IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 21ST DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE R.NATARAJ

WRIT PETITION NO. 201643 OF 2021 (GM-CPC)

BETWEEN:

1. VIJAYAKUMAR MALLIKARJUN DONI
   AGE 51 YEARS,
   OCC: BUSINESS,
   R/O. HOTEL KANISHKA, STATION ROAD,
   VIJAYAPURA - 586101

2. RAMANIKLAL DURALAL RUNWAL
   AGE 66 YEARS,
   OCC: BUSINESS,
   R/O. NEAR DEEPAK MEDICAL STORES,
   STATION ROAD, VIJAYAPURA 586101

3. PRAVEENKUMAR DURGALAL RUNWAL
   AGE 61 YEARS,
   OCC: BUSINESS,
   R/O. NEAR DEEPAK MEDICAL STORES,
   STATION ROAD, VIJAYAPURA 586101

4. NITINKUMAR DURGALAL RUNWAL
   AGE 56 YEARS,
   OCC: BUSINESS,
   R/O. NEAR DEEPAK MEDICAL STORES,
   STATION ROAD, VIJAYAPURA 586101

5. DEEPAK KUMAR DURGALAL RUNWAL
   AGE 51 YEARS,
   OCC: BUSINESS,
   R/O. NEAR DEEPAK MEDICAL STORES,
   STATION ROAD, VIJAYAPURA 586101

Digitally signed by NIJAMUDDIN JAMKHANDI
Location: High Court Of Karnataka

6. PRAFUL KUMAR DURGALAL RUNWAL
AGE 48 YEARS,
OCC: BUSINESS,
R/O. NEAR DEEPAK MEDICAL STORES,
STATION ROAD, VIJAYAPURA 586101

…PETITIONERS

(BY SRI. D. P. AMBEKAR, ADVOCATE)

AND:

1. RAGHUNANDAN KENCHANAGOUDA SIRDESAI
AGE 71 YEARS,
OCC: BUSINESS,
R/O.PLOT NO.S-4, RC APARTMENT,
315, ROY ROAD, TILAKWADI
BELAGAVI - 590001

2. SURESH KHUBBASA NAGARI
AGE 60 YEARS,
OCC: BUSINESS,
R/O. NEAR SAMRAT HOTEL, STATION ROAD,
VIJAYAPURA 586101

…RESPONDENTS

(BY SRI.SHIVAKUMAR KALLOOR, ADVOCATE FOR C/R2;
NOTICE TO R1 DISPENSED WITH V/O.DT.08.01.2025)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO A) ISSUE A WRIT ORDER OR DIRECTION IN NATURE OF CERTIORARI, QUASHING ANNEXURE L VIZ, THE ORDER DATED 22.07.2021 PASSED BY THE IV ADDL. SENIOR CIVIL JUDGE, VIJAYAPURA ALLOWING M.A.NO.44/2016 AND ETC.,

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

CORAM: HON'BLE MR. JUSTICE R.NATARAJ

ORAL ORDER

(PER: HON'BLE MR. JUSTICE R.NATARAJ)

The petitioners who are the plaintiffs in O.S.No.362/2015 on the file of the I Additional Civil Judge and JMFC - I, Vijayapura (henceforth referred to as 'Trial Court' for short) have filed this writ petition challenging the correctness of an order dated 22.07.2021 passed by the IV Additional Senior Civil Judge, Vijayapura (henceforth referred to as 'Appellate Court' for short) in M.A.No.44/2016 by which, the appeal was allowed and order of interim injunction granted by the Trial Court on 21.10.2016 was set aside.

2. The suit in O.S.No.362/2015 was filed for declaration that the decree passed in O.S.No.297/2002 on the file of the I Additional Civil Judge (Jr.Dn.), Vijayapura dated 24.09.2022 in respect of the property bearing No.CTS NO.193/A1/G1 of Ward No.VI Vijayapura is inexecutable and also sought for a decree of declaration that the right accrued to the defendant No.2 under the document dated 14.08.2022 stood extinguished. Consequently, a decree of perpetual

injunction was also sought to restrain the defendants from claiming any right of way in the suit property.

