IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 3RD DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 100092 OF 2023 (GM-CPC)

BETWEEN:

1. SMT. SUNDRAWWA
   W/O. SATTEPPA DESAI @ JAINAPUR,
   AGE: 56 YEARS, OCC: AGRICULTURE,
   R/O: UTTUR,
   TQ: MUDHOL, DIST: BAGALKOT.

2. SUBASH
   S/O. SATTEPPA DESAI @ JAINAPUR,
   AGE: 34 YEARS, OCC: AGRICULTURE,
   R/O: UTTUR,
   TQ: MUDHOL, DIST: BAGALKOT.

3. SMT. TARAWWA S/O. SURESH HADIMANI,
   AGE: 32 YEARS, OCC: AGRICULTURE,
   R/O: UTTUR,
   TQ: MUDHOL, DIST: BAGALKOT.

4. SANGAPPA S/O. SATTEPPA DESAI @ JAINAPUR,
   AGE: 29 YEARS, OCC: AGRICULTURE,
   R/O: UTTUR,
   TQ: MUDHOL, DIST: BAGALKOT.

MOHANKUMAR B SHELAR
Digitally signed by MOHANKUMAR B SHELAR
Location: DHARWAD
Date: 2023.08.08 12:37:05 -0700

...PETITIONERS

(BY SRI GANGADHAR S. HOSAMANI, AND D.M. MALLI, ADVOCATES)

AND:

1. APPASAHEB S/O. NAMADEV SURYAVANSHI,
   AGE: 61 YEARS, OCC: AGRICULTURE,
   R/O: UTTUR, TQ: MUDHOL, DIST: BAGALKOT.

2. SADAPPA S/O. VENKAPPA HASAKOTI,
   AGE: 66 YEARS, OCC: AGRICULTURE,

R/O: UTTUR,
TQ: MUDHOL, DIST: BAGALKOT.

3. SATISH S/O. BALACHANDRAPPA KOLHAR,
SINCE DECEASED BY HIS LRS,

3A. SMT. SUNANDA W/O. SATISH KOLHAR,
AGE: 44 YEARS, OCC: HOUSE WIFE/AGRICULTURE,
R/O: HOUSING COLONY, MANTUR ROAD,
MUDHOL,
TQ: MUDHOL, DIST: BAGALKOT.

3B. SHEVAN ALIAS SHRAVAN S/O. SATISH KOLHAR,
AGE: 28 YEARS, OCC: AGRICULTURE/BUSINESS,
R/O: HOUSING COLONY, MANTUR ROAD,
MUDHOL, TQ: MUDHOL, DIST: BAGALKOT.

3C. SAMARTH S/O. SATISH KOLHAR,
AGE: 26 YEARS, OCC: AGRICULTURE/BUSINESS,
R/O: HOUSING COLONY, MANTUR ROAD,
MUDHOL, TQ: MUDHOL, DIST: BAGALKOT.

…RESPONDENTS

(BY SRI IRANAGOUDA K. KABBUR, ADVOCATE FOR R3;
NOTICE TO R1 AND R2 ARE SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI QUASHING IMPUGNED ORDER DATED 13.07.2022 PASSED BY THE ADDITIONAL CIVIL JUDGE AND J.M.F.C., AT: MUDHOL ON I.A. NO. 4 TO 6 FILED UNDER ORDER 22 RULE 4 R/W SECTION 151, UNDER ORDER 22 RULE 9 R/W SECTION 151 OF CPC AND SECTION 5 OF LIMITATION ACT, FOR BRINGING LRS OF DECEASED DEFENDANT NO.3, SETTING ASIDE ABATEMENT AND CONDONATION OF DELAY FILED BY THE PETITIONER HEREIN VIDE ANNEXURE-D, IN O.S. NO. 74/2014, AND INTER ALIA ALLOW I A NO. 4 TO 6 FILED UNDER ORDER 22 RULE 4 R/W SECTION 151, UNDER ORDER 22 RULE 9 R/W SECTION 151 OF CPC AND SECTION 5 OF LIMITATION ACT, FOR BRINGING LRS OF DECEASED DEFENDANT NO. 3 SETTING ASIDE ABATEMENT AND CONDONATION OF DELAY FILED BY THE PETITIONER HEREIN.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned writ petition is filed by the plaintiffs feeling aggrieved by the order of learned Judge, who has declined to entertain the legal heirs application filed by the plaintiffs to bring the legal heirs of deceased defendant No.3.

