

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF NOVEMBER, 2019

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BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.9033/2018
C/W WRIT PETITION NO.9034/2018 C/W
WRIT PETITION NO.57934/2018 (GM - CPC)

IN W.P.NO.9033/2018:

BETWEEN

MR A ASHRAF ALI
S/O LATE B.R.ABDULLAH,
AGED ABOUT 50 YEARS,
R/AT CITY LINES, NO.15,
GROUND FLOOR,
COOPER ARCH, NO.83,
INFANTRY ROAD,
BANGALORE-01.

...PETITIONER

(BY SRI PRASANNA KUMAR C S, ADV.)

AND

SMT B S SUSHEELA DEVI
W/O LATE DR.E.JS ACHARYA,
AGED ABOUT 91 YEARS,
R/AT NO.24, 2ND MAIN ROAD,
TATA SILK FARM EXTENSION,
BASAVANAGUDI, BANGALORE-560 004.

...RESPONDENT

(BY SMT SUNITHA H SINGH, ADV.)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 02.01.2018 PASSED ON I.A.NO.8 IN O.S.NO.5539/2013, PENDING ON THE FILE OF V ADDL. CITY CIVIL AND SESSIONS JUDGE (CCH 13), BANGALORE, VIDE ANNEXURE-A.

IN W.P. NO.9034/2018:

BETWEEN:

M/S BRIGADE PROPERTIES
HAVING OFF.NO.19,
NALPAD CHAMBERS,
NALPAD RESIDENCY, K.G.ROAD,
BANGALORE-560 009
REP BY PARTNER VINAY.C.MENJERS

...PETITIONER

(BY SRI PRASANNA KUMAR C S, ADV.)

AND:

GARUD S ACHARYA
SINCE DEAD BY LEGAL REPRESENTATIVES

1. SMT.B.S.SUSHEELA DEVI,
W/O LATE DR.BJS ACHARYA,
AGED ABOUT 91 YEARS,
R/AT NO.24, 2ND MAIN ROAD, TATA SILK FARM
EXTENSION, BASAVANGUDI,
BANGALORE-560 004.
2. SMT.RADHA ACHARYA
W/O LATE GARUD S ACHARYA
AGED ABOUT 62 YEARS,
R/AT NO.24, 2ND MAIN ROAD, TATA SILK FARM
EXTENSION, BASAVANGUDI, BANGALORE-560 004.
3. MEERA ACHARYA KRISHNA KUMAR
W/O KRISHNA KUMAR,
AGED ABOUT 37 YEARS,
R/AT NO.24, 2ND MAIN ROAD, TATA SILK FARM
EXTENSION, BASAVANGUDI, BANGALORE-560 004.
4. ADHIKAR G ACHARYA
S/O LATE GARUD S ACHARYA
AGED ABOUT 33 YEARS,
R/AT NO.24, 2ND MAIN ROAD, TATA SILK FARM
EXTENSION, BASAVANGUDI, BANGALORE-560 004.

...RESPONDENTS

(BY SMT SUNITHA H SINGH, ADV.)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF
THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE
IMPUGNED ORDER DATED 13.07.2017 PASSED ON
I.A.NO.1/2017 IN O.S.NO.4465/2013, PENDING ON THE FILE OF

V ADDL. CITY CIVIL AND SESSIONS JUDGE, BANGALORE AT ANNEXURE-A.

IN W.P.NO.57934/2018:

BETWEEN

M/S BRIGADE PROPERTIES
HAVING OFF. NO.19, NALPAD CHAMBERS
NALPAD RESIDENCY, K.G. ROAD,
BANGLAORE 560009
REP. BY PARTNER VINAY.C. MENJERS
S/O. I.D. PRASAD,
AGED ABOUT 40 YEARS,
NO.15, GROUND FLOOR, 83 COPPER ARCH,
INFANTRY ROAD, BENGALURU -01.

...PETITIONER

(BY SRI PRASANNA KUMAR C S, ADV.)

AND

SMT B S SUSHEELA DEVI
W/O LATE DR. BJS ACHARYA
AGED ABOUT 88 YEARS, R/AT NO.24,
2ND MAIN ROAD,
TATA SILK FARM EXTENSION,
BASAVANAGUDI, BANGALORE 560 004.

...RESPONDENT

(BY SMT SUNITHA H. SINGH, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 16.11.2018 PASSED ON I.A.NO.III IN MISC.NO.541/2013, PENDING ON THE FILE OF VIII ADDL. CITY CIVIL AND SESSIONS JUDGE (CCH 15), BANGALORE, VIDE ANNEXURE-A.

