



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25<sup>th</sup> DAY OF AUGUST 2021

BEFORE

THE HON'BLE MR.JUSTICE N.S.SANJAY GOWDA

**C.R.P.No.159/2021(SC)**

**BETWEEN:**

SMT. LEELAVATHI, W/O C.NAGARAJ,  
AGED ABOUT 64 YEARS,  
R/AT No.42, 7<sup>TH</sup> MAIN ROAD,  
DASARAHALLI, BANGALORE - 560 079.

**... PETITIONER**

(BY SRI. K.V.NARASIMHAN AND SRI.K.N.NITISH, ADV.)

**AND:**

1. SMT. C.S.LALITHA,  
AGED ABOUT 56 YEARS,  
W/O H.P.CHANDRAIAH,  
R/A No.307, 3<sup>RD</sup> MAIN, 3<sup>RD</sup> BLOCK,  
1<sup>ST</sup> STAGE, MANJUNATH NAGAR,  
BANGALORE - 560 010.
2. SRI. SURESH, S/O GOVINDAN,  
AGED ABOUT 54 YEARS,  
EARLIER AT No.53 & 54(OLD No.55)  
GIDDADAKONENAHALLI,  
YESHWANTHPUR HOBLI,  
BANGALORE NORTH TALUK,  
BANGALORE - 560 091.

**... RESPONDENTS**

(BY SRI. M.B.RADDI AND SMT. VIDYASHREE., ADV., FOR  
C/R-1)

THIS PETITION IS FILED UNDER SECTION 18 OF THE KARNATAKA SMALL CAUSES COURTS ACT, 1964 AGAINST THE JUDGMENT AND DECREE DATED 23.04.2021 PASSED IN EX.P.No.1315/2015 ON THE FILE OF THE XXI ADDITIONAL SMALL CAUSES AND ACMM COURT OF SMALL CAUSES BENGALURU, ALLOWING THE APPLICATION FILED UNDER ORDER XXI RULE 99 R/W SECTION 151 OF CPC., PRAYING TO PASS AN ORDER DIRECTING THAT SHE BE PUT IN THE POSSESSION OF THE EXECUTION PETITION SCHEDULE PROPERTY.

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

**ORDER**

1. This revision has been preferred against an order passed by the Small Causes Court allowing an application filed under Order XXI Rule 99 CPC by the objector/1<sup>st</sup> respondent herein thereby ordering restoration of possession of the 1<sup>st</sup> respondent/objector in Ex.1315/2015 (arising out of an order of eviction passed in S.C.No.314/2015). By the said order, costs of

Rs.10,000/- has also been imposed against the petitioner.

2. By the same order, a compromise decree passed in the eviction suit filed by the petitioner based on which the execution had been filed by the petitioner herein, has also been set aside.

3. Ultimately, a positive direction has been issued to direct the decree holder/petitioner herein to restore physical possession of the execution petition schedule property to the objector/1<sup>st</sup> respondent herein within one month.

4. The facts, which are not in dispute, are as follows:

4.1 On 08.07.2004, by way of a Sale Deed executed by Nagaraju, the GPA holder of Siddappa and Rajanna, site Nos.53 and 54 were sold to the petitioner herein.

4.2 On 17.03.2006, site Nos.42, 53 and 54 were sold by Siddappa and Rajanna directly in favour of the 1<sup>st</sup> respondent herein C.S.Lalitha.

4.3 In the Year 2012, the petitioner herein filed a suit in O.S.No.244/2012 seeking for a decree of injunction in respect of the property in question against the 1<sup>st</sup> respondent herein and her son in the said suit, an *ex parte* interim order was granted. However, on appearance by the 1<sup>st</sup> respondent and on an application made by her for vacating the interim order, the Trial Court proceeded to vacate the interim order.

4.4 The petitioner, being aggrieved, preferred an appeal in M.F.A.No.5894/2012 and the said appeal, by a judgment dated 28.06.2012 was also dismissed.

4.5 After the dismissal of the said appeal, the 1<sup>st</sup> respondent herein and her son filed O.S.No.8256/2012 seeking for a declaration that the Sale Deed executed by C.Nagaraju allegedly on behalf of Siddappa and Rajanna was null and void and not binding on the 1<sup>st</sup> respondent and her son. A decree of injunction was also sought for in the said suit.

