



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH



DATED THIS THE 27TH DAY OF JUNE, 2023

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 200748 OF 2023 (GM-CPC)

BETWEEN:

ABDUL KAREEM S/O KHAJASAB
AGE: 52 YRS OCC: AGRICULTURE
R/O. HUNSAGI,
TQ. SHORAPUR,
DIST. YADGIRI

...PETITIONER

(BY SRI SHIVANAND PATIL, ADVOCATE)

AND:

1. HUSSAINBEE
W/O ABDUL RAHEEM
AGE: 47 YRS
OCC: HOUSEHOLD
R/O. HUNSAGI
TQ. SHORAPUR
DIST. YADGIRI-585215
2. MOHD GOUSE
S/O KAREEMSAB
AGE: 35 YRS
OCC: PVT SERVICE
R/O. HUNSAGI,
TQ. SHORAPUR
DIST. YADGIRI-585215
3. SMT. YASMEEN
W/O MAHABOOB PASHA
AGE: 41 YRS
OCC: HOUSEHOLD
R/O HUNSAGI,
TQ. SHORAPUR,
DIST. YADGIRI-585215





4. CHANDSAB
S/O EAWASAB TONNUR
AGE: MAJOR
OCC: AGRICULTURE
R/O. HUNSAGI
TQ. SHORAPUR
DIST. YADGIRI-585215
5. SARMUDDIN
S/O YASMEENSAB NABOJI
AGE: 57 YEARS
OCC: BUSINESS
R/O. HUNSAGI
TQ. SHORAPUR
DIST. YADGIRI-585215
6. MALLANAGOUDA
S/O BASAWANTHRAYA
RAMANGOUDAR
AGE: 46 YEARS
OCC: AGRICULTURE
R/O. HUNSAGI
TQ. SHORAPUR
DIST. YADGIRI-585215
7. MAHADEVAPPA
S/O SUGAPPA CHANDA
AGE: 61 YEARS
OCC: AGRICULTURE
R/O. HUNSAGI
TQ. SHORAPUR
DIST. YADGIRI-585215
8. MANOHAR
S/O BASAPPA CHINCHOLI
AGE: 39 YEARS
OCC : AGRICULTURE
R/O. HUNSAGI
TQ. SHORAPUR
DIST. YADGIRI-585215
9. ALLABAKSH
S/O MOHAMMED SAB HANAGI
AGE: 57 YEARS
OCC: AGRICULTURE



R/O. KODEKAL
TQ. SHORAPUR
DIST. YADGIRI-585214

10. MUDDANNA
S/O GOUDAPPAGOUDA KAMATAGI
AGE: 53 YEARS
OCC: AGRICULTURE
R/O. GODIHAL
TQ. SHORAPUR
DIST. YADGIRI-585214
11. NINGANNA
S/O GURANNA PADASHETTY
AGE: 47 YEARS
OCC: AGRICULTURE
R/O. M/S DHANALAXAMI
COCONUT MERCHANT,
SBH ROAD SINDAGI
DIST. VIJAYAPURA-586121
12. ADAPPA
S/O IRAPPA BANDOLI
AGE: 52 YEARS
OCC : AGRICULTURE
R/O. HUNSAGI
TQ. SHORAPUR
DIST. YADGIRI-585215
13. BASAWARAJ
S/O BHIMANAGOUDA MADARKAL
AGE: 52 YRS,
OCC: BUSINESS,
R/O NEAR TMC TALIKOTI,
TQ. MUDDEBIHAL
DIST. VIJAYAPURA-586122
14. CHANDRASEKAR
S/O AYAPPA JAGATKAL
AGE: 55 YEARS
OCC: BUSINESS
R/O. HUNSAGI
TQ. SHORAPUR
DIST. YADGIRI-585215



15. MALLAPPA
S/O BASAWANTHRAYA IBRAHIMPUR
AGE: 88 YEARS
OCC : AGRICULTURE
R/O. KOLIHAI
TQ. SHORAPUR
DIST. YADGIRI-585214
16. SRI RAVI
S/O NARAYANAPPA TALAPALLI
AGE: 59 YRS
OCC: AGRICULTURE
R/O. TALIKOTI
TQ. MUDDEBIHAL,
DIST. VIJAYAPURA-586122
17. VENKATESH
S/O BHIMAAYYA TALAPALLI
AGE: 63 YRS,
OCC: AGRICULTURE
R/O. TALIKOTI
TQ. MUDDEBIHAL,
DIST. VIJAYAURA-586122
18. PRALHAD
S/O SRINIVAS MANVI
AGE: 56 YRS,
OCC: AGRICULTURE
R/O. TALIKOTI
TQ. MUDDEBIHAL,
DIST. VIJAYAURA-586122
19. SANGANAGOUDA
S/O SOMANAGOUDA KONNUR
AGE: 43 YRS,
OCC: AGRICULTURE
R/O. HUNSAGI
TQ. SHORAPUR,
DIST. YADGIRI-585215
20. SMT.M.NAGARATHNA
W/O M SANJAPPA
AGE: 52 YRS
OCC: BUSINESS
R/O. SURYA COLONY,
BELLARY-01



