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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

WRIT PETITION NO. 796 OF 2022 (GM-CPC)**BETWEEN:**

MR. DEENANATH
S/O LATE K ANANDA
AGED ABOUT 65 YEARS
R/AT D.NO. 3-17-1495
KARAVALI LANE
KADRI TOLLGATE
MANGALURU
D.K.DISTRICT - 575 002.

...PETITIONER

(BY SRI K. RAVISHANKAR, ADV.)

AND:

1. CHANDRAHAS
S/O LATE K. ANANDA
AGED ABOUT 63 YEARS
R/AT FLAT NO.101
VRINDAVAN APTS
ARYA SAMAJ ROAD
BALMATTA, MANGALURU
D.K. DISTRICT - 575 003.
2. THUKARAM
S/O LATE K ANANDA
AGED ABOUT 61 YEARS
ANANDA LAXMI FLAT NO.101
B BLOCK, SHANTHALA ASIAN
BEHIND K P T VYASANAGAR
MANGALURU - 575 004.
3. SMT. JALAJAKSHI
W/O DEVADAS
AGED ABOUT 59 YEARS
R/AT D.NO. 2-7-520/2
NEAR TATA INDICOM





MOBILE TOWER, MANGALU - 575 004.

4. SMT. YASHAVANTHI
AGED ABOUT 57 YEARS
W/O JAYAKAR
R/AT AMRUTHA
R/AT NO.19-16/8-1
BEHIND NITK PG HOSTEL
ARANTHABETTU SRINIVAS
NAGAR POST, SURATHKAL MANGALURU
D.K.DISTRICT - 575 025.

...RESPONDENTS

(BY SRI SANDESH SHETTY T, ADV., FOR R-1 TO R-4)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DTD.10.11.2021 PASSED IN O.S.NO.193/2019 PENDING ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND DCJM MANGALURU D.K. DISTRICT (PRODUCED VIDE AENXURE-A) TO THE W.P. AND DISMISS THE MEMO DTD.27.9.2021 FILED BY THE PLAINTIFFS AS PRAYED FOR.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

1. This writ petition under Article 227 of the Constitution of India is filed by the defendant with a prayer to set aside the order dated 10.11.2021 passed in O.S.No.193/2019 by the Court of Principal Senior Civil Judge and CJM, Mangaluru, D.K., on the memo dated 27.09.2021 filed on behalf of the plaintiffs.

2. Heard the learned counsel appearing for the parties.



HC-KAR

3. Plaintiffs have filed O.S.No.193 of 2019 before the jurisdictional civil Court, Mangaluru D.K, District against the petitioner herein seeking the relief of partition and separate possession of the suit schedule 'A' property and to allot 1/5th share each in the suit schedule 'A' property. The petitioner / defendant had opposed the suit claim by filing a detailed written statement and it was contented that the father of the plaintiffs and defendant, namely K. Ananda had executed a will dated 11.11.2007, bequeathing the plaint item No.3 in his favour. In the said suit, a memo was filed on behalf of the plaintiffs stating that at present they have no evidence to lead and reserving their right to lead rebuttal evidence, the defendant may be asked to lead evidence. The said memo was opposed by the defendant by filing objection. The trial Court, vide the order impugned dated 10.11.2021 has taken the evidence of plaintiffs as 'nil' for the time being subject to their right to lead rebuttal evidence and has called upon the defendant to lead evidence. Being aggrieved by the same petitioner / defendant is before this Court.



4. Learned counsel for the petitioner having reiterated the grounds urged in the petition submits that the burden to prove issue Nos.1 and 3 lies on the plaintiffs and the burden on the defendant is only to prove issue No.2. Therefore, the plaintiffs ought to have led their evidence on issue No.1 and issue No. 3 and it is only in respect of issue No.2 they could have sought permission of the trial Court to lead rebuttal evidence. The trial Court has failed to appreciate this aspect of the matter and has erred in granting the prayer made in the memo by the plaintiffs. Learned counsel for the respondent has argued in support of the order impugned and submits that the Court has a discretion to call upon any of the parties to lead evidence depending upon the facts and circumstances of the case and the issues framed by the Court. In support of his arguments, he has placed reliance on the judgment of **RAMA KRUSHNA MOHANTY AND ANOTHER V. BALA KRUSHNA MOHANTY AND OTHERS - C.M.P.NO.262 OF 2016.**

5. Considering the rival pleadings,, the Trial Court in the present case has framed the following issues:



HC-KAR

"1. Whether the plaintiffs prove that they are entitled to 1/5th share each with separate possession over plaint 'A' schedule properties?

