IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 6TH DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE M.I.ARUN

WRIT PETITION NO. 105026 OF 2023 (GM-CPC)

BETWEEN:

SMT. NASEEMA BANU W/O. S. KHALEEL AHMAD,
AGED ABOUT 45 YEARS, R/O. DOOR NO.21/23,
ADARSH COLONY, CANTONMENT, BALLARI-583101.

…PETITIONER

(BY SRI. Y. LAKSHMIKANT REDDY,
SMT. SOUBHAGYA VAKKUND AND
SMT. RANJITA ALAGAWADI, ADVOCATES)

AND:

1. SMT. LAKSHMI W/O. RAMESH MEDAR,
AGED ABOUT 40 YEARS, OCC: HOUSEWIFE,
R/O. KAREBASAVESWARA TEMPLE, NAVALI ROAD,
KARATAGI TOWN, GANGAVATHI TALUK,
KOPPAL DISTRICT-583231.

2. M. CHANDRASEKHAR S/O. LATE SHIVANNA MEDAR,
AGED ABOUT 55 YEARS, OCC: BUSINESS,
R/O. NEAR BALANJINEYA TEMPLE,
BESIDES YELLAMMA TEMPLE,
WARD NO.3, BALLARI-583101.

3. M. SHIVARAM S/O. LATE SHIVANNA MEDAR,
AGED ABOUT 45 YEARS, OCC: BUSINESS,
R/O. NEAR BALANJINEYA TEMPLE,
BESIDES YELLAMMA TEMPLE,
WARD NO.3, BALLARI-583101.

4. SMT. HULIGAMMA W/O. VIRUPAKSHAPPA &
D/O. LATE SHIVANNA MEDAR,
AGED ABOUT 48 YEARS, OCC: HOUSE WIFE,

ROHAN HADIMANI T
Digitally signed by ROHAN HADIMANI T

R/O. NEAR SHIVA THEATRE, BAMBOO BAZAR,
GANGAVATHI TOWN, KOPPAL DISTRICT-583231.

5. SMT. JAYAMMA W/O. RAMANNA,
AGED ABOUT 55 YEARS, OCC: HOUSE WIFE,
R/O. MEDAR STREET, SANDUR TOWN,
BALLARI DISTRICT-583101.

6. SMT. PARVATHI W/O. ESHWAR &
D/O. LATE SHIVANNA MEDAR,
AGED ABOUT 50 YEARS, OCC: HOUSEWIFE,
C/O. DEFENDANT NO.1,
SHRI M. CHENDRASEKHAR,
S/O. LATE SHIVANNA MEDAR,
AGED ABOUT 55 YEARS, OCC: BUSINESS,
R/O. NEAR BALANJINEYA TEMPLE,
BESIDES YELLAMMA TEMPLE,
WARD NO.3. BALLARI-583101.

7. SMT. B. CHAITANYA W/O. B. HARISH,
AGED ABOUT 26 YEARS, OCC: HOUSE WIFE,
R/O. NO.5/3, THALLAM COMPOUND,
ORDINANCE ROAD, FORT, BALLARI,
WARD NO.3, BALLARI-583101.

…RESPONDENTS

(BY SRI. BASAVANAGOUD T., ADV. FOR R1;
NOTICE TO R2 TO R7 IS SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DATED 18.04.2023 PASSED ON IA-16, IN FDP 10/2019 ON THE FILE OF THE 2ND ADDITIONAL SENIOR CIVIL JUDGE BALLARI ANNEXURE-H.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Respondents are related to one another and respondent No.1 filed O.S.No.348/2015 on the file of the II Addl. Senior Civil Judge, Ballari (hereinafter referred to as the 'trial Court') for partition and separate possession of an immovable property situated in Ballari City. The trial Court held that respondent No.1 is entitled to 1/6th share in the said suit schedule property.

2. The petitioner is said to have purchased 5/6th share in the suit schedule property from other respondents, except the share of respondent No.1.

3. Respondent Nos.2 to 7 though served, have remained absent in the present proceedings.

4. Respondent No.1 filed FDP.No.10/2019 pursuant to the preliminary decree passed in the original suit. In the said final decree proceedings, a Court Commissioner was appointed to survey the suit schedule property and divide the same by metes and bounds. The

Court Commissioner after conducting the survey has found that what is left in the present property is only an area of 40 ft X 14 ft with a building thereon and considering the topography of the building, it is not possible to divide the same in a meaningful manner. Hence, in the interest of the parties, the trial Court has ordered that the suit schedule property be sold in a public auction.

5. I do not find any error in the order passed by the trial Court. When the property cannot be meaningfully partitioned by way of the metes and bounds, the only option left is to sell the same by way of public auction.

6. For the aforementioned reasons, the writ petition is hereby, ***dismissed***.

Sd/-
JUDGE

RH
List No.: 1 Sl No.: 64