

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 24TH DAY OF JUNE, 2024
BEFORE
THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM
WRIT PETITION NO. 100487 OF 2022 (GM-CPC)

BETWEEN

R. SHANKAR
S/O. R. PRABHAKAR,
AGED ABOUT 38 YEARS,
OCC: PRIVATE SERVICE,
R/O. HOUSE NO.64, 53, W.NO.35 ,
VEERANAGOUDA COLONY, GANESH NAGAR,
SIRUGUPPA ROAD, BALLARI.

...PETITIONER

(BY SRI. S. B. DODDAGOUDAR, ADVOCATE)

AND

E. RAMMOHAN CHOWDARY S/O. E. YERRAPPA,
AGED ABOUT 60 YEARS, OCC:
R/O. 3RD CROSS, VENKATESH NAGAR,
BALLARI.

...RESPONDENT

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT OF CERTIORARI QUASHING THE ORDER DATED 31/01/2021 IN REVIEW PETITION NO.1/2021 PASSED BY THE FIRST ADDL. SENIOR CIVIL JUDGE BALLARI (ANNEXURE-A); TO ISSUE WRIT OF CERTIORARI QUASHING THE ORDER 27/08/2020 IN CIVIL MISC NO.20/2018 PASSED BY THE HON'BLE FIRST ADDL. SENIOR CIVIL JUDGE BALLARI WHEREIN THE HON'BLE COURT PARTLY ALLOWED THE APPLICATION U/SEC 151 OF CPC IN CIVIL MISC NO.20/2018 (ANNEXURE-B); TO ALLOW APPLICATION U/SEC 151 OF CPC IN CIVIL MISC NO.20/2018, AND DIRECT THE TRIAL COURT TO RETURN THE DOCUMENTS MENTIONED IN THE CIVIL MISC NO.20/2018 (ANNEXURE-C).

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER ON 05.07.2024, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT DELIVERED THE FOLLOWING:

ORDER

1. This petition is filed by the petitioner challenging the order passed by the learned Judge in Civil Miscellaneous No.20/2018, seeking return of the original documents produced by the petitioner-defendant and the original title documents produced by the respondent-plaintiff in O.S.No.62/2001.
2. The learned Judge partially allowed the civil miscellaneous petition, ordering the return of original documents i.e., Exs.D-1 and Ex.D-2 after obtaining certified copies. Aggrieved by the non-return of the original title documents produced by the respondent-plaintiff, the petitioner filed a review petition. The review petition was dismissed on the ground that the title documents were produced by the respondent-plaintiff and under Order XIII Rule 9 of the Code of Civil Procedure, 1908 (CPC), documents admitted in evidence should be returned to the person who produced them in the suit. These two orders are now under challenge.
3. Heard learned counsel appearing for the petitioner. Perused the records.

4. The facts leading to the case are as under:

The respondent-plaintiff initiated a suit for specific performance in O.S.No.62/2001 based on an agreement to sell dated 09.03.1998. The respondent-plaintiff had collected the original title deed from the petitioner, which included the sale deed obtained by the petitioner's maternal grandfather from the Co-operative Housing Society dated 14.08.1985, and an original Will dated 19.12.1986 executed by the maternal grandfather in favour of the petitioner.

The Trial Court, upon assessing the evidence, dismissed the suit for specific performance. The said judgment was upheld by this Court in RFA No.1005/2004. Following the dismissal, the petitioner sought the return of the original documents from the Trial Court. The learned Judge allowed the return of documents produced by the petitioner but declined to order the return of the registered sale deed and the Will.

5. The primary ground for the rejection of the petitioner's application was that although the original title documents were produced by the respondent-plaintiff, they belong to

the petitioner. It appears that the respondent-plaintiff handed over these title documents while executing the agreement to sell. Therefore, the petitioner contends that he has a legitimate claim to seek the return of these documents as the respondent-plaintiff's suit for specific performance is dismissed.

6. On examining both the orders under challenge, the Trial Court's view in rejecting the petitioner's application based on the production of documents by the respondent-plaintiff is fundamentally flawed.
7. Though Order XIII Rule 9 of CPC contemplates that admitted documents shall be returned to the party who produced them, this does not bar a party from seeking the return of original documents even if they were not produced by such party. The provisions of Order XIII Rule 9 of CPC should not be narrowly interpreted. This Court recognizes the petitioner's entitlement to these documents, despite their production by the respondent-plaintiff during the suit for specific performance.
8. The petitioner basis his application on his rightful ownership of the original documents. These documents

pertain directly to the property and testamentary disposition of the petitioner's grandfather.

9. The failure to return the original documents to the petitioner, who is legally entitled, carries significant consequences. It deprives the petitioner of vital, legal and proprietary evidence, potentially hindering his ability to manage, transfer, or assert rights over the property. The absence of these documents could result in substantial financial and administrative burdens, complicating property transactions and estate management. Additionally, withholding these documents violates the petitioner's legal rights and procedural fairness as mandated by the Civil Procedure Code. It undermines the principles of justice, equity, and good conscience, leading to potential reputational damage to the judicial system.
10. Upon thorough consideration of the facts and relevant legal provisions, this Court finds that the petitioner is indeed the rightful owner of the original documents in question. These documents, including the sale deed executed by the Co-operative Housing Society in favour of the petitioner's grandfather and the registered Will, should be returned to

the petitioner. The fact that these documents were produced by the respondent-plaintiff during the suit does not negate the petitioner's entitlement to them. The Trial Court's decision to reject the petitioner's application on this ground is therefore erroneous. The Trial Court erred in narrowly interpreting Order XIII Rule 9 of CPC. The intent of this provision is to ensure that documents, once they have served their purpose in litigation and are no longer required by the Court, should be returned to their rightful owners.

11. In this case, the Trial Court's decision to withhold the documents from the petitioner based solely on the fact that they were produced by the respondent, ignores the broader purpose of Order XIII Rule 9. The provision is not strictly limited to the party that physically submits the documents in Court. Instead, it extends to ensuring rightful ownership and fair administration of justice. This means that the Rule should be applied in a manner that recognizes the rightful owner of the documents, irrespective of who produced them during trial.

12. By rigidly applying the literal language of Order XIII Rule 9, the Trial Court lost sight of an essential principle: the plaintiff, having lost the suit, has no legitimate claim to retain the title documents. These title documents inherently belong to the petitioner. The respondent's role in producing the documents during the litigation process does not confer ownership or a right to retain them post-litigation, especially after losing the suit for specific performance. Courts must be pragmatic while dealing with such situations. If the captioned petition is not allowed, the petitioner will lose the title documents forever.
13. For the reasons stated supra, this Court proceeds to pass the following:

ORDER

- (i) *The writ petition is allowed;*
- (ii) *The impugned order dated 31.08.2021 passed in Review Petition No.1/2021 by the I-Additional Senior Civil Judge, Ballari vide Annexure-A confirming the order dated 27.08.2020 passed in Civil Misc.No.20/2018 is hereby quashed.*

- (iii) The petitioner's application for the return of the original documents is hereby allowed;*
- (iv) The trial court is directed to return the original sale deed and the registered Will to the petitioner;*
- (v) The return of these documents shall be subject to petitioner providing certified copies to be substituted for the originals.*
- (vi) In view of disposal of the petition, pending interlocutory applications, if any, do not survive for consideration and are disposed.*

Sd/-
JUDGE

YAN