4.6 During the pendency of these two suits and three years after the suits had been instituted, on 26.03.2015, the petitioner, filed a Small Cause suit in S.C.No.314/2015 against one Suresha. She claimed that she had inducted the said Suresha as a tenant into the premises standing on site Nos.53 and 54. She contended that said Suresha was in possession as a tenant and despite her request to vacate the premises, he had not agreed and he was also not paying rents as per the agreement and she was, therefore, entitled for possession of the property in question.

4.7 The said suit was referred to Lok Adalat. Before the Lok Adalat, a compromise petition was filed, whereby, Suresha agreed to hand over possession of the suit property on or before 28.05.2015 and on the basis of the said compromise decree, the suit was decreed in terms of the compromise petition.

4.8 The petitioner contending that the compromise decree was not complied with, proceeded to file an

execution petition in Ex.No.1315/2015 on 18.06.2015.

In the said execution petition, possession of the premises was delivered to the petitioner on 01.07.2015 with police help.

4.9 On 13.07.2015, the 1<sup>st</sup> respondent filed an application under Order XXI Rule 99 CPC in Ex.No.1315/2015 contending that she was the owner of the premises and there was abundant material to indicate that she was in possession under an independent title and yet under a decree obtained against Suresha, which did not bind her, she had been dispossessed.

4.10 She also contended that there were two suits, one filed by the petitioner and another filed by her, pending consideration in respect of the very same property and suppressing all these facts, a Small Cause suit had been filed and fraudulently a compromise decree had been obtained by the petitioner herein.

4.11 The Trial Court, initially, by an order dated 23.06.2017 allowed the application and directed restoration of possession to the 1<sup>st</sup> respondent.

4.12 Being aggrieved, an appeal in R.F.A.No.1322/2017, was filed by the petitioner and this Court by order dated 17.03.2020 allowed the appeal and remanded the matter to the Trial Court with a direction to reconsider the matter by giving an opportunity to the petitioner and also to the 1<sup>st</sup> respondent herein to adduce oral evidence if any, hear them and dispose of the matter in accordance with law.

4.13 Pursuant to the said order of remand, the Trial Court conducted an inquiry and by the impugned order, it has concluded that the 1<sup>st</sup> respondent had been in possession under an independent title and she had been wrongfully dispossessed under a decree obtained against Suresha. The Trial Court, therefore, proceeded to order for restoration of possession in favour of the 1<sup>st</sup> respondent herein.

4.14 It is against this order directing restoration of possession, the present revision has been filed.

5. It is an admitted fact that the petitioner had filed O.S.No.244/2012 against the 1<sup>st</sup> respondent herein and her son and in the said suit, she contended that she had constructed one small house and a compound wall with a borewell in the suit property and was in lawful possession of the same. She had also contended therein that the 1<sup>st</sup> respondent and her son were interfering with her possession and therefore, she was constrained to file a suit for injunction.

6. Thus, in the year 2012, she had contended that she was in possession of one small house, in which, a borewell had been sunk. In the said suit, an *ex parte* interim order of temporary injunction was granted. However, on an application by the 1<sup>st</sup> respondent, the Trial Court, after noticing that all the records indicated that the 1<sup>st</sup> respondent was in physical possession, proceeded to vacate the said interim order. The Trial

Court also noticed that the petitioner had not produced the original of the GPA and a sworn affidavit purported to be executed by the admitted true owners Siddappa and Rajanna in favour of Nagaraju, who had executed the Sale Deed in favour of the petitioner.

7. This order vacating the temporary injunction with a finding that the 1<sup>st</sup> respondent was in possession of the suit property was challenged before this Court in M.F.A.No.5894/2012. This Court affirmed the finding of the Trial Court by recording a finding that the material produced before the Trial Court warranted vacation of the interim order of temporary injunction.

8. Thus, the finding that the 1<sup>st</sup> respondent was in possession, as recorded by the Trial Court and as affirmed by this Court, was clearly within the knowledge of the petitioner.

9. Notwithstanding the fact that the said finding was glaring at her face, the petitioner proceeded to file a Small Cause suit contending that one Suresha was in

possession. The averments made by her in the Small Cause suit were diametrically opposite to the plea raised by her in O.S.No.244/2012 that she was in physical possession.

10. In this Small Cause suit, she deliberately chose to suppress the fact that there were two suits in respect of the suit property and her prayer for an order of injunction had been refused on the ground that she was not in possession. It is, therefore, crystal clear that the Small Cause suit was filed with the sole intention of securing a decree fraudulently and to use the process of the Court to dispossess the 1<sup>st</sup> respondent.