3. (i) The plaintiffs contended that the defendant No.1 was the owner of CTS No.193/A-1/G-1 measuring 30 ft x 150 ft which fell to his share under a partition decree in O.S.No.25/1990 on the file of Civil Judge Senior Division, Bagalkot. The defendant No.2 had filed O.S.No.297/2002 for perpetual injunction against the defendant No.1 to restrain him from obstructing the peaceful use of the aforesaid land as an easement to reach the main road and for mandatory injunction to remove the construction wall at point 'C' and 'D'. The said suit was compromised and a decree was passed on 24.09.2002. As per the decree, the defendant No.2 was given right to pass over the land to reach his property bearing No.193/A-2 and CTS No.193/A-3 and 194/A-4. A registered instrument was also executed on 14.08.2002 by the defendant No.1 in favour of the defendant No.2 permitting the defendant No.2 to walkover the land bearing No.193/A-1/G-1.

(ii) The defendant No.1 challenged the said document dated 14.08.2022 in a suit filed in O.S.No.430/2002.

(iii) During the pendency of the suit, the defendant No.1 sold the property bearing No.CTS No.193/A-1/G-1 in favour of the plaintiffs on 20.11.2004 in terms of two sale deeds. Therefore, the defendant No.1 filed a memo in O.S.No.430/2002 that he did not press the suit and accordingly, the suit was dismissed as not pressed. The defendant No.2 then filed O.S.No.364/2004 for declaration that he has a right of easement by prescription over the suit property and sought for perpetual injunction to restrain the plaintiffs from putting up any construction. The defendant No.2 also filed O.S.No.103/2002 against the plaintiff No.2 for declaration that the property bearing CTS No.193/A/A-1/G-1 was reserved for the common use as a way to approach CTS No.193/A-1, 193/A-2 and 193/A-3 and CTS No.194A. The said suit was dismissed as not pressed on 19.11.2013. The plaintiffs therefore contend that the defendant No.2 gave up his right of way by withdrawing O.S.No.103/2002.

(iv) Later the defendant No.2 filed execution petition 5/2023 pending on the file of I Additional Civil Judge, Jr.Dn. Vijayapura against the defendant No.1 to execute the compromise decree in O.S.No.297/2002 and for an order

directing the defendant No.1 to dismantle CD wall as shown in the sketch attached to the plaint. The defendant No.1 who had purportedly sold western half portion in favour of plaintiff No.1 and eastern half portion in favour of plaintiff Nos.2 to 6, had no subsisting right and the permission granted to the defendant No.2 had spent in itself. The plaintiffs claimed that the permission granted to the defendant No.2 under the document dated 14.08.2002 and compromise decree in O.S.No.297/2002 was a mere licence and in view of the sale of the property by defendant No.1 in terms of the sale deed dated 20.11.2004, the right created by the defendant No.1 in favour of defendant No.2 stood automatically extinguished. Thus, it was contended that the defendant No.2 cannot proceed with the execution petition filed to execute the compromise decree in O.S.No.297/2002. The plaintiffs therefore sought for the aforesaid releifs.

(v) The defendant No.2 contested the suit and claimed that the permission granted by the defendant No.1 by way of the compromise decree in O.S.No.297/2002 and by way of document dated 14.08.2002, were in recognition of the right of the defendant No.2 to pass over the land of the defendant No.1

and hence, qualified to be an easement by way of grant. He also contended that once the defendant No.1 had acceded to the easement of defendant No.1, the same could not be withdrawn or resiled.

(vi) An application was filed by the plaintiffs for interim injunction to restrain the defendant No.2 from removing the CD wall laid at the end of the property bearing CTS No.193/A-1/G-1 and to direct the defendants to maintain status-quo. This application was contested by the defendant No.2 on similar lines.

(vii) The Trial Court after considering the contentions of the plaintiffs and defendant No.2 granted interim injunction in favour of the plaintiffs and restrained the defendant No.2 from removing the wall. Being aggrieved by the said order, the defendant No.2 filed M.A.No.44/2016. The Appellate Court after perusing the records, held that the compromise entered into by the defendant Nos.1 and 2 in O.S.No.297/2002 was conclusive and binding *inter se* between defendant Nos.1 and 2 and that mere alienation of the property in favour of the plaintiffs does not extinguish the right created by the defendant No.1 in

favour of defendant No.2. Consequently, it allowed the appeal and set aside the order passed by the Trial Court.

