



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 7<sup>TH</sup> DAY OF FEBRUARY, 2024**

**BEFORE**

**THE HON'BLE MRS JUSTICE M G UMA**

**WRIT PETITION NO. 20868 OF 2021 (GM-CPC)**

**BETWEEN:**

B.N. SREEKANTA SWAMY,  
AGED ABOUT 61 YEARS,  
S/O LATE. K.S. NAGARAJA RAO  
RESIDING AT: NO.186/1, 3<sup>RD</sup> CROSS,  
'D' ROAD, IDEAL HOMES TOWNSHIP,  
2<sup>ND</sup> PHASE, RAJARAJESHWARI NAGAR  
BENGALURU - 560 098.

...PETITIONER

(BY SRI: ASHISH KRUPAKAR, ADVOCATE)

**AND:**

1. SMT. UMA MAHESH  
AGED ABOUT 59 YEARS,  
D/O LATE. K.S. NAGARAJA RAO  
W/O M. MAHESH  
RESIDING AT: 89,  
R.V. ROAD, BASAVANAGUDI  
BENGALURU - 560 004.

SMT. B.N. PARVATHI  
AGED ABOUT 64 YEARS  
D/O LATE K.S. NAGARAJA RAO  
W/O B.V. RAMAKRISHNA  
NO.30, KRISHNA SINGH LANE,  
SEETHARAM MANDIR ROAD,  
ULSOORPET, BENGALURU - 560 002.  
SINCE DEAD BY PROPOSED  
LR OF PLAINTIFF NO.1

2. B.V. RAMAKRISHNA  
AGED ABOUT 67 YEARS,  
(FATHER'S NAME NOT KNOWN)  
RESIDING AT: OLD. NO.112/2,

Digitally signed  
by PAVITHRA N  
Location: high  
court of  
karnataka



NEW NO.52, 9<sup>TH</sup> CROSS, 3<sup>RD</sup> BLOCK,  
THYAGARAJA NAGAR,  
BENGALURU - 560 028.

3. NAGESH A  
AGED MAJOR  
(FATHER'S NAME NOT KNOWN)  
RESIDING AT: NO.1, NISARGA,  
3<sup>RD</sup> MAIN, COCONUT GARDEN,  
NAGARBHAVI MAIN ROAD,  
BENGALURU - 560 007
4. SPECIAL LAND ACQUISITION OFFICER  
KIADB, 1<sup>ST</sup> FLOOR, NRUPATHUNGA ROAD  
BENGALURU - 560 002
5. SPECIAL OFFICER  
BANGALORE METRO RAIL  
CORPORATION LTD.,  
OFFICE AT BMTC COMPLEX,  
3<sup>RD</sup> FLOOR, K.H. ROAD, SHANTHINAGAR  
BENGALURU - 560 027
6. THE COMMISSIONER,  
BBMP, BENGALURU,  
KG NAGAR, 1<sup>ST</sup> FLOOR,  
MUNICIPAL BUILDING  
JC ROAD, BENGALURU - 560 002
7. ASSISTANT REVENUE OFFICER,  
BBMP, BENGALURU,  
KG NAGAR, 1<sup>ST</sup> FLOOR,  
MUNICIPAL BUILDING  
JC ROAD, BENGALURU - 560 002
8. SUB REGISTRAR,  
III MAIN, NEXT TO  
RAMESHWARA TEMPLE  
CHAMARAJPET  
BENGALURU - 560 018

...RESPONDENTS

(BY SRI: A.C. PATIL & SRI: B. REDDY, ADVOCATE FOR R1(ABSENT))

V/O DT. 15/12/21, NOTICE TO R3-8 ARE D/W



R2 - SERVED - UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED COMMON ORDER DTD. 21.10.2021 PASSED ON IA.NO.8 TO 10 IN O.S.NO. 3525/2016 ON THE FILE OF THE 1ST ADDL. CITY CIVIL JUDGE (CCH-2) BENGALURU VIDE ANNEX-G AND ETC.,

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

**ORDER**

Defendant No.1 in OS No.3525 of 2016 on the file of the learned I Additional City Civil Judge (CCH-2), Bengaluru, is seeking writ of Certiorari and to quash the order dated 21.10.2021 allowing IAs.8 to 10 filed under Section 5 of the Limitation Act seeking condonation of delay, under Order XX Rule 9(2) of CPC seeking to set aside the abatement and under Order XXII Rule 3(1) read with Section 151 of CPC seeking to bring the legal representatives of deceased plaintiff No.1 on record permitting her husband to be impleaded as her legal heir.

