**IN THE HIGH COURT OF KARNATAKA**

**KALABURAGI BENCH**

**DATED THIS THE 9TH DAY OF JUNE, 2025**

**BEFORE**

**THE HON'BLE MR. JUSTICE M.I.ARUN**

**WRIT PETITION NO.201039 OF 2025 (GM-CPC)**

**BETWEEN:**

1. SHANTAMMA D/O GURAPPA
   W/O MALLIKARJUN, AGE: 65 YEARS,
   OCC: HOUSE HOLD AND AGRICULTURE,
   R/O H.NO.7-709, NAVADGERI, BIDAR-585 401.

2. NIRMALA DEVI D/O GURAPPA
   W/O PRABHU, AGE: 54 YEARS,
   OCC: HOUSE HOLD AND AGRICULTURE,
   R/O PRATAP NAGAR, BIDAR-585 401.

3. PRABHAVATI D/O GURUAPPA
   W/O JAGANNATH, AGE: 52 YEARS,
   OCC: HOUSE HOLD AND AGRICULTURE,
   R/O HALLIKHED-B, HUMNABAD TALUK,
   DISTRICT BIDAR-585 414.

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4. GUNDAMMA D/O GURAPPA
   W/O MALLIKARJUN PATIL, AGE: 44 YEARS,
   OCC: HOUSE HOLD AND AGRICULTURE,
   R/O SULTANPUR J, BIDAR-585 401.

5. SHOBHAVATI D/O GURAPPA
   W/O REVANAPPA PATIL, AGE: 54 YEARS,
   OCC: HOUSE HOLD AND AGRICULTURE,
   R/O PRATAP NAGAR, BIDAR-585 401.

6. GURAPPA S/O SHIVRAYA,
   AGE: 50 YEARS,

OCC: AGRICULTURE,
R/O CHIMKOD, BIDAR-585 401.

7. GODAVARI @ LAXMI
W/O VEERSANGAPPA,
AGE: 48 YEARS, OCC: AGRICULTURE,
R/O KOLAR-K, BIDAR-585 401.

…PETITIONERS

(BY SRI. SANTOSH KUMAR B. BIRADAR, ADVOCATE)

**AND:**

1. SHEKAMMA W/O KALYANRAO,
AGE: 68 YEARS, OCC: HOUSEHOLD,
R/O CHONDI, BIDAR-585 402.

2. NAGNATH S/O KALYANRAO,
AGE: 68 YEARS, OCC: HOUSEHOLD,
R/O CHONDI, BIDAR-585 402.

…RESPONDENTS

(RESPONDENTS - SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO, (A) ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT(S)/ ORDER(S)/ DIRECTION(S), THEREBY QUASHING THE IMPUGNED ORDER DATED 30.10.2024 PASSED ON I.A NO.IV IN O.S. NO.04/2024 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE AND CJM, BIDAR (ANNEXURE-E); (B) CONSEQUENTLY, TO ALLOW THE APPLICATION FILED BY THE PETITIONERS UNDER ORDER VI RULE 17 OF THE CPC (ANNEXURE-C).

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE M.I.ARUN

**ORAL ORDER**

(PER: HON'BLE MR. JUSTICE M.I.ARUN)

Aggrieved by the order dated 30.10.2024 passed on I.A.No.IV in O.S.No.04/2024 by the Principal Senior Civil Judge and CJM, Bidar, the present writ petition is filed by the plaintiffs therein.

2. The petitioners herein are the plaintiffs in O.S.No.04/2024. They have filed a suit for partition and separate possession of suit schedule properties. While defendant No.1/respondent No.1 herein filed her written statement, it is submitted that the plaintiffs came to know about the existence of the sale deed dated 28.05.1975, by which respondent No.1 herein has claimed exclusive right over the suit schedule properties. Hence, the plaintiffs made an application under Order VI Rule 17 R/w Section 151 of CPC to amend the plaint. The same reads as under:

***"PETITON UNDER ORDER 6 RULE 17 R/W SEC 151 OF CPC***

*May it please your honour,*

*For the various reasons stated in the accompanying affidavit of the plaintiff No.1/petitioner most humbly and respectfully prays to this Hon'ble Court to allow this petition and kindly permitted to amend the plaint and the proposed amendment as under;*

1. *That in subject matter of the suit in 3rd line after word perpetual injunction the following amendment is to be inserted as under:-*

   i) *The Sale Deed bearing No.687/1975-76 dated 28-05-1975 as null and void and does not bind right of the plaintiffs.*

   ii) *That on page No.4 of the plaint after para No.3 the following para be added as under :-*

