



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21<sup>ST</sup> DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 27660 OF 2023 (GM-CPC)

**BETWEEN:**

SMT. SARVAMANGALA  
W/O LATE PATEL GURUNANJAPPA  
AGED ABOUT 76 YEARS  
R/AT HULUSE VILLAGE  
KANIVE POST, KUSHALNAGAR HOBLI,  
SOMWARPET TALUK  
NORTH COORG DISTRICT-571 234

...PETITIONER

(BY SRI. SUNIL S. RAO, ADVOCATE FOR  
SRI.T.SESHAGIRI RAO, ADVOCATE)

**AND:**

1. H.G. RENUKAPPA  
S/O LATE PATEL GURUNANJAPPA  
AGED 55 YEARS  
RESIDING AT KUSHALNAGARA HOBLI  
SOMWARPETE TALUK, KODAGU DISTRICT

2. SMT.RATHNAMMA  
D/O LATE PATEL GURUNANJAPPA  
AGED 53 YEARS  
R.AT RAGIMARAVURU VILLAGE AND POST  
KONANURU HOBLI ARKALGUD TALUK  
HASSAN DISTRICT, HASSAN - 573 130

ALSO RESIDING AT  
R/A HOUSE VILLAGE KANIVE  
POST KUSHALNAGARA HOBLI  
SOMWARAPETE TALUK,  
COORG DISTRICT-571 234

3. SMT.MAHADEVAMMA  
W/O LATE PATEL GURUNANJAPPA





AGED 75 YEARS  
RESIDING AT HULUSE VILLAGE KANIVE  
POST KUSHALNAGARA HOBLI  
SOMWARAPETE TALUK,  
COORG DISTRICT-571 234

4. SMT.PUTTALAKSHMAMMA  
W/O ERAPPA  
AGED 75 YEARS  
R/A HEBBALE VILLAGE  
KUSHALANAGARA HOBLI  
SOMWARPETE TALUK  
KODAGU DISTRICT-571 234

...RESPONDENTS

(BY SRI.K.VIJAYA KUMAR, ADVOCATE FOR R4  
V/O DATED 12.12.2023, SERVICE OF NOTICE  
TO R1 TO R3 IS DISPENSED WITH)

-----

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE  
CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED  
ORDER DATED: 5.12.2023 PASSED BY THE COURT OF CIVIL  
JUDGE AND JMFC, KUSHALNAGAR ON IA NO.6 IN EX.PETITION  
NO.21/2019, AT ANNEX-A AND ETC.

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

### **ORDER**

1. This petition by the Objector in Execution No.21/2019 on the file  
of the Civil Judge and JMFC, Kushalnagar is directed against the  
impugned order dated 5.12.2023 passed on I.A.No.VI whereby the  
said application filed by the petitioner-Objector under Order VI Rule  
17 CPC seeking amendment of the Objector Application by



incorporating paragraphs 4(a) to (j) after paragraph (4) of the plaint was rejected by the Trial Court.

2. Perusal of the impugned order would indicate that the respondent No.4-Puttalakshamma instituted a suit in O.S.No.51/2013 before the Trial Court against respondents No.1 to 3-defendants for declaration, possession, permanent injunction and other reliefs in relation to the suit schedule immovable property. The said suit having been contested by the said defendants, the Trial Court passed the judgment and decree dated 01.06.2018 in favour of respondent No.4-plaintiff against respondents No.1 to 3-defendants. Aggrieved by the same, the respondents No.1 to 3-defendants preferred an appeal in R.A.No.27/2018 which came to be dismissed vide judgment and decree dated 11.02.2019 passed by the First Appellate Court. Aggrieved by the same, the defendants preferred an appeal in RSA No.797/2019 which was also dismissed by this Court vide judgment and decree dated 15.4.2021. Pursuant thereto, respondent No.4-plaintiff instituted the instant execution proceedings to enforce and implement the aforesaid judgments and decrees. During the pendency of the said proceedings, the petitioner herein filed an application under Order



XXI Rule 97, 98 and 101 CPC claiming to be the objectors/Obstructors in possession and enjoyment of the suit schedule properties. Respondent No.4-decree holder has filed objections to the said application and is contesting the same. Subsequently, the petitioner herein filed one more application-I.A.VI under Order VI Rule 17 CPC seeking amendment of Objector/Obstructors Application. The said application having been opposed by the decree holder, the Trial Court proceeded to pass the impugned order rejecting the application on the ground that Order VI Rule 17 CPC which provides for amendment of the pleadings was not applicable to an application filed under Order XXI Rule 97 CPC.