2. Whether defendant (Propounder) would discharge his burden of proving the alleged Will date 11.11.2007 said to have been duly executed by his father-K. Ananda bequeathing plaint item No.3 property in his favour?

3. Whether the plaintiffs further prove that the defendant is liable to render true and correct account of the income of plaint 'A' schedule properties and to pay the plaintiffs their 1/5th share of income?"

4. Whether the plaintiffs are entitled to relief as sought for?

6. The burden of proving all the issues except issue No.2 is on the plaintiffs. The burden of proving issue No.2 is as against the sole defendant.

7. Order XVIII Rule of the Code provides for hearing of the suit and examination of witnesses. Rule 1 of Order XVIII provides for the right to begin with examination of witness and Rule 3 provides for the procedure to produce when there are



several issues. Order XVIII Rule 1 and 3 of CPC reads as follows:-

Order XVIII : Hearing of the suit and examination of witnesses.

"Rule 1. Right to begin.- The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin."

Rule 2 - XXX

"Rule 3. Evidence where several issues.—Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case."

8. A reading of Order XVIII Rule 1 would go to show that the said Rule recognizes that ordinarily it is the plaintiff



HC-KAR

who has a right to begin by leading his evidence and the only exception would be where the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant, that the plaintiff is not entitled to any part of the relief which he seeks. In such a case, the defendant has right to begin.

9. In the present case, there are multiple issues and therefore Order XVIII Rule 3 of CPC would be applicable to the present case. A reading of Rule 3 would go to show that in a case where there are multiple issues and if burden of proving some of the issues is on the defendant, in such a case Rule 3 gives an option to the plaintiffs either to produce evidence on those issues or to reserve it by way of answer to the evidence produced by the other party. When the plaintiff exercises such option, he can adduce the evidence on the said issues by way of rebuttal after the defendant has produced his evidence.

10. From a plain reading of Rule 1 and 3 of Order XVIII it is clear that in a case which falls under Rule 1 normally it is for the plaintiff to lead his evidence first. It also enables defendant to exercise his right subject to the contingency



mentioned in the Rule. In a case where plaintiff intends to reserve his right to lead evidence in rebuttal after the defendant leads his evidence, he can always make such a request to the Court, but then it is for the defendant to decide whether he wants to begin with the evidence. When there are several issues in a case, in respect to the issue where the burden is on the defendant to prove, the plaintiff can exercise the option as provided under Rule 1. However, in respect to the other issues the right to lead the evidence is always on the plaintiff.

11. In the case on hand, except issue No.2 the burden to prove other issues, is on the plaintiffs.

12. The Hon'ble High Court of Bombay, in the case of **BHAGIRATH SHANKAR SOMANI AND ANR. V. RAMESHCHANDRA DAULAL SONI & ANR - (2007) SCC ONLINE BOM 458** in almost similar circumstances, observed as follows:

15. The first issue to be decided is whether by placing reliance on Rule 1 of Order XVIII of the said Code, the Court can give direction to the defendant to enter the witness box before the plaintiff leads his evidence. The



HC-KAR

said issue is no longer res integra. The learned single Judge of this Court in the case of Haran Bidi Suppliers v. V.M. and Company, Bhandara 2001 (4) Mh. L.J. Page 112 had occasion to deal with the said issue. This Court was dealing with a revision Application where the challenge was to an order by which the trial Court had directed the defendants to enter the witness box before the plaintiff leads the evidence. This Court considered the provisions of Order XVIII of the said Code and in particular Rule 1 thereof. After considering Rule 1, the learned single Judge held thus:

"On the plain language of the said provisions, it would appear that it is only an enabling provision entitling the defendant of right to begin. In my view, this provision cannot be interpreted to mean that the Court would be competent to direct the defendant to enter the witness-box before the plaintiff and lead evidence in support of its case. In the circumstances, the impugned order passed by the trial Court cannot be sustained in law".
(Emphasis added)

16. *There is one more decision of another learned single Judge on this aspect. The said decision is rendered in the case of Gouri Food Products, Nagpur v. Priya Trading Company, Nagpur, 2002 (4) Mh. L.J. page 880. The same issue arose before this Court regarding power of the trial Court to give direction to the defendant to lead evidence before the plaintiff leads his evidence. This Court considered the provisions of Order XVIII and in particular Rules 1 to 3 thereof. This Court also*



