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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE K. V. ARAVIND

MISCELLANEOUS FIRST APPEAL NO. 488 OF 2025 (FC)

C/W

MISCELLANEOUS FIRST APPEAL NO. 474 OF 2025 (FC)

In MFA No. 488/2025

Between:

Mr. Sunil Abraham
Aged about 66 years
S/o Late Brigadier T.A.Abraham,
Residing at No. 609, 6th Block,
80 Feet Road, Koramangala,
Bengaluru - 560095

...Appellant

(By Sri S.Srivatsa, Senior Counsel for
Sri Nikhil K., Advocate)

And:

Ms. Reeth Abraham
Aged about 62 years,
D/o Late B.A.Devaiiah,
R/at No. 609, 6th Block,
80 Feet Road, Koramangala,
Bengaluru - 560095.

...Respondent

(By Sri Suresh S. Lokre, Senior Counsel for
Sri Shravan S.Lokre, Advocate)





NC: 2025:KHC:12034-DB
MFA No. 488 of 2025
C/W MFA No. 474 of 2025

This MFA is filed u/s.19(1) of Family Court Act, praying to set aside the judgment and decree dated 14.10.2024 passed in O.S.No.137/2017 on the file of the II Additional Principal Judge, Family Court, Bengaluru, dismissing the petition filed for partition.

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Aged about 66 years
S/o Late Brigadier T.A.Abraham,
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...Respondent

(By Sri Suresh S. Lokre, Senior Counsel for
Sri Shravan S.Lokre, Advocate)

This MFA is filed u/s.19(1) of Family Court Act, praying to set aside the judgment and decree dated 14.10.2024 passed in O.S.No.220/2022 on the file of the II Additional Principal Judge, Family Court, Bengaluru, filed for the relief of mandatory injunction.

Date on which the appeals were reserved for judgment	30.01.2025
Date on which the judgment was pronounced	21.03.2025



These Appeals, having been heard & reserved, coming on for pronouncement this day, judgment was delivered therein as under:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE K. V. ARAVIND

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR)

The common judgment in O.S.No.220/2022 and O.S.No.137/2017, passed by II Additional Principal Judge, Family Court, Bengaluru, has given rise to these two appeals which are also disposed by a common judgment.

2. The parties were husband and wife till their marriage was dissolved by a decree of divorce granted by the Family Court, Bengaluru, in M.C.No.4325/2015, instituted by the wife. The suits emanated after their marriage was dissolved. The subject matter of the suits is a house property bearing No.609, 80 Feet Road, 6th Block, Koramangala, Bengaluru ('suit property' for short). For better narration of facts, the parties may be referred as



husband and wife though they do not stand in that relationship now.

3. The husband's suit O.S.No.137/2017 is for partition of suit property, and the wife's suit O.S.No.220/2022 is for mandatory injunction for a direction to the husband to remove himself from the suit property. The undisputed facts unfold that both were national level athletes. Because they belonged to different religions, to the opposition of their respective families, they got married in the year 1983 in accordance with provisions of the Special Marriage Act. Total dimension of the suit property is 3000 sq.ft., but, site measuring 60 x 40 ft. was allotted to the wife by the Bangalore Development Authority (BDA). The allotment was made by the BDA for a consideration of Rs.30,740/- in the year 1989. Contiguous to 60 x 40 ft. plot, there was extra land measuring 15 x 40 ft., which the wife purchased from the BDA for a consideration of Rs.28,205/-. Thus the entire suit property measures 3000 sq.ft. Thereafter a



house was constructed there. As the relationship between the parties soured, their marriage ended in its dissolution, and thereafter dispute over the suit property arose.

4. The husband, in his suit for partition pleaded that although the site was allotted by the BDA in the name of wife, and the suit property stands in her name, actually he funded for the consideration that was paid to the BDA. Later on he bore the entire expenses for construction of a house. Though being owner he can lay claim on the entire property, he is satisfied if he is allotted a share proportionate to his contribution for acquisition of site and construction of house. But the wife contended in her written statement that initially, a site measuring 60 x 40 ft. was allotted to her by the BDA in recognition of her achievement in sports. The allotment was under 'G' category. She paid the consideration for the allotment as by then she was working in the Corporation Bank. She purchased the contiguous marginal land measuring 15 x 40 ft. for a consideration. Then she raised housing loan



from her bank and constructed a house. Husband's contribution for the suit property was nothing, and actually he possesses his own property at Temple street, Ejipura. Therefore he is not entitled to claim any share.

5. The wife, in her suit stated that after the decree of divorce, the stay of the husband with her in the suit property is illegal as that of a trespasser. It is impossible to tolerate his abusive behaviour and since he is no longer her husband, he has to be driven out. She also stated that she had earlier filed a suit for possession, O.S.No.26139/2020 against the husband. The suit having been dismissed as not maintainable upon an application filed by the husband under Order VII Rule 11(a) of CPC, she filed an appeal RFA.No.472/2022 to the High Court. Later on she withdrew the appeal reserving liberty to file a fresh suit, and then she brought the suit for mandatory injunction.

