IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 25TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE R.NATARAJ

WRIT PETITION NO.202005 OF 2021 (GM-CPC)

BETWEEN:

LAXMIBAI W/O NINGANNA MUDDEBIHAL
DECEASED BY LRS.,

1. SANGAMMA W/O BASAVARAJ GURUADDI,
AGE: 46 YEARS, OCC: HOUSEHOLD WORK,
R/O INGALAGERI, TQ: MUDDEBIHAL,
DIST: VIJAYAPURA.

2. SHREEDEVI @ DEVAMMA
W/O SHIVANAND BIRADAR,
AGE: 44 YEARS, OCC: HOUSEHOLD WORK,
R/O 79, 2ND MAIN ROAD,
6TH CROSS, U.C.B. NAGAR, DHARWAD.

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Location: High Court Of Karnataka

3. SHIVANNA S/O NINGANAGOUDA MUDDEBIHAL,
AGE: 52 YEARS, OCC: AGRICULTURE,
R/O INGALAGERI, TQ: MUDDEBIHAL,
DIST: VIJAYAPURA.

4. RAMESH S/O NINGANAGOUDA MUDDEBIHAL,
AGE: 50 YEARS, OCC: AGRICULTURE,
R/O INGALAGERI, TQ: MUDDEBIHAL,
DIST: VIJAYAPURA.

...PETITIONERS

(BY SRI HARSHAVARDHAN R. MALIPATIL, ADVOCATE)

AND:

1. ANNAPURNA W/O BASANNAGOUDA GURADDI,
   AGE: 60 YEARS, OCC: H.H. WORK,
   R/O INGALAGERI, TQ: MUDDEBIHAL,
   DIST: VIJAYAPURA-586101.

2. NEELAMMA W/O SHIVASANGAPPA HAVALADAR,
   AGE: 35 YEARS, OCC: H.H. WORK,
   R/O INGALAGERI, TQ: MUDDEBIHAL,
   DIST: VIJAYAPURA-586101.

3. LAXMIBAI W/O CHIDANAND TUMBAGI,
   AGE: 33 YEARS, OCC: H.H. WORK,
   R/O INGALAGERI, TQ: MUDDEBIHAL,
   DIST: VIJAYAPURA-586101.

4. BHIMAWWA CLAIMING TO BE
   W/O SHIVAPPA GURADDI,
   AGE: 80 YEARS, OCC: H.H. WORK,
   R/O INGALAGERI, TQ: MUDDEBIHAL,
   DIST: VIJAYAPURA-586101.

…RESPONDENTS

(R1 TO R4 ARE SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI AND SET-ASIDE THE ORDER OF LEARNED CIVIL JUDGE, AT MUDDEBIHAL, DATED 13/11/2020 ON IA NO.XVI FILED BY THE PLAINTIFFS IN O.S.NO.135 OF 2015 VIDE ANNEXURE - E AND CONSEQUENTLY ALLOW THE SAID I.A. AND ISSUE A WRIT OF CERTIORARI AND SET - ASIDE THE ORDER OF LEARNED CIVIL JUDGE, AT MUDDEBIHAL DATED 24/09/2021 ON IA NO.XX AND XXI FILED BY THE PLAINTIFFS IN O.S.NO.135 OF 2015 VIDE ANNEXURE - J AND CONSEQUENTLY ALLOW THE SAID I.A.

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 legal representatives of deceased plaintiff in O.S.No.135/2015 on the file of learned Civil Judge, Muddebihal, are before this Court in this writ petition, challenging an order dated 13.11.2020 and 24.09.2021 by which I.A.Nos.XVI, XX and XXI filed by them to (i) implead defendant Nos.5 to 7, (ii) recall D.W.1 for cross examination and (iii) to reopen the plaintiffs evidence were rejected.

2. The suit in O.S.No.135/2015 was filed for declaration that the plaintiff was the absolute owner in possession and enjoyment of the suit property by virtue of a testament dated 18.07.2009 executed by Smt.Rayawwa and for perpetual injunction. The suit was contested by the defendants, who denied the execution of the Will in favour of the plaintiff and claimed that they had inherited the suit property.

