



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 5<sup>TH</sup> DAY OF OCTOBER, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE S.G.PANDIT**

**WRIT PETITION NO. 8413 OF 2021 (GM-CPC)**

**BETWEEN:**

SRI. H. DYAMANAGOUDA  
SINCE DEAD BY LRS

1. SMT. GANGAMMA  
W/O. NAGAPPA,  
AGED ABOUT 59 YEARS,  
HOME MAKER,  
R/O. CHIGATERI VILLAGE,  
HARAPANAHALLI TALUK,  
BALLARI DISTRICT-583 131.
2. SMT. MANJAMMA  
W/O. SANNAKAVALAPPA,  
AGED ABOUT 57 YEARS,  
HOME MAKER,  
R/O. CHIGATERI VILLAGE,  
HARAPANAHALLI TALUK,  
BALLARI DISTRICT-583 131.
3. SMT. NIRMALAMMA  
W/O. D. NAGAPPA,  
AGED ABOUT 52 YEARS,  
HOME MAKER,  
R/O. BENNIHALLI VILLAGE,  
HARAPANAHALLI TALUK,  
BALLARI DISTRICT-583 127.
4. SMT. ESHAWARAMMA  
W/O. K. BASAVANAGOUDA,





AGED ABOUT 50 YEARS,  
TEACHER,  
R/O. CHINTHRAPALLI VILLAGE,  
HAGARIBOMMANAHALLI TALUK,  
BALLARI DISTRICT-583 212.

5. SRI. H. LINGESWARA GOUDA  
S/O. LATE H. DYAMANAGOUDA,  
AGED ABOUT 47 YEARS,  
AGRICULTURIST,  
R/O. MYDUR VILLAGE,  
HARAPANAHALLI TALUK,  
BALLARI-583 127.
6. SMT. K. B. SUMA  
W/O. LATE BASAVARAJA. K,  
AGED ABOUT 47 YEARS,  
R/AT SINGASANDRA,  
BANGALORE-560 068.
7. SMT. SAVITHRAMMA  
W/O. KARIBASAPPA,  
AGED ABOUT 45 YEARS,  
HOME MAKER,  
R/O. CHIKKAVVANAGATHIHALLI,  
DAVANAGERE TALUK,  
DAVANAGERE-577 512.
8. SRI. H. PRAKASH GOUDA  
S/O. LATE H. DYAMANAGOUDA,  
AGED ABOUT 43 YEARS,  
AGRICULTURIST,  
R/O. MYDUR VILLAGE,  
HARAPANAHALLI TALUK,  
BALLARI DISTRICT-583 127.

...PETITIONERS

(BY SRI. YADUNANDAN N., ADV.)

**AND:**

PATIL ESHWARA GOWDA  
S/O. LATE DYAMANAGOUDA,



AGED ABOUT 50 YEARS,  
R/O. CHIGATERI VILLAGE,  
HARAPANAHALLI TALUK,  
BALLARI DISTRICT-583 131.

...RESPONDENT

(BY SRI. MAHESH R UPPIN, ADV.)

THIS PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASHING THE ORDER DATED 03.04.2021 PASSED ON IA NO.VI FILED UNDER SECTION 151 OF CPC IN OS NO.167 OF 2010 ON THE FILE OF CIVIL JUDGE AND JMFC HARAPANAHALLI AS PER ANNEXURE – G.

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

### **ORDER**

The petitioners/plaintiffs in O.S.No.167/2010 on the file of the Civil Judge and JMFC, Harapanahalli are before this Court, aggrieved by order dated 03.04.2021 allowing I.A.No.6 filed under Section 151 of CPC by respondents, directing PSI of Chitageri Police Station to give protection to defendant's possession and enjoyment of the suit schedule property.

2. There is no representation for the respondent. Learned counsel for the respondent was absent on 20.09.2023 and to provide one more opportunity, the writ



petition was adjourned to 26.09.2023. On the said date also, there was no representation for the respondent.

