HC-KAR

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 3RD DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE M.I.ARUN

WRIT PETITION NO.201251 OF 2024 (GM-CPC)

BETWEEN:

SRI. MAHESH
S/O SHANMUKHAPPA,
AGED ABOUT 45 YEARS,
OCC: AGRICULTURE,
R/O SINGANAL VILLAGE,
TQ. KARATAGI, DIST. RAICHUR-586101.

...PETITIONER

(BY SRI. RAVI B. PATIL, ADVOCATE)

AND:

Digitally signed by VARSHA N RASALKAR
Location: HIGH COURT OF KARNATAKA

SRI. LAXMIKANTHAREDDY
S/O SANJEEVREDDY,
OCC: AGRICULTURE,
R/O CHANALLI VILLAGE,
TQ. SINDHANUR,
DIST. RAICHUR-586101.

...RESPONDENT

(SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI ANY OTHER WRIT OR DIRECTION TO QUASH THE IMPUGNED ORDER 10.01.2024 PASSED ON I.A. FILED UNDER ORDER XXI RULE 32, 35 OF CODE OF CIVIL PROCEDURE IN E.P.NO.121/2022 PASSED BY THE COURT OF II ADDITIONAL

CIVIL JUDGE AT SINDHANUR AS AT ANNEXURE-H, AND CONSEQUENTIALLY TO ALLOW THE APPLICATION PREFERRED BY THE PETITIONER FOR ISSUANCE OF DELIVERY WARRANT BY PUTTING THE PETITIONER IN POSSESSION OF THE SUIT PROPERTY.

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

CORAM: HON'BLE MR. JUSTICE M.I.ARUN

ORAL ORDER

(PER: HON'BLE MR. JUSTICE M.I.ARUN)

Aggrieved by the order passed on an interlocutory application filed by the petitioner herein under Order XXI Rule 32, 35 read with Section 151 of CPC in Execution Petition No.121/2022 dated 10.01.2024 by the II Additional Civil Judge at Sindhanur, the decree holder therein has preferred this petition.

2. The petitioner filed O.S.No.146/2014 which is a suit for specific performance of contract against the respondent herein. The Trial Court based on the pleadings framed the following issues.

1. *Whether the plaintiff proves that, the defendant has executed an sale agreement on 04-08-2010 through document No.4502/2010-11?*

2. Whether the plaintiff further proves that he is always ready of willing to perform his part of the contract?

3. Whether the plaintiff is entitled to the relief of specific performance as prayed?

4. Whether defendant proves that the suit is barred as non-joinder of necessary parties?

5. Whether the defendant proves it is an loan transaction and documents are executed for security purpose?

6. What order or decree?

3. Based on the evidence let in and the arguments made, the Trial Court answered the aforementioned issues as follows:

Issue No. 1. : In the Affirmative.

Issue No. 2. : In the Affirmative.

Issue No. 3. : In the Affirmative.

Issue No. 4. : In the Negative.

Issue No. 5. : In the Negative.

Issue No. 6. : As per final order.

4. As the respondent did not abide by the order passed in O.S.No.146/2014, the petitioner preferred

E.P.No.121/2022. In the said execution petition as per the order of the executing Court, the sale deed in respect of suit schedule property has been executed in favour of the petitioner herein through the Court Commissioner. However, delivery of physical possession of suit schedule property was not made in favour of the petitioner. Hence, he filed an application under Order XXI Rule 32, 35 read with Section 151 of CPC with the following prayer.

> *"For the facts and reasons stated in the annexed affidavit it is prayed that the Hon'ble Court be please to put the decree holder in possession of the schedule property by issuing possession delivery warrant in the interest of justice."*

5. However, the Execution Court on the ground that in the judgment and decree passed in O.S.No.146/2014, there has been a direction only for execution of the sale deed and not delivery of physical possession of property and that the Execution Court cannot go beyond the decree passed by the Trial Court has

dismissed the said application. Aggrieved by the same, the present writ petition is filed.

6. In spite of service of notice, respondent has remained absent.

7. Admittedly, the petitioner filed O.S.No.146/2014 for specific performance of contract in which the respondent took up a defence that he is not the sole owner of the suit schedule property and it is the joint family property and others also have a right over the same and that the suit is bad for non-joinder of necessary parties. The Trial Court has negatived the contention of the respondent. It is true that a person cannot purchase a better right than what the vendor has. However, in the absence of any other person to impleading themselves as objectors, the Trial Court ought to have directed the delivery of physical possession of the property.

8. The sale is always followed by delivery of possession of the property. When the Trial Court has

ordered for specific performance of contract and sale deed is executed in pursuance of the same, it has to be automatically followed by delivery of physical possession of the suit schedule property in favour of the decree holder, unless of course someone else has right over the property and he objects to the same as an obstructer by filing necessary application and the Court finds that there is substance in the application. The conclusion of the Trial Court that as there is no specific direction regarding possession of the property to be delivered in the judgment and decree passed in O.S.No.146/2014, on the given facts and circumstances of the case, leads to an absurdity and it will deny the decree holder from enjoying the fruits of the decree which has attained a finality. He will be unnecessarily made to file another case for possession which is not what is contemplated in law.

9. For the aforementioned reasons, I am of the opinion that the Trial Court erred in dismissing the application filed by the petitioner. Hence the following:

ORDER

i. The impugned order dated 10.01.2024 passed on interlocutory application filed under Order 21 Rule 32 and 35 read with Section 151 of CPC by the II Additional Civil Judge, Sindhanur in E.P.No.121/2022 is hereby set aside.

ii. The application filed by the petitioner before the Execution Court is hereby allowed.

iii. The Trial Court is directed to pass appropriate orders to facilitate the petitioner/decree holder to be put in possession of suit schedule property.

Sd/-
(M.I.ARUN)
JUDGE

VNR
List No.: 1 Sl No.: 87
CT:SI