4. In my considered opinion, the said reasoning of the Trial Court and findings recorded by it cannot be sustained for the following reasons :

*(1) Firstly, though the word "pleadings" under Order VI CPC means, plaint and written statement, having regard to the Scheme and statutory framework envisaged in Order XXI Rules 97 to 106 CPC, which mandates that any application filed by a third party-Obstructor under Order XXI Rule 97 CPC will necessarily have to be decided after trial/enquiry culminating in a decree as*



*contemplated under Order XXI Rule 101 CPC, I am of the view that an application under Order VI Rule 17 CPC would be maintainable to amend an application filed under Order XXI Rules 97, 98 or 99 of CPC.*

*(2) Secondly, it is relevant to state the definition of the expression “pleadings” under The Karnataka Civil Rules of Practice, 1967 is as under :*

**3.(2)** “Pleadings” shall include plaints, written statements, memoranda of appeals, cross-objections, original petitions, applications, counter-objections, replies, rejoinders and every statement setting out the case of a party in the matter to which the pleadings relate.

A plain reading of Rule 3(2) of aforesaid Rules is sufficient to come to the conclusion that pleadings encompass an application under Order XXI Rule 97 of CPC and consequently Order VI Rule 17 CPC would be applicable to the instant application.

*3) Thirdly, it is well settled that even in cases Order VI rule 17 CPC is not applicable, it is open for the Court to invoke Sections 151, 152 and 153 CPC and permit amendment of pleadings, judgments, decrees orders etc. Viewed from this angle also, the Trial Court clearly fell in error in coming to a conclusion that application filed under Order XXI Rule 97 CPC was not maintainable;*



5. In view of the aforesaid facts and circumstances, I am of the view that the impugned order passed by the Trial Court rejecting the application on the ground it was not maintainable deserves to be set aside.

6. Insofar as proposed amendment is concerned, though the respondent would dispute the various contentions urged therein, in the light of the judgment of the Apex Court in **RAJESH KUMAR AGGARWAL & ORS. V. K.K.MODI & ORS.** reported in AIR 2006 SUPREME COURT 1647 wherein it is held that the merits/demerits of the proposed amendment cannot be gone into while considering an application for amendment, I am of the considered opinion that since the respondents would have an opportunity to file additional statement of objections to the amended application, no prejudice can be said to have caused to the respondents/decreed holder if the amendment was allowed.

7. Under these circumstances, since the impugned order passed by the Trial Court refusing amendment has resulted in miscarriage of justice, the same deserves to be set aside and the application-I.A.No.VI deserves to be allowed and the necessary directions are



to be issued to the Trial Court for disposal of the execution proceedings. In this context it is relevant to state that the litigation between the parties commenced in the year 2013 and respondent No.4 obtained the judgment and decree before this Court in RSA No.797/2019 as long back as in the year 2021. Under these circumstances, I am of the view that this is a fit case to issue necessary directions for expeditious disposal of the execution proceedings by exercising my powers under Article 227 of the Constitution of India.

8. In the result, the following:

**ORDER**

- [i] The petition is hereby allowed;
- [ii] The impugned order dated 05.12.2023, passed by the Civil Judge and JMFC, Kushalnagar on I.A.No.VI in Ex.Petition No.21/2019, is hereby set aside;
- [iii] Liberty is reserved in favour of respondent No.4-Decree holder to file additional statement of objections to the amended application;
- [iv] The Executing Court is directed to conclude the execution proceedings as expeditiously as possible ;



[v] Both parties are directed to co-operate for expeditious disposal of the execution proceedings before the Trial Court and the Trial Court shall not grant unnecessary adjournments in favour of the parties;

[vi] All rival contentions and all aspects are kept open and no opinion is expressed on the same.

**Sd/-  
JUDGE**

rs