

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JANUARY, 2021

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.27796 OF 2019 (GM-CPC)

BETWEEN:

1 . T K RAMAKRISHNAPPA,
(FATHER NAME OF PETITIONER NO.1
SHOWN IN THE CAUSE TITLE OF
PLAINT AS S/O KRISHNAPPA GOWDA)
S/O LATE KRISHNAPPA,
AGED ABOUT 67 YEARS,
R/A TARABANAHALLI VILLAGE,
JALA HOBLI, DEVENAHALLI TALUK,
BENGALURU RURAL DISTRICT.

2 . SRI K GOPALAGOWDA,
(FATHER NAME OF PETITIONER NO.2
SHOWN IN THE CAUSE TITLE OF
PLAINT AS S/O KRISHNAPPA GOWDA)
S/O LATE KRISHNAPPA,
AGED ABOUT 62 YEARS,
R/A #14, SRI SAI NIVAS,
1ST CROSS, MLA LAYOUT, R T NAGAR,
BENGALURU-560 032.
WRONGLY SHOWN AS
R/AT TARABANAHALLI VILLAGE,
JALA HOBLI, DEVENAHALLI TALUK,
BENGALURU.

...PETITIONERS

(BY SRI. P N RAJESWARA, ADVOCATE)

AND:

1 . K RAMANJINAPPA,
AGED ABOUT 65 YEARS,
S/O LATE KRISHNAPPA GOWDA,
R/AT TARABANAHALLI VILLAGE,
JALA HOBLI, DEVENAHALLI TALUK,
BENGALURU RURAL DISTRICT-560032.

2 . T K SUBRAMANYA,

S/O LATE KRISHNAPPA GOWDA,
AGED ABOUT 58 YEARS,
NO.003, D BLOCK, L G ENCLAVE,
LAND MARK RESIDENCY,
NANJAPPA CIRCLE, VIDYARANYAPURA,
BENGALURU-560097.

...RESPONDENTS

(BY SMT. RAJESHWARI M, ADVOCATE FOR R1;
SRI. RAMESHA T R, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DATED 25.06.2019 ON I.A.NO.20 IN O.S.NO.903/2006 PASSED BY THE SENIOR CIVIL JUDGE, DEVANAHALLI (ANNEXURE-A) AND ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING - B GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioners being the defendant Nos.2 & 3 in a declaration suit in O.S.No.903/2006, are knocking at the doors of writ court for assailing the order dated 25.6.2019, whereby their application in I.A.No.20 seeking leave of the court to cross-examine the 1st defendant, has been rejected by the learned Sr. Civil Judge, Devanahalli, thereby denying them the right of cross-examination.

2. After service of notice, the contesting respondents having entered appearance through their counsel, resist the writ petition making submission in justification of the impugned order and the reasoning on which it is structured.

3. Having heard the learned counsel for the parties and having perused the Petition Papers, this court is inclined to grant indulgence in the matter for the following reasons:

(a) The reasoning of the learned trial Judge at para 6 of the impugned order, reads as under:

“6. The above defendants in their affidavit annexed to the application contended that even though they are supporting the case of plaintiff but disputing the measurement. If it is so, why they have not cross examined PW.1 in this regard is not stated. It shows that they filed this application only to drag the proceedings. In the same way defendant No.3 examined as DW.1. The plaintiff not cross examined DW.1. If the contention raised by defendant No.2 and 3 is really true, definitely they would cross examine PW.1 on this point. Instead of the same, now they wants to cross examine DW.2. It shows that they have not approached this court with clean hands. If the plaint averment not discloses the proper measurement as alleged by defendant No.2 and 3, then they have to cross examine PW.1 not the DW.2. Hence defendant no.2 and 3 not made out any reasonable grounds or sufficient cause to allow the application.”

The above reasoning militates against the rudiments of law of evidence, to say the least.

(b) **Mr. Rupert Cross**, an Oxford Professor of law, in his treatise “EVIDENCE” III Edition, London – BUTTERWORKS, at Page – 212, states as under:

“ All witnesses are liable to be cross-examined except one who is called by the judge, one who is called for the sole purpose of producing a document and one who is not examined-in-chief because he had been called by mistake. A witness who does not come within these excepted categories is probably liable to be cross-examined, not merely by the opponent of the party calling him, but also by all other parties. All parties probably have the right to cross-examine witnesses not called by them, whether or not the witness is himself a party, and whether or not the witness has given evidence against the party seeking to cross-examine him; ...

Sarkar’s “Law of Evidence” 18th Edition, LexisNexis at page 138 states as under:

“When Witness may not be Cross-Examined- (1) A witness summoned merely to produce a document (post s.139); (2) a witness sworn by mistake (ante and post s.139); or (3) a witness whose examination has been stopped by the judge before any material question has been put (*Creevy v. Carr*, 7 C & P 64) is not liable to cross-examination. (4) A witness giving replies in answer to questions by the court can only be cross – examined with leave (s.165 post). (5) A witness who has given no evidence in chief, may not be cross-examined as to credit (*Bracegirdle v. Bailey*, 1 F & F 536). (6) Under s.138 of the Indian Evidence Act, cross-examination follows chief-examination, but not without chief-examination. It there is no chief-examination, there is no cross-examination. Application for cross-examination of the plaintiff even when the plaintiff has not been examined in chief was rejected as not maintainable”.

(c) The right of cross-examination in varying degrees depending upon the pleadings, avails to a party to the

proceedings and that ordinarily, it is not conditioned by the status of the parties therein subject to all just exceptions; this aspect having not animated the impugned order, the same is liable to be faltered.

In the above circumstances, this Writ Petition succeeds; impugned order is set at naught; petitioners' subject applications having been favoured, learned trial Judge is requested to permit them to cross-examine the 1st defendant, forthwith.

Registry shall send a copy of this judgment to the learned Judge in question for updating his legal knowledge.

Learned Judge of the court below is requested to try & dispose off decade & a half old suit before the onset of Summer Vacation, 2021 since already there is such an order made by a Co-ordinate Bench for expeditious disposal.

All contentions of the parties are otherwise kept open.

No costs.

**Sd/-
JUDGE**