   *3 a) That the deft No.1 has created bogus Sale Deed bearing No.687/1975-76 dated 28-05-1975 in collusion of Chandramma. The suit land is ancestral property. The deceased Chandramma has no absolute right to execute the alleged Sale Deed. The alleged Sale Deed bearing No.687/1975-76 dated*

*28-05-1975 does not bind the right of the plaintiffs. The plaintiffs have acquired the knowledge of alleged Sale Deed after filing of the Written Statement. So the claim of plaintiffs is within time in respect of alleged Sale Deed from the date of knowledge. The deceased Gurappa was absolute owner of suit land. The plaintiffs and deft No.1 have succeeded the suit land from deceased Gurappa. The alleged Sale Deed is created only to effect the right of plaintiffs.*

*3 b) That on page No.4 in para No.4 of the plaint in 9th line after word sufficient the following sentence be added:-*

*The relief of declaration of Sale Deed bearing No.687/1975-76 null and void and does not bind the right of the plaintiffs valued for Rs.1,000/- and paid the Court fee of Rs.25/- U/Sec 24 (d) of KCF and SV Act.*

*3 c) That in prayer column the following amendment be added as under :-*

*e) The Sale Deed bearing No.687/1975-76 dated 28-5-1975 be declared as null*

*and void and does not bind the right of the plaintiffs.*

*The proposed amendment will not change the nature of the suit and kindly permitted to amend the plaint in the ends of justice."*

3. The Trial Court has assigned the following reasons and has dismissed the said application:

*"23. I.A.No.4 plaintiff has contended that the sale deed executed by Chandramma in favour of defendant No.1 is not binding on the share of the plaintiff, but the sale deed made by the Chandramma in the year 1975 in favour of the defendant No.1, the plaintiff has wants to amended the plaint, but as per amendment of CPC in L.A.No.4 deserves to the rejected. Whatever the contents urged in I.A. and supporting affidavit are no holds water at all. Hence I.A.No.4 deserves to be rejected.* ***Hence I answered this point in the Negative****."*

4. Aggrieved by the same, the present writ petition is filed.

5. Inspite of service of notice, respondents have remained absent.

6. The case of the petitioners is that, the Trial Court has not assigned any proper reason for rejecting the prayer to amend the plaint. It is further submitted that the application was filed immediately after respondent No.1 filed her written statement and even till today issues are yet to be framed in the original suit and the trial has not yet commenced and the Trial Court ought to have granted permission to amend the plaint.

7. The question that arises for consideration in the instant writ petition is, whether the Trial Court erred in rejecting the application of the plaintiffs under Order VI Rule 17 of CPC?

8. Order VI Rule 17 of CPC reads as under:

> "***17. Amendment of pleadings.-*** *The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all*

*such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

*Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trail."*

9. Admittedly, the suit is one for partition and separate possession of suit schedule properties. It is submitted by the petitioners that they were under bonafide belief that the family property was not alienated. After filing the written statement by respondent No.1, who is none other than sister of the petitioners herein, they realized that their late mother has sold the property in favour of respondent No.1. It is submitted that the said sale deed is a fraud played on the petitioners herein and for that reason, they have sought to challenge the same. The application is made well before the commencement of the trial in the original suit. As per the submission of the

petitioners, even till today, the trial has not commenced. Under the said circumstances, this Court is of the opinion that the Trial Court ought to have allowed the said application. Whether the prayer sought to be introduced in the plaint is time barred or not is a separate question to be decided by the trial court after hearing the parties concerned. Further, perusal of the reasoning given by the Trial Court, the same has to be considered not satisfactory. Under the said circumstances, the writ petition requires to be allowed.

10. Hence, the following:

ORDER

i) Writ petition is allowed.

ii) The impugned order dated 30.10.2024 passed on I.A.No.IV in O.S.No.04/2024, seeking amendment of the plaint is hereby set aside.

iii) I.A.No.IV, seeking amendment of the plaint as prayed for by petitioners/plaintiffs in O.S.No.04/2024 is hereby allowed.

iv) The Trial Court is directed to permit the petitioners/plaintiffs to amend the plaint as prayed for in I.A.No.IV and proceed with O.S.No.04/2024 in accordance with law.

**Sd/-**
**(M.I.ARUN)**
**JUDGE**

LG
List No.: 1 Sl No.: 60