IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 7TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR JUSTICE R.NATARAJ

WRIT PETITION NO.200611 OF 2023 (GM-CPC)

BETWEEN:

SAYED MOHIUDDIN @ TANVEERPEERAN
S/O SAYED BURANUDDIN HUSSAINI, PEERZADE
AGED 49 YEARS, OCC: BUSINESS,
R/O NEAR HASHIMPEER DARGAH, VIJAYAPUR.

...PETITIONER

(BY SRI. MANVENDRA REDDY, ADVOCATE)

AND:

SAYED NAYEEM SAKAF BY LRS

1. SYED VAJIHA SAKAF
   W/O SYED MOHAMMED NAYEEM
   AGE: 58 YEARS, OCC: HOUSEHOLD,
   R/O H.NO.22 KHALIFA STREET BHATKAL
   UTTARA KANNADA KARNATAKA -581320.

2. SAYEDA NOORAIN SAKAF
   D/O NSAYED MOHAMMED NAYEEM
   AGED 36 YEARS, OCC: BUSINESS,
   R/O H.NO.22 KHALIFA STREET BHATKAL
   UTTARA KANNADA KARNATAKA -581320.

3. SAYED ESNAIN SAKAF
   D/O SAYED MOHAMMED NAYEEM
   AGE: 30 YEARS, OCC: BUSINESS,
   R/O H.NO.22 KHALIFA STREET BHATKAL
   UTTARA KANNADA KARNATAKA -581320.

Digitally signed by RENUKA
Location: High Court Of Karnataka

SMT. SAYEDA HAJARABI BY LRS.
(SINCE DEAD BY DEF NO.2 AND
3/ RESP.NO.4 AND 5)

4. SAYED TOUSIF
S/O SAYED JAVEDPASHA INAMDAR
AGE: 33 YEARS, OCC: STUDENT
R/O MALI GALLI BELGAUM

5. SAYED JUNED
S/O SAYED JAVEDPASHA INAMDAR
AGE: 31 YEARS, OCC: STUDENT,
R/O MALI GALLI BELGAUM

6. SAYEDA ZANARUDBEGUM
W/O SAYED CHIRAGUDDI HUSSAINI PEERZADE
AGE: 70 YEARS, OCC: HOUSEHOLD,
R/O NEAR KALI MASJID
J.M. ROAD, VIJAYAPURA-586101.

7. SAYEDA AKHTARBEGUM
D/O SAYED HASHIM HUSSAINI PEERZADE
AGE: 68 YEARS, OCC: HOUSEHOLD,
R/O HASHIMPEER DARGH VIJAYAPURA-586101.

8. SAYED MAINUDDIN
S/O SAYED HASHIM HUSSAINI
AGE: 68 YEARS, OCC: LECTURER,
R/O HASHIMPEER ,DARGH VIJAYAPURA-586101.

9. SAYEDA MUSHRATBEGUM
W/O SAYED MAUNUDDIN HUSSAINI PEERZADE
AGE: 63 YEARS, OCC: HOUSEHOLD
R/O HASHIMPEER DARGH, VIJAYAPURA.

10. SAYED JAVEDPASHA
S/O SAYED MUSTAFAPASHA INAMDAR
AGE: 65 YEARS, OCC: BUSINESS,
R/O H.NO.2639, MALI GALLI BELGAUM

11. SAYED MUBINPASHA
S/O SAYED MUSTAFAPASHA

AGE: 65 YEARS, OCC: BUSINESS,
R/O H.NO.2639, MALI GALLI BELGAUM

12. SAYED IQBALPASHA
S/O SAYED MUSTAFAPASHA
AGE: 63 YEARS, OCC: BUSINESS,
R/O H.NO.2639, MALI GALLI BELGAUM

13. SAYED FAHEEM SAKAF
S/O SAYED ABDUL RAHIMAN SAKAF INAMDAR
AGE: 58 YEARS, OCC: BUSINESS
R/O H.NO.22 KHALIFA STREET BHATKAL
DIST. KARWAR.

14. SAYEDA SHAHNAZBEGUM
W/O SAYED JAVEED QUADRI
AGE: 53 YEARS, OCC: HOUSEHOLD,
R/O NEAR HASHIM PEER DARGAH
STATION ROAD, VIJAYAPURA.

15. SAYEDA MEHARRUNNISABEGUM
W/O SAYED BURANUDIN HUSSAINI PEERZADE
AGE: 77 YEARS, OCC: HOUSEHOLD,
R/O CTS NO.1924 NEAR HASHIM PEER DARGAH
STATION ROAD, VIJAYAPURA.

16. SAYED MEHAMOOD HUSSAINI
S/O SAYED MURTUZA HUSSAINI PEERZADE
AGE: 82 YEARS, OCC: AGRICULTURE,
R/O HASHIMPEER DARGAH, VIJAYAPURA.