3. Based on these contentions, the Trial Court framed issues and set down the case for trial. Later, the legal representatives of plaintiff filed an application (I.A.No.16) under Order I, Rule 10(2) of CPC to implead proposed defendant Nos.5 to 7 on the ground that the defendants had pleaded in their written statement that the proposed defendant Nos.5 to 7 were proper and necessary parties. The plaintiff also filed an application (IA No.20) to recall DW.1 for cross examination and IA No.21 to recall the stage of the suit for evidence of the plaintiff. All these three applications were rejected in terms of the order dated 13.11.2020 and 24.09.2021. Being aggrieved by the same, the plaintiffs are before this Court.

4. The learned counsel for the legal representatives of plaintiff contended that the proposed defendants were the ones who were mentioned in the written statement filed by the defendants in the suit. He contends that since the suit was filed for declaration of title and injunction based on a Will executed by Smt.Rayawwa, the plaintiff could not leave out any other member of the defendants

and therefore he filed the instant application to implead the other members of the family of the defendants, who according to the defendants were proper and necessary for the adjudication of the suit. He also contends that the plaintiff did not lead any evidence. He also contends that the DW.1 could not be cross examined due to COVID-19 pandemic and therefore she was discharged. It is thus contended that it was necessary to recall D.W.1 for cross examination. He also contends that the plaintiff is in possession of certain other evidence and the same is required to be placed on record and an opportunity may be granted by allowing IA No.21.

5. The respondents, though served with the notice of this petition, have not appeared.

6. A perusal of the written statement filed by the defendants in the suit shows that the defendants had categorically stated that the proposed defendants were proper and necessary parties for the adjudication of the suit and that therefore the suit without them was liable to

be rejected for non-joinder of necessary parties. Following this contention, the plaintiff had filed the instant application though belatedly that too when the trial was underway. Nonetheless, since the defendants had claimed that the proposed defendants were necessary parties, the Court must have exercised discretion under Order I Rule 10(2) of CPC and must have granted an opportunity to the plaintiffs to implead the proposed defendants by placing the plaintiffs on terms.

7. Similarly, the application filed by the plaintiffs to recall D.W.1 for cross-examination must have been entertained by the Trial Court by placing the plaintiffs on terms more particularly, when the plaintiffs had sought for declaratory reliefs in respect of an immovable property.

8. Likewise, the application filed by the legal representatives of plaintiff to recall the stage of the suit and permit them to lead evidence must have been allowed by placing the plaintiffs on terms so as to grant an

opportunity to the legal heirs of the plaintiff to establish their case.

9. Under the circumstances, this Court is of the opinion that an opportunity should be granted to the plaintiffs to not only implead the proposed defendants but also to recall D.W.1 for recording his evidence and also recall D.W.1 for further-cross examination. This is however subject to adjustment of cost of a sum of Rs.10,000/- deposited by the legal representatives of plaintiff before the Trial Court as per order of this Court dated 27.10.2021. Hence, the following:

ORDER

(i) The Writ Petition is ***allowed***.

(ii) The impugned orders passed by the Trial Court dated 13.11.2020 and 24.09.2021 are set aside and the application filed by the plaintiffs to implead proposed defendants 5, 6 and 7 and the application to recall D.W.1 for further cross-examination and the application to recall stage

of the suit and lead evidence of the plaintiffs (I.A.Nos.16, 20 and 21) are allowed subject to release of cost of Rs.10,000/- deposited by the plaintiffs to the defendants before the Trial Court.

(iii) Since the suit is filed in 2015, the Trial Court is requested to dispose off the suit as provided in the Karnataka (Case Flow Management in Subordinate Courts) Rules, 2005.

Sd/-
(R.NATARAJ)
JUDGE

AMM: Para Nos.1 to 6
RSP: Para Nos.7 to till the end
List No.: 1 Sl No.: 40
CT:SI