HC-KAR

considered the decision of the Gujarat High Court in the case of Keshavlal Durlabhasinbhai's Firm (supra) on which reliance has been placed by the learned counsel for the first respondent. In paragraph No. 7, the learned single Judge held thus:

"The plain reading of Rule 1 would show that the plaintiff, undoubtedly, has a right to adduce evidence first in the suit. However, in view of certain contingencies mentioned in Rule 1, the defendant gets right to begin, and is entitled to adduce evidence first in the suit. This is, undoubtedly, an enabling provision entitling the defendant of right to begin. However, nothing in this provision confers any power on the Court under this Rule to direct defendant to adduce evidence first in the suit if the defendant himself has not claimed such right in view of the contingencies mentioned in Rule 1".(Emphasis added)

17. *In paragraph No. 11 of the said decision, this Court referred to the decision of this Court in the case of Haran Bidi Suppliers (supra). The learned single Judge held in paragraph No. 11 as under:*

"11. On the backdrop of the above referred legal position, vis-a-vis Order XVIII, Rule 1 of the Civil Procedure Code, it is evident that it only confers a right, in the contingencies referred to hereinabove, to begin, which is apparently an enabling provision entitling the defendant of right to begin, and does not confer any power on the



HC-KAR

Court to direct the defendant to enter witness box and adduce evidence first in support of his claim before the plaintiff enters witness box. The contention advanced by the learned counsel for the applicant in this regard cannot be accepted".(Emphasis added)

18. *In paragraph No. 12 this Court held thus:*

"It, no doubt, sounds little harsh, however, in absence of a specific provision under Order XVIII and its Sub-rules, it will not be proper to presume the existence of such power in the Court. Such interpretation of Order XVIII of the Code of Civil Procedure may not be valid".

19. xxx

20. xxx

21. *Thus, the consistent view taken by this Court is that a direction against the defendant to lead evidence before the plaintiff leads his evidence cannot be issued under sub-rule (1) of Order XVIII of the said Code. The scheme of Rule 1 appears to be that as a normal Rule, it is the privilege of the plaintiff to lead his evidence first. However, it enables the defendant to exercise the right in the contingency mentioned in the Rule. The plaintiff in a given case can make a statement before the trial Court stating that as the case is covered by exception in Rule 1 of Order XVIII of the said Code, he is reserving his right to lead evidence in rebuttal after the defendant leads his evidence. The said option can be exercised in mofussil Courts by the plaintiff by filing a pursis to that*



HC-KAR

effect. In a Court in which there is no practice of filing pursis, the plaintiff can make oral statement to that effect which will be normally recorded in the roznama of the case. After the plaintiff exercises option it is for the defendant to decide whether he wants to lead the evidence. If the defendant decides to lead the evidence, the plaintiff can always lead evidence in rebuttal. As held by this Court, the Court has no power to issue a direction to the defendant compelling him to lead his evidence before the plaintiff adduces his evidence. Only when the defendant claims right to begin under Rule 1 and the plaintiff disputes existence of such a right, the Court will have to decide the question whether the defendant has acquired a right to begin."

13. I am in complete agreement with the law laid down by the Bombay High Court in the case of **BHAGIRATH SHANKAR SOMANI** (supra). In the case of **RAMA KRUSHNA MOHANTY** (supra), the High Court of Orissa has taken a contrary view on the facts of the said case and even otherwise the said judgment only has persuasive value and cannot be considered as a binding precedent on this Court.

14. Accordingly the following :-

ORDER

(i) Writ petition is allowed.



- (ii) The impugned order dated 10.11.2021 passed in O.S.No.193 of 2019 by the Court of Principal Senior Civil Judge and CJM, Mangaluru, D.K District, is set aside.
- (iii) The plaintiffs shall begin their evidence on all issues except issue No.2 and in the event plaintiffs make a request to lead rebuttal evidence on issue No.2 after the defendant leads evidence on the same, the trial Court shall consider the same in light of observations made in this order.
- (iv) It is needless to state that since the suit is of the year 2019, the trial Court shall make endeavours to dispose of the suit as expeditiously as possible.

Pending applications do not survive for consideration and are accordingly disposed of.

Sd/-
(S VISHWAJITH SHETTY)
JUDGE