2. Learned Judge has rejected the legal heirs application filed under Order 22 Rule 9 of Code of Civil Procedure and Section 5 of the Limitation Act on the ground that the suit being one for bare injunction. Learned Judge held that on account of death of defendant No.3, the cause of action to prosecute the injunction suit will not survive against the legal heirs of defendant No.3. The said order is under challenge.

3. The averments made at paragraph No.9 of the plaint and the affidavit filed in support of order 22 Rule 4 read with Section 151 of CPC, would clinch the entire controversy. Paragraph No.9 of the plaint reads as under;

> *"Defendant No.2 and 3 are instigating the Defendant No.1 to dispossess the Plaintiffs from the suit property forcibly and with the help of Gunda element of the Uttur village. If Defendants are succeeded to disposes the Plaintiffs from the suit property, then in such event Plaintiffs will be driven to put path. Defendants have no right, title or whatsoever interest to disposes the Plaintiffs from the suit property by taking the law in to the hands. Hence, Plaintiffs severally requested the Defendants not to disposes the Plaintiff by taking the law in to their hands. But Defendants are adamant in nature they are not ready to head the request of Plaintiffs. Hence Plaintiffs are constrained to file the suit for permanent injunction against these defendants."*

4. Paragraph No.2 of the affidavit filed in support of the application under order 22 Rule 4 of CPC reads as under;

> *"ಈ ದಾವೆಯ ಪ್ರತಿವಾದಿ ನಂ.3-ಸತೀಶ ತಂದೆ, ಬಾಲಚಂದ್ರ ಕೋಲ್ಹಾರ, ಈತನು ದಿನಾಂಕ: 08-02-2017 ರಂದು ಮೃತಾಗಿದ್ದು ಇರುತ್ತದೆ. ಸದರ ಮೃತನಿಗೆ ಅರ್ಜಿಯಲ್ಲಿ ನಮೂದಿಸಿದ ವಿಳಾಸುದಾರರು ವಾರಸುದಾರ ಹೆಂಡತಿ-ಮಕ್ಕಳು ಇರುತ್ತಾರೆ. ಸದರಿಯವರನ್ನು ಹೊರತುಪಡಿಸಿ, ಬೇರೆ ಯಾರೂ ಮೃತನಿಗೆ ವಾರಸುದಾರರು ಇರುವುದಿಲ್ಲ. ಈಗ ಪ್ರತಿವಾದಿ 30.3 ಈತನು ಮೃತಾಗಿದ್ದರಿಂದ, ಅವನ ವಾರಸುದಾರನಾದ ಅರ್ಜಿಯಲ್ಲಿ ನಮೂದಿಸಿದ ವಿಳಾಸುದಾರರನ್ನು ದಾವೆಯ ಶಿರೋನಾಮೆಯಲ್ಲಿ ಮೃತ ಪತಿವಾದಿ ನಂಡಿ ಈತನ ವಾರಸುದಾರ ಅಂತಾ ನಮೂದಿಸುವುದು ಅವಶ್ಯವಿರುತ್ತದೆ."*

5. On reading at paragraph No.9, it clearly reveals that plaintiffs are alleging that defendant Nos.2 and 3 have instigated defendant No.1 to dispossess the plaintiffs. Therefore, in the said paragraph, plaintiffs have clearly narrated the actions of defendant Nos.1 to 3. Paragraph No.2 of the affidavit, which is culled out gives an impression that plaintiffs wants to prosecute the injunction suit against legal heirs only on account of death of defendant No.3. There are no allegations that the legal heirs of defendant No.3 are also interfering plaintiffs peaceful possession. The threat of dispossession is alleged against defendant No.1. Therefore, the order under challenge is in accordance with law and it does not warrant any interference.

6. Accordingly, the writ petition is dismissed.

Sd/-
JUDGE

AM
List No.: 1 Sl No.: 12