IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

WRIT PETITION NO. 17893 OF 2023 (GM-RES)

BETWEEN:

SRI. NANDISHA,
S/O ERAPPA,
AGED ABOUT 46 YEARS,
R/AT MODURU VILLAGE,
BOOKANAKERE HOBLI,
K.R. PETE TALUK,
MANDYA 571 426

...PETITIONER

(BY SRI. ROOPESHA B., ADVOCATE)

AND:

1. THE ASSISTANT COMMISSIONER,
PANDAVAPURA SUB-DIVISION,
MANDYA 571 426

2. TAHSILDAR,
K.R. PETE TALUK,
MANDYA 571 426

Digitally signed by B K MAHENDRAKUMAR
Location: HIGH COURT OF KARNATAKA

3. ERAPPA,
S/O LATE NINGAPPA,
AGED ABOUT 77 YEARS,
R/AT MODURU VILLAGE,
BOOKANAKERE HOBLI,
K.R. PETE TALUK,
MANDYA 571 426

...RESPONDENTS

(BY SRI. ARUNA G.S., HCGP FOR R1 AND R2;
SRI. H.B. CHANDRASHEKAR, ADVOCATE FOR R3)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS FROM THE R-1 DATED 27.10.2022 VIDE ANNEXURE-G. QUASH THE

ORDER PASSED BY THE R-1 DATED 27.10.2022 VIDE ANNEXURE-G AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

ORAL ORDER

A partition was entered into among the petitioner, the 2nd respondent, and his other children. Under the said partition, the 3rd respondent relinquished his rights in respect of land bearing Survey No. 185/1, measuring 1 acre and 7 guntas, situated at Moduru Village, Bookanakere Hobli, K.R. Pete Taluk, Mandya District. In consideration of relinquishing his rights, the 3rd respondent received a sum of Rs.50,000/- from the joint family nucleus.

2. Following the relinquishment, the petitioner's name was recorded in the revenue records, and the petitioner asserts that he is currently in possession and cultivation of the subject land. Subsequently, the 3rd respondent filed a petition under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (the "Act"), seeking to set aside the partition deed and claiming monthly maintenance.

3. The 1st respondent, by the impugned order, canceled the partition deed, directed the 2nd respondent to record the name of the 3rd respondent in the revenue records concerning the subject property, and ordered the petitioner to

pay a sum of Rs.5,000/- per month as maintenance to the 3rd respondent.

4. Heard the learned counsel for the petitioner, the learned counsel for the respondents, and the learned HCGP for respondent Nos. 1 and 2.

5. A careful perusal of the partition deed indicates that the 3rd respondent relinquished his rights in the subject property after receiving a sum of Rs.50,000/-. The partition deed does not include any clause requiring the petitioner to provide for the basic needs or physical amenities of the 3rd respondent. The petitioner relied on the decision of the Hon'ble Apex Court in Sudesh Chhikara vs. Ramti Devi and Another to support his argument.

6. Furthermore, a co-ordinate Bench of this Court, in WP.No.1199/2021 and connected petitions, held that a partition deed does not fall under the scope of Sub-Section (1) of Section 23 of the Act and, therefore, cannot be challenged under proceedings initiated under this provision.

7. However, the 1st respondent, in the exercise of powers under Section 9 of the Act, has directed the petitioner to pay Rs.5,000/- per month as maintenance, considering the petitioner's neglect to maintain his aged father. In the view of

this Court, the maintenance amount of 5,000/- is just and proper.

8. In view of the above, the Court passes the following:

ORDER

i) The petition is allowed in part.

ii) The impugned order dated 27.10.2022, issued by respondent No. 1 (Annexure-G), is quashed insofar as it pertains to the cancellation of the partition deed and the direction to the 2nd respondent to record the name of the 3rd respondent in the revenue records concerning the subject property.

iii) The direction to the petitioner to pay Rs.5,000/- per month as maintenance to the 3rd respondent for his lifetime is upheld.

iv) Liberty is reserved for the 3rd respondent to execute the order passed by the 1st respondent for arrears of maintenance in accordance with law.

Sd/-
(HEMANT CHANDANGOUDAR)
JUDGE

TIN