THESE WRIT PETITIONS COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

COMMON ORDER

In the suit for ejection, the petitioner being the defendant is invoking the writ jurisdiction of this Court

finding fault with the counsel on record in the Court below in identifying himself with the plaintiff-Land Lord and deposing as a witness on his behalf. After service of notice, the respondents having entered appearance through their counsel, oppose the writ petitions.

2. In view of the varying stand taken up by the counsel for the parties, the following common question of law and professional ethics arises in these matters for consideration:

“Whether the counsel on record after retiring from the case with the leave of the Court can become an agent of the party for prosecuting the suit proceedings?”

since the fact matrix from which the above question arises is inbuilt in the question itself, the factuals need no mention.

Except that, the advocate appearing for the respondent – landlady having retired from the case was appointed as an attorney/agent by her to act on her behalf and to conduct the proceedings in these suits.

3. learned counsel for the petitioner in support of his submission that the answer to the above question has to be in the negative banked upon the following rulings:

1. *BRENDA BARBARA FRANCIS AND ORS. VS. ADRIAN G.MIRANDA AND ORS.-RFA NO.353/2016, KERALA HIGH COURT REPORTED IN MANU/KE/0507/2017.*
2. *OIL AND NATURAL GAS COMMISSION VS. OFFSHORE ENTERPRISES INC. REPORTED IN AIR 1993 BOM 217.*
3. *VATECH GLOBAL CO. LTD VS. UNICORN DENMART LTD AND OTHERS REPORTED IN CDJ 2017 DHC 390.*
4. *SMT.KAMALA BAKSHI VS. UNION OF INDIA REPORTED IN AIR 2004 J AND K 65.*
5. *BALIHEET SINGH VS.PRATAP SINGH AND OTHERS REPORTED IN 2017(7) ADJ 507.*

4. Per contra, the learned counsel appearing for the respondents relied upon the following decisions soliciting an answer to the above question in the affirmative.

1. *SAJIDA BANU VS. HALEEMA BANU AND OTHERS, ILR 2015 KAR 635.*
2. *R. NARASIMHA VS. S.P.SRIDHAR, ILR 2014 KAR 84*
3. *BHIMAPPA AND OTHERS VS. ALLISAB AND OTHERS, ILR 2006 KAR 3129*
4. *BAKER OIL TOOLS (INDIA) PVT. LTD., BS. BAKER HUGHES LTD. AND ANOTHER, RFA 583/2004*
5. *NAGAPPA MALLAPPA BANDI VS. SHIVRAJ, LAWS(KAR) 2005 916*
6. *COLUMBIA PICTURES INDUSTREIS VS. SITI CABLE NETWORK LIMITED,D DATED 30.03.2001, 2001(60) DRJ 11.*
7. *MADANLALA DHARIWAL VS. BHERRULA, AIR 1965 MYSORE 272*

5. Having heard the learned counsel for the parties and having perused the petition papers, this Court is of the considered opinion that the answer to the above question has to be in the negative for the following reasons:

(a) in the case of Brenda Barbara Francis supra, the High Court of Kerala concurred with the decision of the Bombay High Court in ONGC Vs. Offshore Enterprises, AIR 1993 BOMBAY 217 which held

“Advocates in their professional capacity are enjoined to act with complete impartiality and detachment and not entitled to identify themselves with the clients or the cause personally. The paramount duty of an advocate is to assist the Court in its task of administering justice- - - advocates belong to noble profession of law. On the other hand, a constituted attorney is entitled to identify himself with the donor of power of attorney and act in the same manner as the suitor litigant is entitled to act. An advocate is governed not merely by written provisions of the Advocates, Act 1961 but also by traditions of Bar built up for generation during the course of administration of justice for centuries.”

(b) the High Court of Delhi in the case of Vatech Global Company supra, has too echoed the same as has done the High Court of J & K, in the case of Smt. Kamla Bakshi Vs. UOI, AIR 2004 J & K 65. Similar is the view of High Court of

Allahabad in the case of Akhilesh Thripati Vs. Varun Dev Sharma, supra.

6. The decision cited by the counsel for the respondents do not have a fact matrix wherein the counsel having retired from the case was acting as the agent of a litigant in the very same case. Therefore, they do not justify the contention of the respondents that the answer to the aforesaid question should be in the affirmative. the advocate on record in the Court below (whose name is consciously left unmentioned herein) should not be permitted to act as an agent of the landlady in these proceedings,

7. In the above circumstance, these writ petitions succeed: the learned counsel Sri Siraj Ahmed is restrained from participating in the proceedings in O.S.No.4465/2013, O.S.No.4462/2013 & Miscellaneous No.541/2013 either as a party or as an agent of the party or as a counsel of the party or otherwise.

No costs.

**Sd/-
JUDGE**