IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 10TH DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 104905 OF 2023 (GM-CPC)

BETWEEN:

HEMAPPA S/O BISATEPPA KENGANNAVAR
AGE 66 YEARS, OCC AGRICULTURE
R/O HALLUR, TQ HIREKERUR
DIST HAVERI 581111

...PETITIONER

(BY SRI. SADIQ N GOODWALA.,ADVOCATE)

AND:

1. HONNAPPA S/O BISTEPPA KENGANNANAVAR
   AGE 63 YEARS
   OCC AGRICULTURE
   R/O HALLUR
   TQ HIREKERUR
   DIST HAVERI 581111

2. SMT MANJAMMA T W/O RANGAPPA TIPPALLI
   AGE 61 YEARS
   OCC HOUSEHOLD WORK
   R/O BENAKANAHALLI
   TQ HONNALLI
   DIST DAVANAGERE 577 001

3. SMT RATNAMMA W/O BASAVARAJAPPA KURBAR
   AGE 47 YEARS
   OCC HOUSEHOLD WORK
   R/O GOVINAHAL
   TQ HARIHAR
   DIST DAVANAGERE 577 001

MOHANKUMAR B SHELAR
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Location: DHARWAD
Date: 2023.08.14 17:59:20 -0700

4. SMT SHIVAMMA W/O SHIVAPPA KOLER
   AGE 54 YEARS
   OCC HOUSEHOLDN WORK
   R/O LINGADAHALLI
   TQ RANEBENNUR
   DIST HAVERI 581110

5. SMT LAKSHMAKKA W/O SIDDAPPA DODDAMANI
   AGE 49 YEARS
   OCC GHOUSEHOLD WORK
   R/O NANDIGUDI
   TQ HARIHAR
   DIST DAVANAGERE 577 001

6. SMT SARASWATI W/O MAHESHAPPA GODDEMMI
   AGE 49 YEARS
   OCC HOUSEHOLD WORK
   R/O BANNIKOD
   TQ HARIHAR
   DIST DAVANAGERE 577 001

7. SMT NAGAMMA W/O M KARIYAPPA MARIKARIYAPPAR
   AGE 46 YEARS
   OCC HOUSEHOLD WORK
   R/O NELAHONNA
   TQ HONNALI
   DIST DAVANAGERE 577 001

…RESPONDENTS

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTOIN OF INDIA PRAYING TO ISSUE WRIT IN THE NATURE OF MANDAMUS DIRECTING THE TRIAL COURT TO PASS ORDERS AND DISPOSE OF FDP NO.2/2017 PENDING ON THE FILE OF SENIOR CIVIL JUDGE AND JMFC, HIREKERUR FORTHWITH.

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

ORDER

Notice to the respondents is dispensed with, as this court is not deciding any issue which would seriously prejudice the rights of the respondents. Bearing in mind that captioned petition is filed seeking mandamus to expedite the final decree proceedings, I have proceeded to hear the matter without issuing notice to the respondents.

2. The petitioner who is plaintiff, filed a suit for partition in O.S.No.48/2011. The said suit is decreed by judgment and decree dated 29.01.2016 and preliminary decree drawn in O.S.No.48/2011 is confirmed by the appellate court in R.A.No.46/2016. The grievance of the petitioner before this court is, though final decree proceedings are pending in FDP No.2/2017, the learned Judge is adjourning the matter without proceeding further to give effect to the preliminary decree drawn in O.S.No.48/2011.

3. On examination of material on record, I am of the view that this is a fit case where mandamus needs to

be issued to the learned Judge. Mere pendency of the second appeal before this court will not automatically operate as stay. Since the second appeal is not admitted and no interim orders are passed by this court, the FDP court cannot go on adjourning the matter without proceeding further as contemplated under Order 20 Rule 18 of CPC.

4. For the reasons stated supra, writ petition is allowed. The learned Judge is hereby directed to expedite the final decree proceedings and give effect to preliminary decree, in accordance with law.

Sd/-
JUDGE

MBS
List No.: 1 Sl No.: 27