6. The written statement of the husband is replica of plaint in his suit for partition, and he contended that he



cannot be directed to vacate as he has legitimate right in the suit property.

7. The issues framed in the suit are not necessary to be extracted here, but obviously the burden was on the husband to establish the contribution made by him to be entitled to claim partition, and likewise the wife was to prove that co-residence of the husband in the suit property was illegal after the dissolution of the marriage in order that mandatory injunction could be granted.

8. Assessing the evidence, the trial court drew up conclusions that the husband failed to prove his contribution for acquisition of site muchless for construction of the house. Referring to the documents marked on behalf of the husband, the finding is that none of them establishes the husband's contribution and on the contrary, the evidence given by the wife shows that it was to her that site was allotted by the BDA, and she constructed the house from her money and therefore he cannot claim partition. In regard to wife's suit, there is no



elaborate discussion, but husband's possession is held to be illegal as he failed to prove his contribution for purchase of the site and construction of house, and in view of dissolution of marriage.

9. We have heard the arguments of Sri. Srivatsa, learned senior counsel who appeared on behalf of husband's counsel, and Sri. Suresh Lokre, learned senior counsel, who argued on behalf of wife's counsel.

10. Husband has filed an application under Order 41 Rule 27 CPC (IA.3/2025) for production of some documents as additional evidence. Learned counsel addressed argument on this application also.

11. Sri. Srivatsa raised the grounds that the trial court has failed to appreciate the evidence properly in the sense that though many documents that the husband has produced clearly indicate major contribution made by him at the time of allotment of the site by the BDA and later for construction of a house, it is wrongly held that those documents do not establish his contribution. Non



application of mind to the documents can be demonstrated by the very fact that there is no discussion on a very important document marked Ex.P.86, which is a copy of the mutual divorce petition filed by both husband and wife and which was subsequently withdrawn by them. In Ex.P.86, there is a clear statement that suit property was acquired by joint contribution of both. It is a clear admission by wife about husband's contribution. This one admission suffices the required proof. Non consideration of Ex.P.86 has resulted in dismissal of the suit erroneously and therefore the suit for partition deserves to be allowed.

11.1. With respect to suit for mandatory injunction, his argument was that no mandatory injunction could be granted against a person who would be entitled to a share in the suit property, and secondly that possession could not be sought by filing a suit for mandatory injunction. Under Section 39 of the Specific Relief Act, no direction can be issued to vacate and handover possession. The



trial court has lost sight of the scope of Section 39 of the Specific Relief Act and therefore decree is to be set aside.

11.2. Sri. Srivatsa referred to I.A.3/2025 filed under Order 41 Rule 27 CPC and argued that the documents produced with the application are to be received as they substantiate his claim for partition. They are all bank documents relating to years 1992 and 1993 and provide proof for his contribution to purchase a site and construct a house. These documents could not be produced earlier as the concerned banks declined to provide the records to the husband for the reason that they pertained to twenty year old transactions, and that he also faced many problems from the wife in accessing and organizing those documents. Sri. Srivatsa submitted that the documents are also necessary to pronounce judgment effectively.

12. Sri. Suresh Lokre argued that the judgments in both the suits do not suffer from infirmity in as much as the documents that the husband has produced in proof of his contribution actually do not pertain to suit property.



Some of the documents do not even contain the name in whose name they were issued, and some appear to be in relation to his own property situate at temple street. The impugned judgment shows every document of the husband being considered and discussed. So far as Ex.P.86 is concerned, it was a joint petition for consent divorce, and it was withdrawn by them. Any statement made in a petition which was withdrawn cannot have effect of admission as well. Finding of the trial court that suit property absolutely belongs to wife is based on meticulous examination of both documentary and oral evidence and therefore the judgment in partition suit cannot be set aside.

12.1. As regards the suit for mandatory injunction, Sri. Suresh Lokre argued that in view of dissolution of marriage between them, the husband cannot claim right of cohabitation. In fact the wife had filed a suit for possession and it was dismissed as not maintainable. When the wife filed a suit for mandatory injunction, the



husband would again contend about its maintainability, which kind of argument cannot be entertained at all. The husband is a trespasser, and to drive him out of the suit property, suit for mandatory injunction is the only remedy available. For this reason, the decree in this suit cannot be set aside.

12.2. Sri. Suresh Lokre refuted the application for additional evidence by submitting that even if they are received, they do not improve the husband's case. Many of the documents are applications made under Right to Information Act, and from some other documents nothing can be gathered in support of husband's case about contribution to acquire property. Hence the application cannot be allowed.