3. Heard learned counsel Sri.Yadunandan for petitioner. Perused the writ petition papers.

4. Learned counsel for the petitioners would submit that the suit of the petitioners/plaintiffs is for possession. The respondent/defendant filed written statement and thereafter, the respondent/defendant filed I.A.No.6/2017 under section 151 of CPC requesting the Court to direct PSI of Chitageri to protect the possession and enjoyment of defendant by providing police assistance. In the affidavit, it is stated that defendant had filed O.S.No.120/1990 against the plaintiffs for specific performance of contract and also for perpetual injunction in respect of the suit schedule property. The said suit was decreed on 24.07.1983. As against the said decree, petitioners/plaintiffs filed R.A.No.4/2009 which was partly allowed, setting aside the relief of specific performance and confirming perpetual injunction granted by the trial



Court. It is submitted that RSA No.406/2010 filed by respondent/defendant is pending before this Court. Learned counsel for the petitioners would submit that there is no interim order in the present suit either against the petitioners/plaintiffs or respondent/defendant.

5. I.A.No.6 was filed praying for police protection based on the decree of injunction order passed in O.S.No.120/1990. Learned counsel for the petitioners would submit that no Police assistance could be sought to implement the decree passed in O.S.No.120/1990, but it is open for the respondent/defendant to file execution to execute the decree passed in O.S.No.120/1990. Learned counsel for the petitioners would submit that since there is no interim order in the present suit, the application filed by the respondent/defendant under Section 151 of CPC seeking police protection would not be maintainable. Thus, he prays for dismissal of the writ petition.

6. Having heard the learned counsel for the petitioners/plaintiffs and on perusal of the writ petition papers, I am



of the view that the trial Court committed an error in allowing I.A.No.6 filed under Section 151 of CPC by respondent/defendant seeking police assistance to protect the defendant's peaceful possession and enjoyment over the suit schedule property.

7. The suit of the petitioners/plaintiffs is for possession of the suit schedule property. Admittedly, there is no interim order whatsoever, either in favour of the petitioners/plaintiffs or respondent/defendant. It is also an admitted fact that the suit filed by the respondent/defendant in O.S.No.120/1990 was decreed and permanent perpetual injunction was granted in favour of respondent/defendant in the said suit. It is also an admitted fact that against the said judgment and decree, R.S.A No.406/2010 is pending before this Court.

8. Order XXI Rule 32 provides for execution of a decree for injunction. Sub-Rule (5) of Rule 32 of Order XXI of CPC provides for consequences when a decree for injunction has not been obeyed. Without resorting to



execution of decree passed in O.S.No.120/1990 and based on decree passed in O.S.No.120/1990, the respondent/defendant could not have filed petition under Section 151 of CPC, seeking police help to protect his possession over the suit schedule property. If in the present suit, the respondent/defendant had obtained interim order or interim order was in his favour, then he could have sought for police protection to implement the said interim order of injunction. The observation of the trial Court that when there is order of perpetual injunction with respect to suit schedule property, protection of the said property is required, cannot be disputed. But the said protection or enforcement of decree is to be initiated by respondent/defendant under separate proceedings or based on the said decree for perpetual injunction, the respondent/defendant could have prayed for grant of injunction in his favour in the present suit. Without there being any interim order in favour of respondent/defendant, I.A.No.6 filed by respondent/defendant under Section 151 of CPC seeking



police assistance to protect his possession over the suit schedule property would not be maintainable.

9. For the reasons recorded above, the writ petition is allowed. The order dated 03.04.2021 on I.A.No.6 filed under Section 151 of CPC in O.S.No.167/2010 on the file of the Civil Judge and JMFC, Harapanahalli is set aside and I.A.No.6 is dismissed.

**Sd/-  
JUDGE**

MPK  
CT:bms  
List No.: 1 Sl No.: 65