11. In other words, it is clear that S.C.No.314/2015 was a collusive proceeding designed to be used as a weapon to throw out the 1<sup>st</sup> respondent from the premises in question. The fact that the said suit which was filed on 26.03.2015 ended in a compromise petition on 28.04.2015 i.e., within a month, reaffirms the fact that the entire proceedings were initiated with the

sinister design of dispossessing the 1<sup>st</sup> respondent illegally.

12. In furtherance of this sinister design, the petitioner preferred an execution petition and in the execution proceeding proceed to obtain a delivery warrant and also secured police help and proceeded to dispossess the 1<sup>st</sup> respondent.

13. As stated above, the 1<sup>st</sup> respondent had set up a claim over the suit property under an independent title and the petitioner was not only aware of the said suit but had also suffered adverse orders in the suit that she had filed against the 1<sup>st</sup> respondent in O.S.No.244/2012. Thus, essential and material facts were deliberately suppressed before the Small Causes Court and the Small Causes Court, being unaware of the proceedings, proceeded to accept the collusive compromise decree and proceeded to evict the 1<sup>st</sup> respondent.

14. The Trial Court, on consideration of the materials produced before it, has recorded the following finding:

"18. Ex's.P.3 to 7 are the certified copies of the Tax Demand Register Extracts, Tax paid Receipts and Khatha Extracts pertaining to the aforementioned sites. These exhibits disclose that since 2007 the names of the objector and her son are entered in the Khatha and Demand register extracts of sites No.42, 53 & 54 of G.K.Halli and they are paying taxes with respect to it to the concerned authority. The Ground Water investigation report dated 08.12.2011, recommending the details/requisites regarding the borewell to be dug in site No.53/54 of G.K.Halli is marked at Ex.P8. Ex.P.9 is the Invoice issued by Sri.Kaveri Borewell Drillers in favour of PW.1's son on 09.12.2011. The cash bill & E-Sugam Form issued to him by Maruti Wood works consigning the goods to sites No.53 & 54 of G.K.Halli are exhibited at Ex.P.10 & 11. Exs.P.12 & 13 are the certified copies of the Power Sanction letter dated 06.12.2012 addressed to PW.1's son, granting supply of Electricity connection to site No.53 of G.K.Halli and Tax invoice of Landis + GYR Limited (from whom single phase static energy meter was purchased). The certified copy of cash paid bills issued by BESCO, Bengaluru to PW.1's son is marked at Ex.P.14.

19. Ex.P.15 is the letter addressed by Assistant Executive Engineer (Elec), N2 Sub-Division, BESCO to the Executive Engineer (Elec) BESCO on 22.08.2012 stating that the issue of arranging power supply to the premises at #53 & 54 of G.K.Halli is kept pending till the order copy of the Court is produced. Ex.P.16 is the reminder dated 11.07.2012 issued to Smt. Leelavathi W/o Nagaraju (decree Holder herein) asking her to produce requisite original documents pertaining to the premises at #53 & 54 of G.K.Halli, failing with the work order issued for arranging power to the said premises will be cancelled and the application submitted by Smt. C.S.Laiitha and Sri.C.Nandakumar (PW.1 & her son) will be processed as they have produced the original documents and Court order.

20. Certified copy of the plaint in OS.244/2012 filed by Decree Holder against objector (PW.1) & her son before the Hon'ble City Civil Court, Bengaluru seeking the relief of Permanent Injunction with respect to sites No.53 & 54 of G.K.Halli (E.P.S.P. herein) is exhibited at Ex.P.17. Certified copies of the written statement IA No.I filed U/o 39 Rules 1 and 2 of C.P.C, IA No.II filed U/o 39 Rule 4 of CPC, Affidavit filed by Siddappa and Rajanna & orders passed on IA's I &

II (all in OS No.244/2012) are marked at Exs.P.18 to 22. Ex.P.23 is the certified copy of the Judgment passed by the Hon'ble High Court of Karnataka in MFA.No.5894/2012. Ex.P.24 is the certified copy of the plaint in OS.8256/2012 which is instituted by the Objector and her son against the Decree Holder in the case on hand seeking the relief of Declaration declaring that the sale deed executed by C.Nagaraju allegedly on behalf of Siddappa & Rajanna in favour of the defendants (Decree holder herein) dated 08.07.2004 is null & void and not binding on them. Further to set aside the said sale deed & order it to be delivered up and cancelled. Also to permanently restrain the defendant from interfering with their peaceful possession and enjoyment of the suit schedule property i.e., Sites No.53 & 54 formed in Sy.No.5 of Gidadakonenahalli Village, Yeshwanthapura Hobli, Bengaluru North Taluk (E.P.S.P herein). Certified copy of the IA filed in O.S.8256/2012 U/o 39 rule 1 & 2 of CPC seeking an ex parte order of temporary Injunction restraining the defendant from interfering with their possession & also alienating the suit schedule property till the disposal of the suit is marked at Ex.P.25. Ex.P.26 is the certified copy of written statement filed in

the said suit. The certified copy of examination in chief filed in OS.8256/2012 is marked at Ex.P.27.