13. From the arguments of the learned counsel the points that arise for discussion are:

- (i) *Are there grounds to receive additional evidence as sought by the husband in his*



application under Order 41 Rule 27 of CPC as per I.A.3/2025?

- (ii) Has the trial court erred in holding that the husband has failed to prove his contribution to acquire the site and for construction of house in order to claim partition?*
- (iii) Can the wife drive out husband from the suit property by obtaining mandatory injunction against him?*

POINTS (i) AND (ii):

14. These two points can be discussed together. It is needless to say that burden is on the husband to prove his contribution firstly for purchase of site from the BDA, and for construction of house later on. In his plaint, the husband has stated that wife did not have financial resources for purchase of site from the BDA and therefore he paid entire sale consideration of Rs.30,740/-, although the plot was registered in wife's name. He has stated to have paid consideration to purchase the adjacent land. In paragraphs 6 and 7 of the plaint, he has stated to have



spent more than Rs.20,00,000/- for construction of a house and additional structures, and for interiors, besides giving breakup figures of his resources. And in para 8, he has stated that though the wife availed housing loan of Rs.2,00,000/-and demand loan of Rs.30,000/- she spent that entire money for her personal use. That means according to him, he alone bore all the money required for purchasing the site and constructing a house, and there was no contribution from the wife at all. If this is his case, it is not understandable as to why he wants a share in the suit property, he could have sought eviction of wife instead of claiming a share.

15. As he has claimed a share proportionate to his contribution he must clearly state the extent of his contribution so that the court can evaluate the evidence to find out whether his claim is tenable or not. He cannot leave his claim in vagueness. Now if the documents that he has produced are seen, it is not possible to take a view different from what the trial court has taken. While their



relationship had not yet soured, he might have contacted engineers and architects as would get disclosed from Ex.P3, Ex.P4 and Ex.P4(a), but the other documents do not indicate his name at all, instead some bills, Exs.P13 to P16, P18, P25, P38, P39 etc., in regard to purchase of construction materials were issued in the name of wife; It is true that Ex.P22 contains the name of the husband in connection with purchase of some steel items, but the address written there is No.796, IX Main, Koramangala which is not suit property. With reference to Ex.P22 it is possible to argue that they were living in another house while the house was being constructed, but with the aid of a lone document no inference can be drawn that it would establish his contribution. In Exs.P26 to 31, ExP.33, P34, P35, P37, P40, P52, P55, P56, P58, P62 to P70, P72 to P74, no body's name is mentioned. The documents Ex.P55 onwards relate to the year 2010, but the house construction work was completed in the year 1992-1993. Therefore these documents do not help the husband. The trial court has given meticulous finding on every



document, but as has been argued by Sri. Srivatsa, the trial court has just referred to Ex.P86, there is no discussion on it. Therefore Ex.P86 is now considered.

16. Ex.P86 is the certified copy of petition presented by both the parties under Section 28 of the Special Marriage Act for dissolution of their marriage, but it was not pursued and as it is not in dispute that the petition was withdrawn. In para 10 of this consent petition for divorce, it is stated, "The petitioners purchased the residential site bearing No.609 situated at 80 feet road 6th Block, Koramangala, Bangalore – 560 095, in the name of petitioner No.1 under a registered Sale Deed dated 30th November, 1992 was executed in her favour by the Bangalore Development Authority. The house comprising a ground and first floor on the said site ('the said property' for short) was constructed by both the petitioners from the funds contributed jointly by them".

17. It is with reference to the above paragraph, Sri. Srivatsa argued that it was an admission by the wife about



husband's contribution and this document alone is enough to accept his case. He has referred to decided cases in support of his argument. Contra argument by Sri. Suresh Lokre was that as the petition for consent divorce was withdrawn, husband cannot rely upon any part of withdrawn petition.

18. In regard to this line of argument, it has to be stated that, admission no doubt binds its maker, and the admission found in pleadings has a greater evidentiary value. At the same time, admission can be explained away by its maker. Admission is not a conclusive proof, it is only corroborative to other evidence. In ***Biswanath Prasad and Others Vs. Dwarka Prasad and Others (AIR 1974 SC 117)***, the Hon'ble Supreme Court has held that the admissions usually tell against its maker unless reasonably explained and no acceptable ground to extricate the appellants from the effect of their own earlier statement has been made out. The argument of Sri.Suresh Lokre that once a petition is withdrawn, any



admission found therein loses its binding nature, is difficult to be accepted for the party making a statement is still bound by it; withdrawal of a suit or a petition only affects its further continuance in the court. Sri. Srivatsa has relied on a decision of the Calcutta High Court in ***Chandrakanto Goswami Vs. Ram Mohini Debi and Others (AIR 1956 Cal.577)*** where it is held that withdrawal of a suit does not destroy the effect of an admission made therein. Therefore mere withdrawal of a suit or any other petition does not have the effect of effacing its contents, but whether to act upon an admission found therein depends on other evidence brought on record, and incidental and other related circumstances.

