IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 17TH DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 104953 OF 2023 (GM-CPC)

BETWEEN:

HANAMANTH S/O. YALLAPPA DALAWAI,
AGE: 67 YEARS, OCC: RTD. GOVT. SERVANT,
R/O: BANDAKERI, TQ: BADAMI, DIST: BAGALKOT-587206.

...PETITIONER

(BY SRI Y.R. JOGI, ADVOCATE)

AND:

1. YAMANAWWA W/O. LATE. RAMESH DALAWAI,
   AGED ABOUT: 40 YEARS, OCC: HOUSEHOLD,
   R/O: BANDAKERI, TQ: BADAMI, DIST: BAGALKOT-587206.
2. SMT. LAXMIBAI W/O. MANJUNATH TIPPANNAVAR,
   AGE: 30 YEARS, OCC: HOUSEHOLD,
   R/O: BANDAKERI, TQ: BADAMI, DIST: BAGALKOT-587206.
3. SMT. KAVITA W/O. LAXMAPPA KUMBAR,
   AGE: 27 YEARS, OCC: HOUSEHOLD,
   R/O: BANDAKERI, TQ: BADAMI, DIST: BAGALKOT-587206.
4. SMT. NEELAVVA W/O. SHIVANAND KUMBAR,
   AGE: 22 YEARS, OCC: HOUSEHOLD,
   R/O: BANDAKERI, TQ: BADAMI, DIST: BAGALKOT-587206.

...RESPONDENTS

Digitally signed by YASHAVANT NARAYANKAR
Location: DHARWAD
Date: 2023.08.21 16:12:25 -0700

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT OF MANDAMUS DIRECTING THE ADDITIONAL CIVIL JUDGE AND JMFC BADAMI, SITTING AT KERUR DISPOSE THE I.A. NO. I, U/O. XXXIX RULE 1 AND 2 OF CPC FILED BY THE PETITIONER IN O.S. NO. 14/2023 DATED. 23/01/2023 AS PER ANNEXURE-F1.

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

ORDER

The captioned petition is filed by the plaintiff seeking direction against the learned Judge to decide the application filed in I.A.No.1 under Order 39 Rule 1 and 2 of CPC in O.S.No.14/2023.

2. Heard the learned counsel for the petitioner and perused the material on record.

3. Petitioner herein filed a suit for declaration and injunction. An application seeking interim injunction is filed on 23.01.2023. If an application is filed seeking injunction, the court cannot keep an application seeking temporary injunction pending for almost 4 months. When an application is filed under Order 39 Rule 1 and 2, the court is bound to decide the application at the earliest. The very object of granting injunction would be defeated if such an application is not decided at the earliest point of time. If the petitioner has made out a case by placing on record prima facie material and if there is a genuine threat, the courts are bound to decide the application, in accordance with law.

4. In the present case on hand, petitioner's grievance is that defendants are putting up construction. If that is so, learned Judge needs to decide the application, failing which the nature of the property would be stand altered only on account of not passing an order on the said application. Therefore, this is a fit case where mandamus needs to be issued to the learned Judge.

5. Even if some of the defendants are not yet served with summons, he cannot keep the said application pending waiting completion of process to all contesting defendants.

6. For the reasons stated supra, the writ petition is allowed.

7. The learned Judge is hereby directed to decide application in accordance with law within a period of four weeks from the date of receipt of copy of this order.

Sd/-
JUDGE

MBS
List No.: 1 Sl No.: 41