P. No.2717/2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 26TH DAY OF MARCH, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.2717/2022 (GM-CPC)

BETWEEN:

1. SMT. GEETHA ALIAS GEETHALAKSHMI
AGED ABOUT 74 YEARS.
2. SMT. LEELA .K
AGED ABOUT 71 YEARS.
3. SMT. GAYATHRI
AGED ABOUT 70 YEARS.
4. SRI. MOHAN RAO
AGED ABOUT 68 YEARS.
5. SRI. PRAKASH RAO .K
AGED ABOUT 66 YEARS.
6. SMT. SHAILAJA
AGED ABOUT 63 YEARS.

ALL ARE CHILDREN OF
LATE SAHARADAMBA BAI
DEVASTHANABETTU
NO.74, ULLOOR VILLAGE - 576229
KUNDAPURA TALUK
UDUPI DISTRICT.

...PETITIONERS

(BY SRI. NANDEESH C.B. ADV., FOR
SRI. CHANDRANATH ARIGA K, ADV.,)

AND:

1. SMT. SANKAMMA NAIKTHI
AGED ABOUT 71 YEARS

Digitally signed
by ARSHIFA
BAHAR
KHANAM
Location: HIGH
COURT OF
KARNATAKA



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W/O LATE MANJA NAIK.

2. SRI. RAMA NAIK
AGED ABOUT 47 YEARS
S/O SMT. SANKAMMA NAIKTHI.

BOTH ARE RESIDENTS OF
NO 74, ULLOOR VILLAGE - 576229
KUNDAPURA TALUK
UDUPI DISTRICT.

...RESPONDENTS

(R1, R2 ARE SERVED AND UNREPRESENTED)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 23.04.2021 IN EX.NO.13/2010 DISMISSING THE EXECUTION PETITION FILED IN O.S.NO.244/1993 PASSED BY THE II ADDL. CIVIL JUDGE AND JMFC, KUNDAPURA (ANNEXURE-J). ALLOW THE PRAYER SOUGHT IN EX.NO.13/2020 IN O.S.NO.244/1993 ON THE FILE OF THE II ADDL. CIVIL JUDGE AND JMFC, KUNDAPURA & ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B 'GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This petition is filed challenging the order dated 23.04.2021 in Ex.No.13/2010 by the II Additional Civil Judge and JMFC, Kundapura.

2. Sri.Nandeesh C.B., learned counsel for Sri.Chandranath Ariga K., learned counsel appearing for



the petitioners submits that the original plaintiff has filed a suit for permanent injunction against the respondents which came to be dismissed. Thereafter, the original plaintiff preferred an appeal in RA.No.48/2001, wherein the Appellate Court set aside the judgment and decree passed in O.S.No.244/1993 and decreed the suit, restraining the defendants from interfering with the peaceful possession and enjoyment of the petitioners in plaint 'A' schedule properties. It is submitted that the petitioners filed execution proceedings in Ex.No.13/2010, alleging disobedience of the said judgment and decree of injunction with respect to item Nos.17 to 20 of the suit 'A' schedule properties. However, the trial Court, by the impugned order erroneously closed the execution proceedings on the ground that the Court Commissioner opined that the decree holders are not in possession of the item Nos.19 and 20 of the 'A' schedule properties, now, which is factually incorrect and contrary to the decree passed by the Appellate Court. It is further submitted that



the said finding of the executing Court is nothing but acted as an appellate authority over the judgment and decree passed in RA.No.48/2001. Accordingly, he seeks to allow the petition by directing the trial Court to reconsider the execution proceedings and take action against the judgment debtors/respondents for violation of the judgment and decree.

3. Despite service of notice, the respondents/judgment debtors have remained absent.

4. I have heard the arguments of the learned counsel for the petitioners and meticulously perused the material available on record.

5. The mother of the petitioners has filed O.S.No.244/1993 seeking an order of injunction against the respondents. The said suit was dismissed vide judgment dated 13.06.2001. Being aggrieved, the original plaintiff filed an appeal in RA.No.48/2001, which came to be allowed by setting aside the judgment and decree



dated 13.06.2001 passed in O.S.No.244/1993 by restraining the defendants from interfering with the peaceful possession and enjoyment of the plaint 'A' schedule properties. Subsequently, the petitioners filed execution proceedings in Ex.No.13/2001 contending that judgment debtor Nos.1 and 2 had violated the decree by interfering with their peaceful possession and enjoyment of item Nos.17 to 20 of the suit schedule 'A' properties. However, the trial Court, based on the Court Commissioner's report and the evidence on record, dismissed the execution petition.

6. It is to be noticed that the trial Court in paragraph No.25 has recorded the reason that the report and sketch submitted by the Court Commissioner indicates that the judgment debtors were in possession of the portion marked in yellow and the Court Commissioner's report does not disclose item Nos.17 to 20 of the plaint schedule properties, subsequently, the trial Court also extracted the points noted by the Court Commissioner in



support of its conclusion. The Executing Court, in paragraph No.29, recorded a further finding that, on perusal of Ex.P2, item Nos.19 and 20 are the properties which are now in possession of the judgment debtors as per the Court Commissioner's report. The Executing Court also referred to and extracted the order dated 13.08.2013, noting that the judgment debtors had specifically contented that they are not in violation of the terms of the decree. Based on such findings, the execution petition came to be closed. It is also to be noticed that the judgment and decree in RA.No.48/2001 have attained finality insofar as the suit schedule 'A' properties are concerned and the respondents/judgment debtors are restrained from interfering with the peaceful possession and enjoyment of the said properties of the petitioners. The finding recorded by the Executing Court in the impugned order is contrary to the judgment of the Appellate Court in RA.No.48/2001 and would be without any basis with regard to the possession. The Appellate



Court, having considered the lawful possession of the petitioners over the suit schedule properties, decreed the suit in their favour.

7. This Court also cannot ignore the fact that the impugned order closing the execution proceedings is dated 23.04.2021 and the judgment debtors have clearly stated before the Executing Court that they are not in violation of the judgment and decree. In view of the above, I am of the considered view that no further orders are required to be passed in the present petition. However, liberty is reserved to the petitioners/decreed holders to seek revival of the execution petition, in the event of any violation of the decree in RA.No.48/2001 by the judgment debtors. With the above liberty, the writ petition is ***disposed of***.

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**

ABK
List No.: 1 Sl No.: 29