21. SMT .NINGANAGOUDA
S/O SIDDANAGOUDA PATIL
AGE: 47 YRS,
OCC: AGRICULTURE
R/O. HUNSAGI
TQ. SHORAPUR,
DIST. YADGIRI-585215

22. SRI BASAVARAJA
S/O AMARAPPA GOGI
AGE: 32 YEARS
OCC: BUSINESS
R/O. HUNSAGI,
TQ. SHORAPUR
DIST. YADGIRI-585215

...RESPONDENTS

(BY SRI. R.S.SIDHAPUKAR, ADVOCATE FOR R-10
NOTICE TO R-4 TO R-6, R-8, R-9, R-11 TO 22 IS DISPENSED WITH
VIDE COURT ORDER DATED 28.03.2023; VIDE ORDER DATED
27.06.2023, R-1 TO R-3 AND R-7 HELD SUFFICIENT)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING A WRIT OF CERTIORARI OR ANY
OTHER ORDER OF THE KIND AND SET ASIDE THE IMPUGNED ORDER
DATED 02.02.2023 ON IA NO. XVII AND XVIII IN OS.NO.75/2012 ON
THE FILE OF CIVIL JUDGE AND JMFC SHORAPUR AS PER ANNEXURE-
G, TO THE WRIT PETITION IN THE INTEREST OF JUSTICE.

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

ORDER

1. The petitioner who is the plaintiff in O.S.No.75/2012 is
before this Court seeking for the following reliefs:

*a. A writ of certiorari or any other order of the
kind and set aside the impugned order
dated 02.02.2023 on IA NO. XVII and XVIII
in OS NO 75/2012 on the file of Civil Judge*



and JMFC Shorapur as per Annexure- G, to the writ petition in the interest of justice.

b. Any other order in the facts and circumstances of the case may also be passed.

2. The suit in O.S.No.75/2012 is filed seeking for partition and separate possession of the suit properties as also for declaration of certain sale deeds mentioned in the relief column are illegal, null and void and not binding on the plaintiff. On trial being completed and the matter being posted for arguments, defendant No.7 and Defendant No.10 had filed an application under Order 26 Rule 9 of CPC for spot inspection of some of the properties in question to ascertain the construction which had been put up and nature of construction. The trial court allowed the said application vide its order dated 2.02.2023. It is aggrieved by the same that the petitioner is before this court.
3. The contention of Sri.Shivanand Patil, learned counsel for the petitioner is that there was no local inspection which was required to be conducted in a suit for partition inasmuch as any inspection ought to be conducted in a



final decree proceedings and at this stage, whether there is any construction or not would not have any impact on the preliminary decree to be passed by a trial court.

4. Sri.R.S.Sidhapurkar, learned counsel for respondent No.10 submits that the status of the property is required to be ascertained in order to properly and effectively partition the property. On this ground, he submit that the order passed by the trial Court is proper and correct.
5. Heard Sri.Shivanand Patil, learned counsel for the petitioner, Sri.R.S.Sidhapurkar, learned counsel for respondent No.10. Perused papers.
6. A suit for partition essentially results in a preliminary decree to be passed. In such a suit, the rights of the parties are required to be determined with reference to the properties, once they are held to be joint family or ancestral properties. The actual partition is carried out only in a Final Decree Proceedings at a much later stage. Very few defences are available in a partition suit, which could include probably denial of relationship, denial that



the property is joint family property or ancestral property, prior partition or the like.

7. The existence of building, whether permanent or not, is neither a defence nor would it be germane to determine the share of the parties in a suit for partition. At the most, it may be relevant for determining the valuation of the property at the time of a final decree proceedings being drawn up, which shall be so determined upon a commissioner being appointed.
8. In that view of the matter, I am of the considered opinion that the very filing of application under Order 26 Rule 9 of CPC in a suit for partition, firstly not being required has been filed only to delay the proceedings. Such an application, if allowed and the commissioner report being challenged, would also require cross examination of the commissioner, which is not relevant or required at this stage of the suit. At this stage of the dispute resolution process, namely before the preliminary decree is drawn up it is only the shares of the parties which has to be



determined, once it is determined that the properties are Joint Family properties or ancestral properties.

9. It would be well advised for the courts handling partition matters to deal with these kind of applications keeping in mind the requirement thereof to pass a preliminary decree so as not to protract the proceedings. As such, I pass the following:

ORDER

- i. The petition is allowed.
- ii. A certiorari is issued, the impugned order dated 2.02.2023 passed on IA Nos. 17 and 18 in O.S. No.75/2012 by the Civil Judge and JMFC, Shorapur, is hereby quashed.
- iii. The Suit being of the year 2012, the Civil Judge and JMFC is directed to proceed with the matter and dispose of the same as expeditiously as possible, considering that the matter is posted for final arguments within a period of three months from the date of receipt of a copy of this order.



iv. The submission of Sri.Shivanand Patil and Sri.R.S.Sidhapurkar, learned counsel that their respective counterparts and clients would cooperate with the trial Court for early disposal is placed on record.

Sd/-
JUDGE

LN
List No.1/SI.No.5