IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 10TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE R.NATARAJ

WRIT PETITION NO.201193 OF 2024 (GM-CPC)

BETWEEN:

JAGADEVAPPA
S/O LATE DANAPPA @ CHITAMABARAO PATIL,
AGE: 51 YEARS, OCC: AGRICULTURIST,
R/O.BHOGANALLI, TQ. AFZALPUR-515335
DIST. KALABURAGI.

...PETITIONER
(BY SRI. BALAGERI JNANAYYA CHANNAYYA, ADVOCATE)

AND:

1. SUBHASCHANDRA
   S/O LATE DANAPPA @ CHITAMABARAO PATIL,
   AGE: 51 YEARS, OCC: AGRICULTURIST,
   R/O. BHOGANALLI, TQ.AFZALPUR-515335
   DIST. KALABURAGI.

2. RUDRAGOUDA
   S/O LATE DANAPPA @ CHITAMABARAO PATIL,
   AGE: 44 YEARS, OCC:AGRICULTURIST,
   R/O BHOGANALLI, TQ. AFZALPUR-515355
   DIST. KALABURAGI.

3. SANTOSH
   S/O LATE DANAPPA @ CHITAMABARAO PATIL,
   AGE: 42 YEARS, OCC: AGRICULTURIST,
   R/O. BHOGANALLI, TQ. AFZALPUR-515355
   DIST. KALABURAGI.

Digitally signed by RENUKA
Location: High Court Of Karnataka

4. AKKAMAHADEVI
W/O. SHIVASHANKAR DESAI,
D/O LATE DANAPPA @ CHITAMABARAO PATIL,
AGE: 42 YEARS, OCC: HOUSEHOLD,
R/O BHOGANALLI, TQ. AFZALPUR-515355
DIST. KALABURAGI.

5. THE SPECIAL ACQUISITON OFFICER,
AT KALABURAGI MINI VIDHAN SOUDHA,
KALABURAGI-585101
TQ. AND DIST. KALABURAGI.

…RESPONDENTS

(BY SRI. BASAVAKIRAN G. R., ADVOCATE FOR R1;
SRI. D.P.AMBEKAR, ADVOCATE FOR R2 TO R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER WRIT OR ORDER OR DIRECTION, TO SET-ASIDE THE IMPUGNED ORDER DATED 01-04-2024 PASSED BY THE SENIOR CIVIL JUDGE AND JMFC AFZALPUR IN FDP NO 9/2023 ON I.A NO.3 AND I.A NO.4 VIDE ANNEXURE - H RESPECTIVELY.

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

CORAM: HON'BLE MR. JUSTICE R.NATARAJ

ORAL ORDER

The petitioner has challenged an order dated 01.04.2024 passed by the Senior Civil Judge and JMFC, Afzalpur in FDP No.9/2023 allowing I.A.Nos.3 and 4 filed under Order XXVI Rule 9 of Civil Procedure Code read with Section 151 of Civil Procedure Code.

2. A suit in O.S.No.14/2020 was filed by respondent Nos.2 to 4 for partition and separation possession. The said suit after contest was decreed on 10.02.2023. The judgment and decree in O.S.No.14/2020 was challenged in R.A.No.30/2023. However, the stay granted initially was later recalled. Since there was no stay of the judgment and decree in O.S.No.14/2020, the respondent Nos.2 to 4 filed FDP No.9/2023 was filed for enforcement of the preliminary decree.

3. The respondent Nos.2 to 4 filed applications (I.A.Nos.3 and 4) in FDP No.9/2023 for appointment of a Commissioner to divide the house properties and revenue properties. The said applications were allowed in terms of the impugned order.

4. Being aggrieved by the same, the petitioner/respondent No.2 in FDP No.9/2023 has filed this writ petition.

5. Learned counsel for the petitioner contended that since the regular appeal is pending consideration, the final decree Court could not have appointed a commissioner to suggest a scheme of partition. He also contends that there

were certain counter claims made in the suit and hence it was necessary for the final decree Court to await the out come of the proceedings in regular appeal.

6. Learned counsel for the respondents/plaintiffs in FDP No.9/2023 contends that R.A.No.30/2023 was finally disposed off on 16.11.2024 and therefore there is no impediment for the final decree Court to proceed further.

7. Since the petitioner had filed this petition challenging the order of the final decree Court appointing the commissioner to suggest a scheme of partition, on the ground that a regular appeal is pending consideration, the present petition is rendered academic, as R.A.No.30/2023 is disposed off. Therefore, there is no error committed by the final decree Court in appointing a commissioner to give effect to the preliminary decree passed.

8. Hence, writ petition lacks merit and is dismissed.

Sd/-
(R.NATARAJ)
JUDGE

HJ
LIST NO.: 1 SL NO.: 58
CT:SI