



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 23RD DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

WRIT PETITION NO.107385 OF 2024 (GM-CPC)

BETWEEN:

KUM. SAMRUDH K.S. S/O. KASAPLA SIDDAPPA,
AGED ABOUT 11 YEARS, OCC. STUDENT,
SINCE MINOR REPRESENTED BY HIS
NEXT FRIEND AND GUARDIAN HIS
NATURAL MOTHER BY NAME
SMT. KASAPLA SHASHIREKHA W/O. KASAPLA SIDDAPPA,
AGED ABOUT 37 YEARS, OCC. HOUSEHOLD WORK,
R/O. ARASIKERE VILLAGE, TQ. HARAPANAHALLI,
DIST. VIJAYANAGARA.

...PETITIONER

(BY SRI. A.C. CHAKALABBI, ADVOCATE)

AND:

1. SRI. KASAPLA NINGAPPA
S/O. LATE K. BHARAMAPPA,
AGE. 67 YEARS, OCC. AGRICULTURE,
R/O. ARASIKERE VILLAGE, TQ. HARAPANAHALLI,
DIST. VIJAYANAGARA.
2. SRI. KASAPLA CHIKKAPPA
S/O. K. BHARAMAPPA,
AGED ABOUT 52 YEARS, OCC. AGRICULTURE,
R/O. ARASIKERE VILLAGE, TQ. HARAPANAHALLI,
DIST. VIJAYANAGARA.
3. SRI. K.N. BHARAMESH
S/O. KASAPLA NINGAPPA,
AGED ABOUT 40 YEARS, OCC. AGRICULTURE,
R/O. ARASIKERE VILLAGE, TQ. HARAPANAHALLI,
DIST. VIJAYANAGARA.

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4. SRI. K.N. RAVIRAJ S/O. KASAPLA NINGAPPA,
AGED ABOUT 39 YEARS, OCC. AGRICULTURE,
R/O. ARASIKERE VILLAGE, TQ. HARAPANAHALLI,
DIST. VIJAYANAGARA.
5. SRI. K.N. NAGABHUSHANA S/O. KASAPLA NINGAPPA,
AGED ABOUT. 37 YEARS, OCC. AGRICULTURE,
R/O. ARASIKERE VILLAGE, TQ. HARAPANAHALLI,
DIST. VIJAYANAGARA.
6. SMT. K. RENUKAMMA W/O. KASAPLA NINGAPPA,
AGED ABOUT. 62 YEARS, OCC. AGRICULTURE,
R/O. ARASIKERE VILLAGE, TQ. HARAPANAHALLI,
DIST. VIJAYANAGARA.

...RESPONDENTS

(BY SRI. HANUMANTHAREDDY SAHUKAR, ADV. FOR R1-R6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO I. TO ISSUE A WRIT OF CERTIORARI FOR QUASHING THE IMPUGNED ORDER VIDE ANNEXURE-A DATED 07/11/2024 PASSED BY THE SENIOR CIVIL JUDGE AND JMFC HARAPANAHALLI IN M.A.NO.01/2024 AND ORDER DATED 13/12/2023 PASSED BY THE CIVIL JUDGE AND JMFC HARAPANAHALLI IN O.S.NO.130/2022 VIDE ANNEXURE-G ON I.A.NO.II FILED UNDER ORDER XXXIX RULE 1 AND 2 CPC R/W SECTION 151 CPC SEEKING A RESTRAINT ORDER AGAINST THE RESPONDENT FROM CAUSING ANY OBSTRUCTION TO THE PEACEFUL POSSESSION AND ENJOYMENT OF THE SUIT PROPERTY. II. TO ALLOW THE INTERIM APPLICATION NO.II FILED IN O.S.NO.130/2022 WHICH IS PENDING ON THE FILE OF THE CIVIL JUDGE AND JMFC HARAPANAHALLI FILED UNDER ORDER XXXIX RULE 1 AND 2 CPC R/W SECTION 151 CPC SEEKING A RESTRAINT ORDER AGAINST THE RESPONDENT FROM CAUSING ANY OBSTRUCTION TO THE PEACEFUL POSSESSION AND ENJOYMENT OF THE SUIT PROPERTY TILL THE DISPOSAL OF THE SUIT VIDE ANNEXURE-F. III. THE HON'BLE COURT MAY ALSO THE PLEASSED TO PASS ANY OTHER WRIT, ORDER, DIRECTION ETC IN THE ABOVE CASE TO SERVE THE ENDS OF JUSTICE.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI)

1. The petitioner has filed this writ petition challenging the judgment dated 07.11.2024 passed in M.A. No. 1/2024 by the learned Senior Civil Judge and JMFC, Harapanahalli, as well as the order dated 13.12.2023 passed on I.A. No.II in O.S. No.130/2022 by the learned Civil Judge and JMFC, Harapanahalli.

2. Brief facts leading rise to the filing of this petition are as follows:

The petitioner filed a suit for permanent injunction restraining the respondents from interfering with his peaceful possession and enjoyment of the suit schedule properties. Along with the suit, the petitioner filed I.A. No.II seeking an order of temporary injunction. The said application was opposed by the respondents by filing their objections. The Trial Court, after hearing the learned counsel for the parties, rejected I.A. No.II vide order dated 13.12.2023. Aggrieved by the same, the petitioner



preferred an appeal in M.A. No.1/2024 before the learned Senior Civil Judge and JMFC, Harapanahalli. The First Appellate Court, after re-appreciating the material on record, dismissed the appeal by judgment dated 07.11.2024.

