NC: 2023:KHC:31485
MFA No. 1877 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE H.T. NARENDRA PRASAD

MISCELLANEOUS FIRST APPEAL NO. 1877 OF 2023 (CPC)

BETWEEN:

1. SMT RENUKAMA
   W/O LATE MUDDURANGEGOWDA
   AGED ABOUT 61 YEARS

2. SRI KEERTHAN GOWDA
   S/O LATE MUDDURANGEGOWDA
   AGED ABOUT 29 YEARS.

3. SMT SUMAN
   D/O LATE MUDDURANGEGOWDA
   AGED ABOUT 27 YEARS

4. SRI MUNIKRISHNAPPA
   S/O LATE CHANNARANGAPPA
   AGED ABOUT 55 YEARS
   ALLARE RESIDENATS OF
   KADATHANAMALE VILLAGE
   HESARAGHATTA HOBLI
   YALAHANKA TALUK
   BANGALORE 560064.

...APPELLANTS

(BY SRI. M SHIVAPRAKASH.,ADVOCATE)

AND:

1. SRI RAMACHANDRAIAH
   S/O LATE CHANNAANGAPPA
   AGED ABOUT 44 YEARS
   R/AT KADATHANAMALE VILLAGE
   HESARAGHATTA HOBLI

Digitally signed by DHANALAKSHMI MURTHY
Location: High Court of Karnataka

YALAHANKA TALUK
BANGALORE 560064.

2. SMT JAYAMMA
W/O RAMAIAH
AGED ABOUT 61 YEARS
R/AT KAREPURA VILLAGE
DODDABELAVANGALA HOBLI
DODDABALLAPURA TALUK
BANGALORE RURAL DISTRICT.

3. SRI THIMMARAYAPPA
S/O LATE CHANNARANGAPPA
AGED ABOUT 59 YEARS
R/AT KADATHANAMALE VILLAGE
HESARAGHATTA HOBLI
YALAHANKA TALUK
BANGALORE 560064.

4. SMT MUTHAMMA
W/O RUDRAIAH
AGED ABOUT 56 YEARS
R/AT ARALU MALLIGE VILLAGE
KASABA HOBLI
DODDABALLAPURA TALUK
BANGALORE RURAL DISTRICT

…RESPONDENTS

(BY SRI. VIJAYA KUMAR K.,ADVOCATE FOR R1:
SRI. M SRINIVAS, ADVOCATE FOR R3:
SRI. MANJUNATH V., ADVOCATE FOR R2 & R4)

THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) R/W SECTION 151 OF CPC, AGAINST THE ORDER DATED: 07.09.2022 PASSED ON IA NO.1 IN O.S.NO.1008/2021 ON THE FILE OF THE VIII ADDITIONAL SENIOR CIVIL JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, ALLOWING IA NO.1 FILED U/O.39 RULE 1 AND 2 OF CPC.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

1. This appeal under Order XLIII Rule 1(r) read with Section 151 of CPC has been filed by defendant Nos.1 to 3 and 6 challenging the order dated 07.09.2022 passed by the VIII Additional Senior Civil Judge, Bengaluru Rural District, Bengaluru on I.A.No.1 in O.S.No.1008/2021 whereby the application filed by the plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 of CPC has been allowed.

2. For the sake of the convenience, the parties are referred to as per their ranking before the Trial Court.

3. The plaintiff has filed the suit for partition and separate possession. Along with the plaint, he has filed I.A.No.1 under Order XXXIX Rules 1 and 2 of CPC seeking an order of temporary injunction restraining the defendants from alienating or creating any mode of documents in respect of suit schedule properties, pending disposal of the suit.

4. The trial Court after hearing the parties, has allowed application filed by the plaintiff and restrained the defendants from alienating or creating any mode of documents in respect of suit schedule properties pending disposal of the suit. The trial Court has also restrained the plaintiff from alienating or creating any mode of documents in respect of property bearing Sy.No.17/1 as shown in the suit as item No.1 as mentioned in the agreement of sale dated 13.10.2016 pending disposal of the suit.

5. Being aggrieved by restraining the defendants from alienating or creating any mode of documents in respect of suit schedule properties, the defendants are before this Court in this appeal.

6. The suit before the trial Court is now posted for framing issues. The defendants have also filed an application under Order VII Rule 11 of CPC.

7. Under this circumstance, the only relief that can be granted by this Court is to direct the trial Court to consider

the application filed by the defendants under Order VII Rule 11 of CPC, forthwith and pass an order, in accordance with law.

8. Accordingly, the appeal is ***disposed of***.

9. The trial Court is directed to consider the application filed by the defendants under Order VII Rule 11 of CPC, in accordance with law, after giving opportunity to both the parties, within a period of two months from the date of receipt of certified copy of this order.

Sd/-
JUDGE

HA
List No.: 1 Sl No.: 33