



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 31ST DAY OF JANUARY, 2024
BEFORE
THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ
WRIT PETITION NO. 100190 OF 2021 (GM-CPC)

BETWEEN:

SMT. SHAHEEN @ HANIFA W/O. SALEEM MARFANI,
AGED ABOUT 56 YEARS, OCC. HOUSEHOLD WORK,
R/O. PLOT NO.9, BOYCE COMPOUND,
K. R. LAYOUT, CLUB ROAD,
BELAGAVI, DIST. BELAGAVI-560019.

...PETITIONER

(BY SRI. GIRISH A. YADAWAD, ADVOCATE)

AND:

1. SHIVAKUMAR S/O. SHIVALINGAPPA BOLISHETTY,
AGED ABOUT 64 YEARS, OCC. NIL,
R/O. PLOT NO.10, BOYCE COMPOUND,
K.R. LAYOUT, CLUB ROAD, BELAGAVI,
DIST. BELAGAVI-560019.
2. MALLIKARJUN S/O. SHIVALINGAPPA BOLISHETTY,
AGED ABOUT 59 YEARS, OCC. BUSINESS,
R/O. PLOT NO.10, BOYCE COMPOUND,
K.R. LAYOUT, CLUB ROAD, BELAGAVI,
DIST. BELAGAVI-560019.
3. ASHA W/O. ASHOK BOLISHETTY,
AGED ABOUT 50 YEARS, OCC. HOUSEHOLD WORK,
R/O. PLOT NO.10, BOYCE COMPOUND,
K.R. LAYOUT, CLUB ROAD, BELAGAVI,
DIST. BELAGAVI-560019.
4. ANAND S/O. SHIVALINGAPPA BOLISHETTY,
AGED ABOUT 49 YEARS, OCC. BUSINESS,
R/O. PLOT NO.10, BOYCE COMPOUND,
K.R. LAYOUT, CLUB ROAD, BELAGAVI,
DIST. BELAGAVI-560019.

...RESPONDENTS

(BY SRI.V.S. KALSURMATH, ADV. FOR R1 TO R4)





THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT OF CERTIORARI OR ANY SUCH WRIT OR DIRECTION TO QUASH THE IMPUGNED ORDER DATED 30.11.2020 PASSED BY THE II ADDL. SENIOR CIVIL JUDGE, BELAGAVI, IN O.S. NO.292/2018 VIDE ANNEXURE F.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking the following reliefs:

- a) *Quash the impugned order dated 30.11.2020 passed by the II Addl. Senior Civil Judge, Belagavi, in O.S. No.292/2018 vide Annexure F.*
- b) *Pass such order or orders which this Hon'ble court deems fit and necessary under the facts and circumstances of the case.*

2. The petitioner had filed a suit in O.S.No.292/2018 seeking for specific performance against the defendants. In the said suit, an application in I.A.No.3 under Order III Rule 2 read with Section 151 of the Code of Civil Procedure (for short "CPC") was filed seeking permission of the Court to lead oral and documentary evidence through her husband and a special power of attorney. The said application was



rejected by the impugned order dated 30.11.2020 on the ground that the special power of attorney cannot depose in a matter if he does not have personal knowledge. It is challenging the said order the petitioner is before this court.

3. Learned counsel for the petitioner Sri.Girish Yadwad submits that whether the power of attorney has special knowledge or not can only be established during the course of evidence-in-chief and cross-examination and at the stage of filing and consideration of an application under Order III Rule 2 of CPC, the same is not required to be considered. His submission is that, in the event of defendants being able to prove that the power of attorney holder has no personal knowledge the same would have to be assessed at the time of consideration of the evidence and not at the time of consideration of application under Order III Rule 2 of CPC.
4. Sri.V.S.Kalasurmam, learned counsel appearing for the respondents would, however, submit that there would be no purpose served by examining a person who does not



have personal knowledge and it would only be a waste of precious time of the Court and as such, the trial court has rightly rejected the application in a suit for specific performance.

5. Heard Sri.Girish Yadwad, the learned counsel for the petitioner and Sri.V.S.Kalasurmath, learned counsel appearing for the respondents.
6. It would always be for the plaintiff to lead evidence by herself or through her witnesses, including her witnesses, who could be her power of attorney, who is a recognized agent. In terms of order III rule 2 of CPC, the option having been provided under the CPC for leading of such evidence, the assessment of evidence cannot be done at the stage of consideration of application under Order III Rule 2 of CPC. It is only after the evidence is led and the witness is cross-examined, would the court be in a position to assess whether the person, who has deposed has personal knowledge or not. In the event, during the evidence, it being categorically established that the witness had no personal knowledge, then the evidence



could always be rejected as hearsay at the time of passing of a judgment after consideration of the evidence. In that view of the matter, I am of the considered opinion that the trial Court has prejudged the matter at the time of consideration of an application under Order III Rule 2 of CPC.

7. It would always be available for the defendants to take up contention to establish that the witness does not have personal knowledge, during the course of cross examination or to take up contention during the course of arguments. As such, I pass the following:

ORDER

- i) Writ petition is allowed.
- ii) The impugned order date 30.11.2020 passed by the II Additional Senior Civil Judge Belgaum in O.S.No.292/2018 at Annexure-F is hereby quashed.
- iii) Consequently, I.A.No.3 filed under Order III Rule 2 read with Section 151 of CPC is allowed.



- iv) Special power of attorney is permitted to lead oral and documentary evidence.
- v) It is made clear that this Court has not expressed any opinion on the personal knowledge or otherwise of the said witness which shall be considered by the trial court on the basis of the cross examination.
- vi) In view of disposal of the petition, pending interlocutory applications, if any, do not survive for consideration and are disposed of accordingly.

Sd/-
JUDGE