

HIGH COURT OF KARNATAKA**Bench: Justice S.G. Pandit****Date of Decision: November 29, 2023****WRIT PETITION NO. 25540 OF 2023 (GM-CPC)**

1. SMT. NINGAMMA
2. SRI.N.M SURESHA ...PETITIONERS

Versus

1. SRI. BASAVARAJU
2. SMT. NAGAMMA

Legislation:

Article 227 of the Constitution of India

Section 151 of the Code of Civil Procedure, 1908 (CPC)

Subject:

Application under Section 151 of CPC, which involves reopening the stage for defendants' evidence in a suit for partition and separate possession of properties. The defendants had raised contentions regarding Will and Adoption in the case.

Headnotes:

Civil Procedure – Application under Section 151 of CPC – Reopening the stage for defendants' evidence – Opportunity denied by trial court – Petitioners seeking permission to lead their evidence – Suit for partition and separate possession of properties – Contention of Will and Adoption raised by defendants – Error in not providing reasonable opportunity to defendants to lead their evidence – Court emphasizes that no party should feel denied an opportunity to present their case – Petitioners granted permission to lead their evidence within 15 days – Impugned order set aside.

Referred Cases: None.

Representing Advocates:

For the Petitioners: Sri. Manjunath Hegde, Advocate

For Respondent No. 1: Sri. P. Nataraju, Advocate

ORDER

The petitioners, defendants in O.S.No.388/2013 on the file of I Additional Civil Judge (Junior Division) Malavalli, are before this Court questioning the order dated 31.10.2023, rejecting application filed under Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') to reopen the stage for defendants' evidence and seeking permission to lead their evidence.

2. Heard Sri. Manjunath Hegde, learned counsel for the petitioner and Sri. P.Nataraju, learned counsel for respondent No.1. Perused the writ petition papers.

3. Learned counsel for the petitioners would submit that the suit of the respondent/plaintiff is one for partition and separate possession of half share in the suit schedule properties. Learned counsel would further submit that the defendants have raised contention of Will and Adoption. The plaintiff completed his evidence on 25.05.2023 and the suit was set down for defendants' evidence on 13.06.2023. It is further submitted that on 13.06.2023, the defendants sought time to lead evidence. But the same was rejected and the suit was posted for arguments. He further submits that on 24.06.2023, the trial Court heard arguments of the plaintiff and recorded arguments of defendants as nill and posted for judgment to 17.07.2023, on which date, the petitioners-defendants filed an application under Section 151 of CPC to reopen the stage and seeking permission to lead their evidence. It is submitted that thereafter, the suit was adjourned on two occasions for objections of the plaintiff to the said application. But on 31.10.2023, the application of the petitioners-defendants was rejected. Learned counsel would further submit that, the trial Court committed an error in not affording reasonable opportunity to the petitioners to lead their evidence. Learned counsel submits that when the plaintiff completed his evidence on 25.05.2023 and when the suit was posted to 13.06.2023 for defendants' evidence, the petitioners-defendants ought to have been provided one opportunity to lead their evidence by adjourning the matter as prayed. Further, learned counsel would pray for one opportunity to lead defendants' evidence and he assures the Court that the defendants would lead their evidence within 15 days from today by advancing the suit, if it is beyond 15 days.

4. Learned counsel for respondent No.1/plaintiff would support the order passed by the trial Court. However, he submits that if this Court is of the opinion that the petitioners-defendants ought to be given an opportunity to lead their evidence, he prays for fixing time for leading their evidence.

5. Heard learned counsels for the parties and on perusal of the writ petition papers, I am of the view that the petitioners-defendants before the trial Court ought to be given an opportunity to lead their evidence. No

party or litigant shall go out of the Court under impression that he has not been provided sufficient opportunity to put forth his case or to defend his case.

6. In the instant case, the plaintiff completed his evidence on 25.05.2023 and the suit was set down for defendants' evidence on 13.06.2023, on which date, the trial Court has taken evidence of defendants as nill. In the facts and circumstances of the case, I am of the view that petitioners/defendants would be entitled for one opportunity to lead their evidence. Hence, the following:

ORDER

- (i) Impugned order dated 31.10.2023 in O.S.No.388/2013 on the file of I Additional Civil Judge, Junior Division, Malavalli, is set aside. Consequently, I.A. filed under Section 151 of CPC, to reopen the stage and seeking permission to lead defendants' evidence is allowed and defendants are permitted to lead their evidence.
- (ii) The submission of the learned counsel for the petitioners that the defendants would lead their evidence within 15 days from today is placed on record.
- (iii) The respondent/plaintiff without taking any further adjournment, shall cross-examine the defendants witness.
- (iv) With the above, writ petition stands disposed off.

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