



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR JUSTICE S.G.PANDIT

WRIT PETITION NO. 5711 OF 2022 (GM-CPC)

BETWEEN:

SRI. ANWAR PASHA,
S/O LATE MOHAMMED AMEER SAB,
AGED ABOUT 78 YEARS,
R/AT KAGGERE VILLAGE,
YEDIYUR HOBLI,
KUNIGAL TQ,
NOW R/AT ALL-HUDA EXTN.,
TANJAVOOR MOHALLA,
KUNIGAL TOWN - 572 130.
(SENIOR CITIZEN BENEFIT NOT CLAIMED)

...PETITIONER

(BY SRI. P.M. GOPI, ADVOCATE)

AND:

1. SRI. PYARE JAAN,
W/O LATE MOHAMMED AMEER SAB,
AGED ABOUT 81 YEARS,
R/AT KESTHUR VILLAGE,
ATHAGURU HOBLI,
MADDUR TQ,
MANDYA DSIT - 571 476.
2. SRI. ABDUL KHUDUS,
S/O LATE MOHAMMED AMEER SAB,
AGED ABOUT 81 YEARS,
R/AT KESTHUR VILLAGE,





ATHAGURU HOBLI,
MADDUR TQ,
MANDYA DISTRICT - 571 476.

3. SRI. BASHA K.A.,
S/O WIFE OF LATE
MOHAMMED AMEER SAB,
AGED ABOUT 68 YEARS,
R/AT ALL-HUDA EXTN.,
TANJAVOOR MOHALLA,
KUNIGAL TOWN - 572 130.
4. SRI. VASANTHA KUMAR N.S.,
S/O SHIVAPPA,
AGED ABOUT 43 YEARS,
R/AT KAGGERE VILLAGE,
YEDIYUR HOBLI,
KUNIGAL TALUK - 572 130.
5. SMT. MEHARUNNISSA,
W/O PYARE JAAN,
AGED ABOUT 68 YEARS,
R/AT KESHTUR VILLAGE,
ATHAGURU HOBLI,
MADDUR TQ,
MANDYA DIST - 571 476.
6. SMT. YAMEEN TAJ,
D/O PYARE JAN,
AGED ABOUT 43 YEARS,
R/AT KESHTUR VILLAGE,
ATHAUGURU HOBLI,
MADDUR TALUK,
MANDYA DISTRICT - 571 476.



7. SMT. TASEEN TAJ,
D/O PYARE JAN,
AGED ABOUT 41 YEARS,
R/AT KESTHUR VILLAGE,
ATHAGURU HOBLI,
MADDUR TALUK,
MANDYA DISTRICT - 571 476.

8. SMT. SHABREEN TAJ,
D/O PYARE JAN
AGED ABOUT 33 YEARS,
R/AT KESTHUR VILLAGE,
ATHAGURU HOBLI,
MADDUR TALUK,
MANDYA DISTRICT - 571 476.

9. SRI. SHIVAPPA,
S/O LATE ANANDAYAPPA,
AGED ABOUT 81 YEARS,
RESIDING AT KAGGERE VILLAGE,
YEDIYUR HOBLI,
KUNIGAL TALUK - 572 142.

10. SMT. QUSTTHER UNNISSA,
W/O ABDUL KHUDUS,
AGED ABOUT 65 YEARS,
R/AT KAGGERE VILLAGE,
YEDIYUR HOBLI,
KUNIGAL TQ - 572 142.

11. SRI. GHOUSE PASHA,
S/O ZEHARUDDIAN,
AGED ABOUT 55 YEARS,
R/AT KAGGERE VILLAGE,
YEDIYUR HOBLI,
KUNIGAL TALUK - 572 142.

...RESPONDENTS



THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET-ASIDE THE IMPUGNED ORDER DATED:22.07.2021 PASSED IN O.S.NO.166/2019 BY THE LEARNED ADDITIONAL CIVIL JUDGE AND JMFC, KUNIGAL IN DISMISSING THE I.A.NO.I VIDE ANNEXURE-E AND THE ORDER DATED:13.01.2022, PASSED IN M.A.NO.12/2021, PASSED BY SENIOR CIVIL JUDGE AND JMFC, KUNIGAL VIDE ANNEXURE-F AND ETC.,

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

ORDER

The petitioner/plaintiff in O.S.No.166/2019 on the file of the Additional Civil Judge and JMFC, Kunigal, and appellant in M.A.No.12/2021 on the file of Senior Civil Judge and JMFC, Kunigal is before this Court aggrieved by rejection of I.A.No.4 filed under Order XXXIX Rule 1 and 2 of CPC to restrain the defendant No.4 from interfering with possession and enjoyment of Item No.1 of the suit schedule property and also rejection of appeal filed against the said order under judgment dated 13.01.2022 in M.A.No.12/2021.



2. Heard Sri P.M.Gopi, learned counsel appearing for Sri P.M. Siddamallappa, learned counsel for the petitioner/plaintiff and perused the writ petition papers.

3. The petitioner/plaintiff is before this Court against the concurrent finding of fact by Trial Court as well as the Appellate Court. The suit of petitioner/plaintiff is one for partition and separate possession along with declaration that the registered sale deed dated 18.03.2019 executed by defendant No.1 in favour of defendant No.4 with respect to suit schedule Item No.1 is not binding on the plaintiff. It is an admitted fact that there is registered sale deed dated 18.03.2019 in favour of defendant No.4 executed by defendants 1 and 5 to 8. Based on the registered sale deed, the Trial Court has *prima facie* come to the conclusion that defendant No.4 is in possession and is cultivating the land. The Trial Court has also based its finding on the certificate dated 09.07.2021 issued by the Village Accountant, which is placed on record by defendant No.4 to say that defendant No.4 is in possession



cultivating the land. The Appellate Court based on the material on record has come to the conclusion that the Trial Court has not committed any error in dismissing I.A.No.4.

4. Grant of injunction under Order XXXIX Rule 1 and 2 of CPC is a discretionary relief. Unless a person, who seeks an order of injunction under Order XXXIX Rule 1 and 2 of CPC makes out a *prima facie* case and would show that non grant of injunction would result in irreparable loss, the person who seeks injunction would not be entitled for the said relief. In the instant case, the petitioner/plaintiff has not made out prima facie case and on going through the material on record, I am of the view, that balance of convenience is in favour of defendant No.4. There is no merit in the writ petition. Accordingly the writ petition is ***dismissed.***

**Sd/-
JUDGE**