21. Complaint given by Siddappa and Rajanna on 17.01.2012 to the Gnanabharathi Police Station against Decree Holder, her husband & her sons alleging creation of fraudulent documents with respect to sites bearing 53 & 54 of G.K.Halli and threatening them in that regard is marked at Ex.P.28. Ex.P.29 is the Endorsement given by Gnanabharathi Police Station to the objector and her son. Ex.P.30 is the letter dated 30.08.2012 & Ex.P.31 is the Endorsement dated 19.01.2013. The orders passed by Karnataka State Human Rights Commission on 13.04.2018, in HRC.774/2012 (B III) is marked at Ex.P.32. The complaint dated 22.01.2019 addressed by the objector to Deputy Commissioner (West), complaining about the illegal trespass made by the decree Holder, her husband and her sons over the E.P.S.P on the basis of fraudulent documents, is marked at Ex.P.33 Ex.P.34 is the Endorsement dated 31.01.2019 issued by BESCO to H.R.Chandraiah (objector's husband) under Right to Information Act 2005 informing that the R.R.Meter number of E.P.S.P is standing in the name of Sri. C.Nandakumar (objector's son) from January-2012 till February 2017 & the initial

deposit of Rs.680/- with respect to the said property was paid by Sri.C.Nandakumar.

22. Ex.P.35 is the Orders passed by Karnataka State Human Rights Commission on 06.02.2019 in HRC.379/2010/31/2019(SB 3). The letter issued by the Additional Secretary to Government of Karnataka dated 01.08.2019 is exhibited at Ex.P.36. Ex.P.37 is the Endorsement dated 23.02.2019 stating that the dispute pertaining to E.P.S.P is purely Civil in nature. Certified copy of order sheets in PCR No.3/2017 & PCR.No.15/2017 (along with the B Reports filed therein) which were filed by the Decree Holder & one Sharath respectively against the objector, her husband & son, Siddappa & Rajanna, Girsh Kumar and few others praying to register the complaint against the said persons for the offences punishable U/s 3(1)(2)(i)(ii)(v), 10 of SC & ST (PA) Act 1989 & Sections 209, 354, 406, 409, 420, 465, 468, 506 r/w Section 34 of I.P.C. are marked at Ex.P.38 & 39. Ex.P.40 is the certified copy of the Registered Sale deed dated 08.07.2004 vide which the Decree Holder's husband (C.Nagaraju) alleging himself to be the GPA Holder of Siddappa and Rajanna sold the E.P.S.P in favour of his wife i.e., Decree Holder herein for a sale consideration of Rs.96,000/-.

The certified copy of Gift deed dated 15.04.2017 as per which the Decree Holder gifted part of the E.P.S.P i.e., site No.53 of G.K.Halli, measuring 40X30 in favour of her son Harish.N is marked at Ex.P.41. Likewise the Gift deed dated 15.04.2017 through which site No.54 of G.K.Halli measuring 40X30 was gifted in favour of her other son Ravikanth.N is marked at Ex.P.42.

23. Ex.P.43 is the certified copy of memorandum of deposit of title Deeds dated 01.06.2018 vide which documents pertaining to site No.53 of G.K.Halli are deposited by Harish (Decree Holder's son ) with the Andhra Bank with an intent to create equitable mortgage in favour of the Bank for having availed financial assistance of Rs.22,00,000/- from it. Ex.P.44 is the Encumbrance Certificate of site No.53 wherein the aforementioned transactions are being depicted. The photographs along with CD which show that some persons are entering into the E.P.S.P, putting chain lock to the gate of the said property, inscribing the words on its compound that 'this property belongs to Leelavathi, SC & ST Caste' are exhibited at Ex.P.45. Ex.P.46 is the Kannada Prabha daily news paper dated 20.04.2017. The relevant portion of the paper publication taken in the said paper in which the

public notice is issued by the objector alerting the public not to deal with sites No.42, 53 & 54 of G.K.Halli is marked at Ex.P.46(a).”

