IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 7TH DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 104947 OF 2023 (GM-CPC)

BETWEEN:

1. SMT. RENUKA W/O. MAHABALESHWAR AMMINABHAVI,
   AGE: 60 YEARS, OCC: HOUSEHOLD WORK,
   R/O: BEHIND REDDY BANK, PADAKI PURAM,
   SAUNDATTI, TQ: SAUNDATTI,
   DIST: BELAGAVI.

2. SMT. MEENAXI W/O. MUTTESH TARALI,
   AGE: 48 YEARS, OCC: HOUSEHOLD,
   R/O: HUKKERI, TQ: HUKKERI,
   DIST: BELAGAVI-591309.

3. SMT. DRAXAYANI W/O. MAHANTESH CHACHADI,
   AGE: 52 YEARS, OCC: HOUSEHOLD,
   R/O: GIRIJANNAVAR ONI, SAUNDATTI,
   TQ: SAUNDATTI, DIST: BELAGAVI,
   NOW AT YALAKKI SHETTAR COLONY,
   DHARWAD-580004.

YASHAVANT NARAYANKAR
Digitally signed by YASHAVANT NARAYANKAR
Date: 2023.09.12 14:27:08 +0530

4. SHRI SHIVARAJ S/O. MAHANTESH CHACHADI,
   AGE: 28 YEARS, OCC: HOUSEHOLD,
   R/O: GIRIJANNAVAR ONI,
   SAUNDATTI, TQ: SAUNDATTI,
   DIST: BELAGAVI,
   NOW AT YALAKKI SHETTAR COLONY,
   DHARWAD-580004.

...PETITIONERS

(BY SRI SHIVASAI M. PATIL, ADVOCATE)

AND:

1. SHRI MAHANTESH S/O. MAHADEVAPPA CHACHADI,
   AGE: 56 YEARS, OCC: HOUSEHOLD,
   R/O: GIRIJANNAVAR ONI, SAUNDATTI,

TQ: SAUNDATTI, DIST: BELAGAVI-591126.

2. SMT. SUVARNA W/O. RAJSHEKHAR CHACHADI,
AGE: 45 YEARS, OCC: HOUSEHOLD,
R/O: GIRIJANNAVAR ONI, SAUNDATTI,
TQ: SAUNDATTI, DIST: BELAGAVI-591126.

3. SHRI RAVI S/O. RAJASHEKHAR CHACHADI,
AGE: 30 YEARS, OCC: PRIVATE WORK,
R/O: GIRIJANNAVAR ONI, SAUNDATTI,
TQ: SAUNDATTI, DIST: BELAGAVI-591126.

4. SMT. SHWETA D/O. RAJSHEKHAR CHACHADI,
AGE: 30 YEARS, OCC: PRIVATE WORK,
R/O: GIRIJANNAVAR ONI, SAUNDATTI,
TQ: SAUNDATTI, DIST: BELAGAVI-591126.

5. SHRI RAGUVEER @ SHANKAR,
S/O. RAJSHEKHAR CHACHADI,
AGE: 30 YEARS, OCC: PRIVATE WORK,
R/O: GIRIJANNAVAR ONI, SAUNDATTI,
TQ: SAUNDATTI, DIST: BELAGAVI-591126.

…RESPONDENTS

(BY SMT. SHAILA BELLIKATTI, ADVOCATE FOR C/R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI BY QUASHING THE IMPUGNED ORDER ON I.A. NO.2 UNDER ORDER XXXIX RULE 1 & 2 R/W 151 CPC, VIDE ORDER DATED. 01.04.2023 IN O.S. NO. 75/2023 PASSED BY THE LEARNED PRL. SENIOR CIVIL JUDGE SAUNDATTI VIDE ANNEXURE-D IN INTEREST OF JUSTICE AND EQUITY.

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

ORDER

The captioned petition is filed by defendant Nos.1 to 4 questioning the order passed by the learned Judge in

directing the present petitioners/defendant Nos.1 to 4 to deposit the monthly rent at the rate of Rs.20,000/- pertaining to 5 shops.

2. Heard learned counsel appearing for the petitioners and learned counsel appearing for the respondents.

3. The respondent No.1 has instituted a suit for partition and separate possession and has also questioned the gift deed in favour of the petitioners. Pending consideration of the partition suit, the plaintiff has filed an application seeking a direction against the present petitioners to deposit the monthly rent of Rs.20,000/- in respect of 5 shops which are the subject matter of registered gift deed in favour of the present petitioners.

4. The said order needs to be set aside on two counts. Firstly, the learned Judge has not afforded reasonable opportunity to the petitioners to contest this application by filing objections. Secondly, the order under

challenge is not sustainable because no reasons are forthcoming while directing the petitioners to deposit the monthly rent at the rate of Rs.20,000/-. If petitioners are resisting the suit based on a registered gift deed, I am of the view that they deserve a fair opportunity to contest this application. In that view of the matter, the order under challenge is not sustainable.

5. Accordingly, I pass the following:

ORDER

(i) The writ petition is allowed;

(ii) The order dated 01.04.2023 passed on I.A.No.2 in O.S.No.75/2023 on the file of the Principal Senior Civil Judge, Saundatti vide Annexure-D is set aside;

(iii) The petitioners are granted a week's time to file objections to the application;

(iv) The learned Judge shall examine the claim made by the respondent/plaintiff and the objections that would be raised in the statement of objections to the application

and after hearing both the parties, the learned Judge is required to pass orders on the application by assigning reasons.

Sd/-
JUDGE

CA
List No.: 1 Sl No.: 16