19. Now if the cross examination of DW1 i.e., the wife is seen, her attention was drawn to Ex.P86 and she admitted the contents of the entire petition, and she gave a voluntary answer that she had to put her signature with a lot of stress. This answer indicates that probably she did



not sign the petition for consent divorce with a free mind. There is no further elucidation of the stressful circumstances, but it can be said that she suffered stress as she was reluctant to go for divorce. Definitely she was not against obtaining divorce, in fact she herself filed a petition for divorce on various grounds after withdrawing the mutual consent petition for divorce, this is not disputed. If she spoke about stress, probably as the attending circumstances in regard to acquisition of property indicate, she might have been compelled to admit certain things. Because she spoke about stress in the context of a question relating to contents of the petition, the possible inference is that she might have reluctantly signed the petition. In this view, Ex.P86 cannot be taken as an unequivocal admission of a fact.

20. Along with I.A.3/2025, eighteen documents are produced to be received as additional evidence. Documents at Sl.Nos.3 to 10 are all correspondences under Right to Information Act. Probably the husband



wanted to procure information about wife's financial resources, but no information was provided to him. From these documents, nothing helpful to him could be made out. The certificates under Form No.16 at Sl.Nos.13 to 17 appear to have been produced to show that husband had taxable income, but by mere production of these certificates, he cannot prove his contribution to acquire suit property. Then documents at Sl.Nos.11 and 12 appear to be having some relevancy, but they too do not help the husband in as much as the document at Sl.No. 11 is computation of wife's income for the assessment year 1994-1995, in which she disclosed her sources for construction of the house. She obtained housing loan and demand loan from the bank, and her parents'-in-law gifted money to her. She disclosed interest free loan of Rs.90,000/- taken from her mother-in-law, and contribution of Rs.2,00,000/- from the husband. Perhaps for the reasons of gifts made by his parents and payment of Rs.2,00,000/- by him, he might have produced this document. So far as gifts are concerned, husband cannot



claim any right over it. And payment of Rs.2,00,000/- by him, cannot also be considered for the simple reason that his actual plea in the plaint is that he paid the entire consideration to purchase the site and bore all construction expenses, which plea does not get established by mere payment of Rs.2,00,000/-. Therefore if the application is allowed, it serves no purpose and it deserves to be dismissed.

21. It is not necessary to delve into all the documents produced by wife. She too was a national level athlete, employed at the Corporation Bank. Her documents show allotment of site exclusively to her by the BDA; payment of consideration by her; and also construction of a house from her resources. Therefore the husband cannot claim partition in the suit property and for this reason, the findings of the trial court to dismiss the suit for partition cannot be disturbed. Points (i) and (ii) are thus answered.



POINT No. (iii):

22. The relationship between the parties as husband and wife no longer exists after the dissolution of their marriage in M.C.No.4325/2015. The wife states that husband's continued residence with her in the suit property which belongs to her amounts to trespass. As the evidence on record shows that suit property belongs to wife, and the husband is not entitled to seek partition in it, he cannot claim right of co-residence after dissolution of marriage. Sri. Srivatsa's argument that suit for mandatory injunction is not maintainable, and instead suit for possession should have been filed, cannot be accepted. It appears that this point was not raised before the trial court. Anyway, this is a question of law. A simple analysis answers the argument. Suit for possession can be filed either under Section 5 or Section 6 of the Specific Relief Act, according to the scope of each Section respectively, when a person loses possession of immovable property. Here the wife has not lost



possession. Her grievance is that after divorce, husband cannot reside with her and he must be driven out. To this kind of a situation appropriate relief that can be granted by the court is mandatory injunction only. Section 39 of the Specific Relief Act states:

"39. Mandatory injunctions.—

When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts."

23. It becomes clear from Section 39 that mandatory injunction can be granted by court to prevent the breach of obligation and to compel performance of required act. Here, she had earlier filed O.S.No.26139/2020 for recovery of possession and damages, and it was dismissed as not maintainable. And then she filed an appeal before this court which she withdrew later on with a liberty to file fresh suit. Therefore it is clear that suit for possession was held not maintainable.



24. Factual position being so, it is quite strange that argument is advanced that suit for mandatory injunction is not maintainable. As the husband's possession in the suit property with wife after divorce is illegal, to drive him out of it, mandatory injunction can be granted. The trial court has rightly decreed the suit filed by wife. Therefore point No. (iii) is answered in affirmative.

25. Therefore from the discussion on points Nos.(i) to (iii), both the appeals are dismissed with costs.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE

SD/CKL
List No.: 1 Sl No.: 6