



CNR: KAHC010413132022

NC: 2026:KHC:46569
W.P. No.18164/2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 28TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.18164/2022 (GM-CPC)

BETWEEN:

SRI. RAMESH PARMAR
S/O LATE BABULAL PARMAR
AGED ABOUT 65 YEARS
PROP M/S JAIN MEDICALS
OPP GENERAL HOSPITAL
B H ROAD
TUMAKURU-572201.

...PETITIONER

(BY SRI. P.D. SURANA, ADV.,)

AND:

SMT. K.M. LEELAVATHI
W/O LATE G.S. PRASAD
AGED ABOUT 67 YEARS
R/O 2ND MAIN ROAD
GANDHINAGAR
TUMAKURU-572101.

...RESPONDENT

(BY SRI. T. DADAKHALANDAR, ADV.,)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DTD.3.8.2022 MADE ON IA FILED UNDER XXVI RULE 9 R/W 151 OF THE CPC IN O.S.NO.151 OF CPC IN O.S.NO.250/2017 ON THE FILE OF THE VTH ADDITIONAL CIVIL JUDGE AND JMFC TUMAKURU ANENXURE-F BESIDE GRANTING RELIEFS OF OTHER NATURE & ETC.





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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 03.08.2022 passed in OS.No.250/2017 by the V Additional Civil Judge and JMFC, Tumakuru (for short 'the trial Court').

2. Sri.P.D.Surana, learned counsel appearing for the petitioner submits that the respondent has filed a suit for eviction. In the said suit, the petitioner/defendant filed a written statement and thereafter filed an application seeking appointment of a Court Commissioner to inspect the suit schedule property to ascertain the cost of construction made by the defendant in the first floor, and also assess the cost of repairs to the front portion on the northern side of the suit schedule property. The said application came to be dismissed by the trial Court only on



the ground that no material has been placed by the defendant to establish that he has put up the construction. It is submitted that Ex.P1, is the rent agreement which is an admitted document between the parties, which clearly indicates that the first floor was constructed by the defendant and also carried out repairs to the front portion of the ground floor of the suit schedule property. It is further submitted that PW1, in paragraph No.11 of her evidence, has admitted Ex.P1 and has also admitted that the construction was put by the defendant. It is also submitted that in order to get the reimbursement as provided under Section 51 of the Transfer of Property Act, 1882 (for short 'the Act'), appointment of a Court Commissioner is necessary, which would aid the trial Court in deciding the suit. Hence, he seeks to allow the petition.

3. Per contra, Sri.T.Dada Khalandar, learned counsel for the respondent submits that the application seeking appointment of a Court Commissioner is



accompanied by an affidavit, which indicates that a suggestion was put forth by the defendant to PW1 with regard to the construction and the same was categorically denied by his evidence. It is submitted that the case of the defendant is that the plaintiff has not put up any construction as alleged and the said aspect is required to be gone into by the trial Court. It is further submitted that in the absence of any prima facie material before the trial Court to establish that the defendant has put up the construction as asserted by him, the question of appointing a Court Commissioner would not arise and the trial Court, considering the same has rightly rejected the application. The impugned order does not call for any interference. Hence, he seeks to dismiss the petition.

4. I have heard the arguments of both sides and meticulously perused the material available on record.

5. The respondent filed a suit in OS.No.250/2017 seeking judgment and decree of ejectment and mesne



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profits. In the said suit, the petitioner/defendant filed a detailed written statement. Issues were framed and the parties led evidence. Thereafter, the defendant filed an application under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC'), seeking appointment of a Court Commissioner to inspect the suit schedule property, to ascertain the construction cost made by the defendant in the first floor and also to assess the cost of repairs carried out in the front portion on the northern side of the suit schedule property which has been incurred by the defendant. The said application was opposed by the plaintiff. The trial Court, under the impugned order dismissed the said application.

6. The assertion of the defendant in the suit is that the husband of the plaintiff, Sri.G.S.Prasad, had instructed the defendant to put up a construction over the first floor of the suit schedule premises at his own cost and according to their understanding, the defendant put up the



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construction at his own cost and also incurred some amount towards the repairs to the ground floor. In order to substantiate the said assertion, the defendant has adduced oral evidence and has also relied on Ex.P1, the rent agreement dated 02.05.2015 entered into between the plaintiff and the defendant.

7. A perusal of the clause in Ex.P1 indicates that there is a reference that, during the lifetime of Sri.G.S.Prasad the upstairs of this lease agreement schedule premise was given to the lessee with the instruction to construct first floor with staircase of the scheduled premises with oral agreement to construct at the cost of lessee and the rent for the same will be fixed from 01.01.2017.

8. It is to be noticed that the application has been filed by the defendant on the premise that the construction was put up by him, as agreed between him and Late Sri.G.S.Prasad. The question as to whether the



construction was put up by the defendant or by the plaintiff is required to be gone into by the trial Court during the course of trial. If the trial Court comes to the conclusion that the construction was put up by the defendant, at that stage, it may be difficult for the trial Court to consider the prayer of the defendant with regard to the right under Section 51 of the Act to adjust the aforesaid amount towards the mesne profit or the decree which would be passed by the trial Court.

9. Without expressing any opinion as to whether the construction was put up either by the defendant or the plaintiff, I am of the considered view that it would be appropriate to appoint a Court Commissioner to assess the alleged costs incurred by the defendant, in order to avoid difficulty or inconvenience to trial Court, if the trial Court comes to the conclusion that the defendant has put up the construction in the final adjudication of the suit.



10. It is also to be noticed that mere appointment of the Court Commissioner to assess the cost of construction of the first floor as well as the cost incurred towards the repairs to the front portion of the ground floor, as sought in the application would not amount to recording a finding that the defendant has put up the construction in the suit premises as alleged in the written statement. The report of the Court Commissioner would aid the trial Court to decide the controversy between the parties. Hence, I proceed to pass the following:

ORDER

- i. The writ petition is ***allowed***.
- ii. The impugned order dated 03.08.2022 passed in OS.No.250/2017 by the V Additional Civil Judge and JMFC, Tumakuru is hereby set aside.
- iii. The trial Court is directed to appoint an approved Valuer/Engineer to assess the cost of construction of the first floor of



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the suit schedule premises and also the cost of repairs to the front portion on the northern side of the suit schedule premises and submit the report in a time-bound manner.

- iv. It is made clear that the appointment of Court Commissioner does not amount to recording the finding with regard to the assertion of the defendant that the defendant has put up the construction over the suit schedule property and the said issue is required to be gone into by the trial Court while recording the finding, while deciding the suit on merits.

No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

ABK
List No.: 1 Sl No.: 23