4. Being aggrieved by the same, the plaintiffs are before this Court in this writ petition.

5. Learned counsel for the plaintiffs contended that the compromise entered in O.S.No.297/2002 resulted in a document dated 14.08.2002, which was in the nature of a licence and not an easement and upon sale of the property, to which the licence was granted, such licence granted stood extinguished by operation of Section 59 of the Indian Easements Act, 1882 read with illustration (b) to Section 61 of Indian Easements Act. He therefore contends that there is no easement granted in favour of the defendant No.2 and hence, the plaintiffs are entitled to possess the property by ignoring the licence that was granted to the defendant No.2 since the same stood extinguished.

6. Per contra, the learned counsel for the defendant No.2 contended that what was granted to the defendant No.2 by way of compromise reported in O.S.No.297/2002 was an easement by way of grant. He contends that the same was

acknowledged by the defendant No.1 by executing a document dated 14.08.2002 which was duly registered. He therefore contends that mere conveyance of the property by the defendant No.1 in favour of the plaintiffs did not extinguish the easement by way of grant in favour of the defendant No.2. Hence, he contends that the order passed by the Appellate Court is just and proper and does not warrant interference. In support of his contention, he relied upon the following judgments:

(i) *Smt. Lucy Pinto Vs. Glary D'Souza - AIR 2012 (4) KAR 52;*
(ii) Hero Vinoth (minor) Vs. Seshammal - AIR 2006 SC 2234;
(iii) Pradeep Oil Corporation Vs. Municipal Corporation of Delhi and Anr. - AIR 2011 (2) Karnataka 834;
(iv) Dr. S.Kumar & Ors. Vs. S.Ramalingam - AIR 2019 SC 3654.

7. After hearing the learned counsel for the petitioners and learned counsel for the respondents, this Court is of the opinion that substantial questions of law arises for consideration in the suit.

8. On the one hand, the plaintiffs claimed that what was created by the defendant No.1 in favour of the defendant

No.2 was a licence which was susceptible to extinction under the circumstances provided under Section 59 and illustration (b) to Section 61 of Indian Easements Act, 1882, the defendant No.2 contends to the contrary and claimed that what was given was an easement by way of grant and mere existence of another way to reach the property of the defendant No.2, does not extinguish the grant made in favour of the defendant No.2. Therefore, these are pure questions of law that require to be considered in the suit and same needs to be tried. Since the plaintiffs have now developed the property and have enclosed the property bearing No.193/A1/ G1, and have installed electric transformers adjacent to the CD compound wall, it is not appropriate at this stage, to compel the plaintiffs to remove the wall and relocate the transformers. Therefore, the plaintiffs have made out a case for grant of an order of injunction and hence, the impugned order passed by the Appellate Court deserves to be set aside and since the nature of the property has now changed, it is appropriate to direct both the parties to maintain status-quo of the aforesaid property until disposal of the suit. The defendant No.2 who has a way to reach his

property would not suffer any hardship or difficulty if the order passed by the Trial Court is restored.

9. Consequently, this petition is disposed off setting aside the order dated 22.07.2021 passed by the Appellate Court in M.A.No.44/2016 and restoring the order dated 21.10.2016 passed by the Trial Court in O.S.No.362/2015 is restored.

10. It is made clear that the plaintiffs shall not put up any obstruction or whatsoever nature in the property other than what exists as on date. It is needless to mention that if the plaintiffs fail in their suit, the defendants are entitled to pursue their execution petition to execute the decree passed in O.S.No.297/2002. Since the suit is filed in the year 2015, the Trial Court is requested to dispose off the suit as early as possible and in accordance with Karnataka (Case Flow Management in Subordinate Courts) Rules, 2005.

Sd/-
(R.NATARAJ)
JUDGE

HJ
List No.: 1 Sl No.: 47