3. Being aggrieved by the said judgment and the order passed on I.A. No.II, the petitioner has filed this writ petition.

4. Heard the arguments of the learned counsel for the petitioner, and the learned counsel for the respondents.

5. The learned counsel for the petitioner submits that the Trial Court has committed an error in rejecting I.A. No.II. He submits that the respondents have admitted the title of the petitioner over the suit schedule property, and in view of such admission, the Trial Court ought to have granted temporary injunction. However, both the Courts, the Trial Court and the First Appellate Court have failed to properly appreciate the material on record and have



erroneously rejected the applications. Hence, on these grounds he prays to allow the writ petition.

6. *Per contra*, the learned counsel for the respondents submits that the suit filed by the petitioner is not maintainable, as the petitioner has not availed the appropriate remedy. He further submits that the suit is barred under Section 41(h) of the Specific Relief Act. He submits that both the Courts below have concurrently recorded findings of fact against the petitioner. He further submits that the scope of interference under Article 227 of the Constitution of India is very limited, and therefore, the writ petition is liable to be dismissed.

7. Perused the records, and considered the submissions made by the learned counsel for the parties.

8. The petitioner has filed a suit for bare injunction in O.S.No.130/2022.

9. It is contended that the suit schedule properties are family properties and that the father of the plaintiff/petitioner and defendant Nos.1 and 2/respondents



are siblings, being the children of late Kasapla Ningappa S/o late Bharamappa. He died leaving behind the father of the plaintiff/petitioner and defendant Nos.1 and 2/respondents.

10. It is further contended that there was an oral partition among the father of the petitioner and respondent Nos.1 and 2, which was subsequently reduced into writing on 04.06.2001. Thereafter, the plaintiff's/petitioner's father gifted the suit schedule properties in favour of the petitioner, when he was a minor, by way of a registered gift deed dated 16.10.2021, and mutation entries were effected accordingly.

11. The petitioner claims to be in possession of the suit schedule property. However, the respondents filed a written statement denying the averments made in the plaint and contended that the petitioner is not in possession and enjoyment of the suit schedule properties.

12. The First Appellate Court, upon considering the entire material on record, has recorded its findings in paragraphs 28 to 30, which read as follows:



"28. On the perusal of the documents on record it is apparent that the claim of the plaintiff is based on the unregistered partition list dated 04-06-2001 and the defendants have seriously disputed this partition. The defendants had also challenged the said mutation in MR No. 10/2001-02 in appeal filed in RA No CR no 87/2022 before assistant commissioner and appeal was dismissed. Thus there is serious dispute regarding the plea of earlier oral partition dated 04.06.2001. Thereby it is necessary to ascertain whether there was an oral partition as alleged and whether the same was valid and acted upon. Only if the court comes to the conclusion that there was already an partition and it is acted upon, the father of the plaintiff would get exclusive right and only thereafter Kasapla Siddappa could execute gift deed. Though a registered gift deed is produced, the validity of the said gift deed would be only on proof of earlier partition. If the court concludes that there was no partition then father of the plaintiff would have no exclusive right to gift the suit properties. These aspects require trial.

29. Before an injunction can be granted, the plaintiff has to establish a prima-facie case, balance of convenience. After establishing these two aspects the plaintiff should also show that if temporary injunction is refused he will be put to irreparable injury which cannot compensated in terms of money. It is also settled principle that while considering an application for



*temporary injunction the court cannot hold a mini trial.
The temporary injunction is in aid of the main relief.*

30. Exclusive title of the suit properties by the father of the plaintiff cannot be ascertained at this stage. To clarify about the title of suit properties and also regarding possession there needs to be some evidence and proof. For that there needs to be a full fledged trial. Admittedly this is pre trial stage and at the infant stage the court cannot straight away conclude that the suit properties are exclusively belonging to the father of the plaintiff. The said aspects is to be proved in evidence. Admittedly there is serious dispute regarding nature of the suit properties and thus there is absolutely need to venture trial. Thus opportunity has to be given to both parties to prove the nature of the suit properties and put forth their respective contentions. Thus without trial the rights cannot be adjudicated upon."

13. Both the Courts below have concurrently recorded a finding of fact that, regarding to the partition deed dated 04.06.2001 and the registered gift deed, the question of their validity requires detailed consideration during trial. It has been further held that the petitioner has failed to establish his possession over the suit schedule properties.



14. Thus, both the Courts below have concurrently recorded findings of fact against the petitioner.

15. In view of the settled proposition of law laid down by the Hon'ble Apex Court in **Radhey Shyam & Anr. Vs. Chhabi Nath & Ors.¹**, the scope of interference under Article 227 of the Constitution of India is very limited.

16. Hence, this Court do not find any grounds to interfere with the impugned judgment at Annexure-A and the order passed on I.A. No.II at Annexure-G. Accordingly, the following:

ORDER

- i. The writ petition is **dismissed**.
- ii. Pending applications, if any, shall stand disposed of.

Sd/-
(ASHOK S. KINAGI)
JUDGE

AC
CT: UMD/List No.: 1 SI No.: 22

¹ (2015) 5 SCC 423