17. AZIZ S/O MAQBOOLSAB SUNNEWALE
AGE: 64 YEARS, OCC: BUSINESS,
R/O SHAHPUR GATE, KALAL GALLI VIJAYAPURA

…RESPONDENTS

(BY SRI. D.P. AMBEKAR, ADVOCATE FOR R1 TO R3;
V/O DATED 07.01.2025 NOTICE TO R-4 TO R-12
AND R-17 DISPENSED, R-14 TO R-16 SERVED;
NOTICE TO R-13 HELD SUFFICIENT)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF THE CERTIORARI THEREBY QUASHING / SET ASIDE THE IMPUGNED ORDERS ON I.A NO. 22 DATED 08.11.2022 AND IA NOS. 23 AND 24 DATED 16.02.2023 VIDE ANNEXURE- J AND J1 PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE, VIJAYAPURA B) ISSUE A WRIT IN THE NATURE OF MANDAMUS TO ALLOW THE APPLICATION IN IA NO. 22 TO 23 VIDE ANNEXURE- J AND J1.

THIS PETITION, COMING ON FOR ORDERS THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE R.NATARAJ

ORAL ORDER

Defendant No.14 in OS No.147/2012 on the file of Prl. Senior Civil Judge, Vijayapura is before this Court challenging the correctness of orders dated 08.11.2022 and 16.02.2023, by which his applications in I.A.Nos.22, 23 and 24 to recall the stage of the suit and to recall PW-1 for further cross examination and to recall defendants evidence were rejected.

2. (i) The suit in OS No.147/2012 was filed for partition and separate possession of the plaintiffs' share in the suit schedule property. Defendant No.14 being the grandson, contested the suit interalia contending that

there was an earlier partition between the parties on 10.01.2001, which was reduced into writing, based upon which, a varadi was submitted to revenue authorities. Based on this contention, the suit was taken up for trial.

(ii) After conclusion of evidence of plaintiffs, the suit was listed for evidence of defendants. Defendant No.14 was examined as DW-2 on 30.11.2019 and the case was set down for arguments. At that stage, defendant No.14 filed an application to recall the stage of the suit and to recall PW-1 for further cross examination and to recall defendants evidence and permit him to lead further evidence of defendants. The said applications were contested by the plaintiffs on the ground that the same were designed to protract the proceedings.

(iii) The Trial Court in terms of the impugned order, rejected all the applications on the ground that no reasons were mentioned in the applications to recall PW-1 for further cross examination and to permit defendant No.14 to lead further evidence and that applications were filed

belatedly. Being aggrieved by the said order, defendant No.14 is before this Court.

3. (i)Learned counsel for defendant No.14 submits that there was a prior partition of the suit schedule property between the family members, which was reduced into writing, based upon which certain revenue entries are made. He submits that this fact could not be confronted to PW-1 and therefore, PW-1 has to be recalled for further cross examination. He also contends that defendant No.14 has now been able to secure certain witnesses, who would speak about the partition in the family and therefore, an opportunity has to be granted to defendants to lead further evidence.

(ii) This is however contested by the learned counsel for plaintiffs, who contends that defendant No.14 ought to have availed the opportunity to cross examine PW-1 at the earliest point of time. He also invited the attention of the Court to applications filed by defendant No.14 and contended that no reason is mentioned in the applications

as to why PW-1 had to be recalled for further cross examination and as to why defendant No.14 has to be granted an opportunity to lead further evidence.

4. I have considered the contentions of learned counsel for defendant No.14 as well as learned counsel for plaintiffs.

5. A perusal of the applications filed by defendant No.14 to recall PW-1 for further cross examination shows that he alleged that his advocate, who was engaged by him earlier had not cross examined PW-1, in the light of the averments made in the written statement and the genealogy mentioned in the written statement. He claims that the advocate now on record has advised him to file an application to recall PW-1 for further cross examination. In the application filed to lead further evidence, defendant No.14 did not mention any reason as to why, he could not lead further evidence earlier. Nonetheless, since defendant No.14 has raised substantial defence that there was prior

partition between plaintiffs and defendants and that the same was given effect to, an opportunity deserves to be granted to defendant No.14 to establish his case, however, subject to certain conditions so as to ensure that defendant No.14 does not protract the proceedings any further. In addition, plaintiffs are entitled to be compensated for the time lost in the litigation.

6. Consequently, following order is passed:

ORDER

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

ii The impugned order passed by Trial Court on I.A.Nos.22, 23 and 24 are set aside and the applications filed by defendant No.14 are allowed, subject to condition that defendant No.14 pays cost of Rs.10,000/-, payable to the plaintiffs before the Trial Court on the next date of hearing.

iii In addition, defendant No.14 shall without fail cross examine PW-1 on the next date of hearing. He shall also take steps to examine

other witnesses on his behalf either on the next date of hearing or on following date that may be fixed by the Trial Court.

iv If, defendant No.14 fails to avail this opportunity, the Trial Court is at liberty to dispose off the suit on merits in accordance with law.

v Since, the suit is filed in the year 2012, Trial Court shall dispose off the suit as early as possible, but at any rate, within a period of 6 months from the date of receipt of certified copy of this order.

Sd/-
(R.NATARAJ)
JUDGE

NJ
List No.: 1 Sl No.: 9
CT:SI