2. Heard Sri. Ashish Krupakar, learned counsel for the petitioner. Learned counsel for the respondents has not addressed his arguments inspite of giving sufficient



opportunity. Hence, his arguments is taken as nil. Perused the materials on record.

3. Learned counsel for the petitioner contended that plaintiff Nos.1 and 2 being the sisters of defendant No.1 filed suit OS No.3525 of 2016 seeking declaration that the release deed dated 29.08.2001 executed by the father of plaintiffs and defendant No.1 is not binding on them. The schedule property is a small bit of land measuring 7/27 feet, which is adjacent to the land of plaintiffs on the eastern side and to the east of disputed property, the property belonging to defendant No.1 is situated. Much prior to filing of the suit, i.e., on 09.02.2016, defendant No.1 sold bit of property in favour of defendant No.2. It is only thereafter, the plaintiffs filed the suit OS No.3525 of 2016 on 29.04.2016 seeking relief of declaration.

4. Learned counsel submitted that during the pendency of suit, plaintiff No.1 died on 31.12.2019. Plaintiff No.2 filed IAs.8 to 10 as stated above seeking to implead the husband of plaintiff No.1 as her legal representative. Admittedly, plaintiff No.1 had no issues. It is also admitted that disputed property was belonging to the father of the



plaintiffs and they intend to inherit the same. Under such circumstances, Section 15(2)(a) of Hindu Succession Act operates and it shall devolve on the heirs of father of plaintiff No.1. The husband of plaintiff No.1 will not have any right whatsoever over the disputed property.

5. Learned counsel further submitted that, the husband of plaintiff No.1 was not interested to be brought on record. He never filed any application nor appeared before the Trial Court. He has also not appeared before this Court. In spite of specific provisions under the Hindu Succession Act, the Trial Court proceeded to allow the applications only by observing that, at this stage, the husband of plaintiff No.1 is a necessary party to the suit. There is absolutely no other reason assigned by the Trial Court. Under such circumstances, the impugned order is liable to be set aside. Accordingly, he prays for allowing the petition.

6. Plaintiffs Nos.1 and 2 in OS.No.3525/2016 filed the suit for partition and separate possession in respect of one item of property described in the schedule contending that the said property was originally owned by Sri.K.N.Shikantaiah, who is



the grandfather of the plaintiff and defendant No.1 and after his demise, it devolved on K.S.Nagaraja Rao, who is the father of the plaintiffs and defendant No.1.

7. During pendency of the suit, plaintiff No.1 died and it is the contention of the parties that plaintiff No.1 was not having issues that she left behind her husband. Therefore, the applications IA Nos.8 to 10 were filed seeking condonation of delay, setting aside, abatement and to bring husband of the deceased plaintiff No.1 on record as her legal representative. The said application was allowed by the trial Court relying on Section 15(2)(a) of the Hindu Succession Act.

8. It is the contention of the petitioner/defendant No.1 that since plaintiff No.1 is the sister of defendant No.1 and she is claiming property from her father, it will devolve upon heirs of the father and not on her husband. Section 15(2)(a) of Hindu Succession Act reads as under:

*"Any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in*



*the order specified therein, but upon the heirs of the father"*

9. The averments made in the plaint disclose that plaintiffs are seeking right over the property through their father. Plaintiff No.1 being the daughter who died issueless, Section 15(2)(a) of Hindu Succession Act would be applicable. Therefore, the property which is claimed by plaintiff Nos.1 devolve upon heirs of her father and not in accordance with Section 15(a) of Hindu Succession Act.

10. I have gone through the impugned order passed by the trial Court. The trial Court even though considered Section 15 of Hindu Succession Act it has proceeded to allow the applications ordering to implead husband of deceased plaintiff No.1 ignoring specific provision of law i.e., Section 15(2)(a) of Hindu Succession Act. Therefore, I am of the opinion that the impugned order is liable to be set aside. Accordingly, I proceed to pass the following:

**ORDER**

- i. Writ petition is ***allowed***.



- ii. The order dated 21.10.2021 in OS No.3525 of 2016 on the file of the learned I Additional City Civil Judge (CCH-2), Bengaluru allowing IAs.8 to 10 is set aside.
- iii. At this stage, learned counsel for the petitioner drawn my attention that the writ petition is of the year 2016. Therefore, the trial Court is directed to expedite the matter and dispose off the same at the earliest with the co-operation of both the parties.

**Sd/-  
JUDGE**

BH  
List No.: 1 Sl No.: 1