

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 12th DAY OF AUGUST, 2009

BEFORE

THE HON'BLE MR. JUSTICE ASHOK B HINCHIGERI

WRIT PETITION NOS. 22911 & 24108/2009(GM-CPC)

BETWEEN:

K. RAMA PRASADH
SON OF LATE MUKUNDA NAYAK,
AGED ABOUT 48 YEARS,
SHANTHIKUNJA HOUSE,
ARYAPU VILLAGE AND POST,
PUTTUR TALUK,
D.K. ... PETITIONER
(BY SRI KRISHNAMOORTHY.D, ADVOCATE)

AND:

PARAMESHWARA NAIK,
SON OF LATE RAMA NAIK,
AGED ABOUT 63 YEARS,
BARIKE HOUSE, ARYAPU VILLAGE,
AND POST, PUTTUR TALUK,
D.K. ... RESPONDENT

THESE WRIT PETITIONS FILED PRAYING TO QUASH THE ORDER ON IA NO.8 & 9 PASSED BY THE LEARNED PRL.CIVIL JUDGE (JR.DN) AT PUTTUR, D.K IN OS.NO. 66/06 DT 23.7.2009, PRODUCED AT ANN-G & PLEASED TO ALLOW THIS WP.

THESE WRIT PETITIONS COMING ON FOR PRELIMINARY HEARING BEFORE THE COURT TODAY, COURT MADE THE FOLLOWING:

ORDER

The petitioner has raised the challenge to the order dated 23/7/2009 passed by the learned Principal Civil Judge (Junior Division), Puttur, D K on I A No.8 and 9 in O S No.66/2006.

2. The facts of the case in brief are that the respondent filed the suit seeking the relief of declaration that he has acquired the right of pathway in plaint 'B' schedule property and for permanent prohibitory injunction, etc. On the closure of respondent's side of evidence the matter was posted for the defendant's (petitioner's) evidence. At that stage, the respondent's side filed I A No.8 for reopening his case and I A No.9 for summoning his son, Krishna Naik for giving evidence. The Trial Court allowed both the I As. by its order, dated 23/7/2009. Feeling aggrieved by the same, these petitions are presented.

3. Sri Krishnamurthy, the learned counsel submits that I A No.8 is not supported by any affidavit. It

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is only accompanied by the memo of facts, signed only by the respondent's advocate. Even that memo does not disclose any reasons as to why the case should be reopened.

4. The learned counsel has raised objection to the affidavit filed in support of I A No.9 not being filed by the respondent himself. It is filed by his son who is not a party to the suit. Even this affidavit does not contain any reason as to why Krishna Naik has to be summoned to give the evidence.

5. The first submission urged on behalf of the petitioner fails as Rule 18(2) of the Karnataka Civil Rules of Practice, 1965 provides for filing of memo of facts by the party's counsel. The filing of the affidavit by Vasanth on behalf of his father is to be considered in proper perspective. Sri Vasanth's affidavit states as follows:

"My father is an illiterate person and does not know the worldly affairs". This special circumstance would justify

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the respondent's son filing the affidavit. The reasons stated therein are adequate for allowing I A No.9. Besides, the petitioner would not be put to any prejudice, as he would get an opportunity to cross-examine the witness sought to be examined.

6. Finding no merit and no jurisdictional error, I dismiss these petitions. No order as to costs.

Sd/-
JUDGE

akd*