15. The Trial Court, on a critical analysis of all material produced before it, has recorded a clear finding that the 1<sup>st</sup> respondent was in possession of the property in question under an independent title and the decree obtained by the petitioner in a collusive proceeding could not have been used to dispossess the 1<sup>st</sup> respondent.

16. In my view, this finding of the Trial Court is unexceptionable. The Trial Court has considered every document and has come to the correct conclusion. The simple fact that the petitioner had filed O.S.No.244/2012 in which the Trial Court had vacated an *ex parte* interim order granted in favour of the petitioner after recording a finding that the 1<sup>st</sup> respondent was in possession and which is affirmed by this Court, disentitled the petitioner from initiating proceedings for eviction against one Suresha.

17. The petitioner, being starkly aware of the finding regarding possession which was glaring at her, still, nevertheless, proceeded to initiate a collusive proceeding. This entire *modus operandi* adopted by the petitioner depicts that the eviction proceeding was designed to abuse the process of the Court to dispossess the person in lawful possession.

18. The petitioner had challenged the order passed by the Execution Court in the first instance before this Court in R.F.A.No.1322/2017 with a complaint that she was not afforded an opportunity to oppose the application. This Court accepted her plea and remanded the matter with a direction to afford her an opportunity to adduce evidence. However, on remand, the petitioner neither cross-examined the 1<sup>st</sup> respondent/objector nor did she chose to lead any evidence on her behalf. It is thus clear that the petitioner was just interested in protracting the proceedings and delay the inevitable.

19. The argument of the learned counsel that the petitioner should be afforded an opportunity is an argument, which if accepted, will only aid in further protraction of the proceedings and thereby take advantage of illegality. I am therefore of the view that this argument does not deserve acceptance.

20. This brazen conduct of the petitioner, which unfortunately appears to be followed by many unscrupulous litigants in recent times, deserves to be deprecated in the strongest possible terms.

21. I am, therefore, of the view that the Trial Court was correct in allowing the application under Order XXI Rule 99 CPC and directing restoration of possession to the 1<sup>st</sup> respondent herein.

22. This revision is, therefore, dismissed. Having regard to manner in which the entire proceedings have been conducted with the sole purpose of abusing the process of the Court, in my view, this would be a fit case to impose costs of Rs.50,000/- to be paid by the

petitioner to the 1<sup>st</sup> respondent within a period of four weeks from today. If the said sum is not paid, the 1<sup>st</sup> respondent herein is at liberty to initiate appropriate execution proceedings against the petitioner.

23. Before parting with this case, it would be necessary to take note of the fact that this Court is coming across far too many cases in which unscrupulous litigants are abusing the process of the court in dispossessing persons who are in lawful possession by obtaining collusive compromise decrees against persons who have no semblance of a right over the property in question.

24. In many a case, the defendant is an unknown person or even a fictitious person and as a result when the fraud played on the Court is discovered later, appropriate proceedings against the offenders cannot be taken effectively. In short, it has become rather easy for unscrupulous litigants to take advantage of the laxity and lack of sufficient safeguards in the process of the Courts.

25. It has therefore become the need of the hour for the Trial Courts to be cautious in the matter of accepting compromise petitions and also passing of *ex parte* orders of eviction.

26. In this regard, the following guidelines are being issued to the Trial Courts as an illustrative guide to them to ensure the process of the Courts is not abused.

a. The Trial Courts shall ensure that proper and acceptable proof of identity of the parties to proceedings as mandated by the Government for various purposes (such as Aadhar Card, Driving Licence, Passport Copy, Election Identity card, etc.,) are obtained as a matter of rule.

b. The Trial Court shall ensure, especially in eviction matters in which compromise petitions are filed, to satisfy itself about the actual possession of the persons in possession.

c. The Trial Court shall call upon the parties to produce documents such as an Electricity Bill, Telephone Bill, Pass Book extracts, or such other documents which establish the actual residence of the tenants.

d. It would be open for the Trial Court to pass such orders as it may deem necessary such as the appointment of a Commissioner, etc., to satisfy itself about the possession of the parties before accepting the compromise petition.

27. The Registrar General is directed to issue a Circular in this regard to all the Courts in the State.

28. The Registrar General is also directed to place the matter before the Rulemaking Committee of this Court to examine the matter of evolving a process for the Bailiffs to execute eviction orders using modern technological tools such as video recording, GPS mapping to ensure

that no illegality is allowed to be perpetuated through the process of the Court.

**Sd/-  
JUDGE**

PKS