IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 14TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE R.NATARAJ

WRIT PETITION NO.202179 OF 2021 (GM-CPC)

BETWEEN:

1. MOTHILAL S/O RAMADAS LAMANI @ RATHOD,
   AGE: 54 YEARS, OCC: AGRICULTURE,

2. PANDU S/O RAMADAS LAMANI @ RATHOD,
   AGE: 52 YEARS, OCC: AGRICULTURE,

   BOTH ARE R/O ATALATTI L.T.,
   TQ. AND DIST. VIJAYAPURA-586 101.

...PETITIONERS

(BY SRI. GANESH SUBHASHCHANDRA KALBURGI, ADVOCATE)

AND:

Digitally signed by RENUKA
Location: High Court Of Karnataka

1. KASTURIBAI D/O DONGRI RATHOD @ LAMANI,
   AGE: 33 YEARS, OCC: HOUSEHOLD,

2. SANTOSH S/O DONGRI RATHOD @ LAMANI,
   AGE: 32 YEARS, OCC: HOUSEHOLD,

3. DHANNU S/O DONGRI RATHOD @ LAMANI,
   AGE: 30 YEARS, OCC: AGRICULTURE,

4. SHEKUBAI D/O DONGRI RATHOD @ LAMANI,
   AGE: 28 YEARS, OCC: HOUSEHOLD,

5. DEVABAI D/O DONGRI RATHOD @ LAMANI,
   AGE: 27 YEARS, OCC: HOUSEHOLD,

6. VIJAYLAXMI D/O GONGRI RATHOD @ LAMANI,
AGE: 22 YEARS, OCC: HOUSEHOLD,

7. DONGRI S/O SHANKAR LAMANI,
AGE: 72 YEARS,
OCC: AGRICULTURE,

8. ANASUBAI W/O DONGRI LAMANI,
AGE: 67 YEARS,
OCC: HOUSEHOLD,

9. PREMADAS S/O DONGRI LAMANI,
AGE: 34 YEARS, OCC: AGRICULTURE,

ALL ARE R/O ATALATTI L.T,
TQ. AND DIST. VIJAYAPURA-586 101.

…RESPONDENTS

(BY SRI. MAHANTESH PATIL, ADV. FOR R1 TO R6;
V/O DTD. 07.03.2022, NOTICE TO R7 TO R9 SERVICE OF NOTICE IS DISPENSED WITH)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 30.10.2021 PASSED IN I.A. NO. 11 ON IN O.S. NO. 225/2014 ON THE FILE OF THE V ADDL. CIVIL JUDGE, VIJAYAPURA, THE CERTIFIED COPY OF WHICH IS AT ANNEXURE-F.

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

(PER: HON'BLE MR. JUSTICE R.NATARAJ)

The defendant Nos.1 and 2 in O.S No.225/2014 on the file of V Addl. Civil Judge, Vijayapura, are before this Court challenging the order dated 30.10.2021 by which their application (I.A No.11) under Order XIV Rule 5 of Code of Civil Procedure, 1908, (hereinafter 'CPC, 1908') to strike off an issue was rejected.

2. The suit in O.S No.225/2014 was filed for partition and separate possession of the plaintiffs' share in the suit schedule property. The defendant Nos.1 and 2 are the purchasers of land bearing Sy No.1076/1 of Toravi Villlage measuring 5 acres. The defendant No.3 is the father, while defendant No.4 is the mother and defendant No.5 is the brother of the plaintiffs. The plaintiffs contended that the suit schedule property were all ancestral joint family property and that they were not partitioned. They claimed that the defendant No.3 had illegally sold a property bearing Sy No.1076/1 of Toravi village to the defendant No.1 and thereafter defendant No.1 had relinquished it in favour of the defendant No.2. The plaintiffs claimed that they were also entitled for a share in the

property purchased by the defendant No.1 and that the sale deed executed by the defendant No.3 in favour of defendant No.1 did not bind them. Consequently, they sought for a partition and separate possession of their 1/8th share in the property bearing Sy No.1076/1. The suit was contested by the defendant No.1, who inter-alia contended that the defendant No.3, in order to meet his family and legal necessity, had sold the suit land to him in terms of a sale deed dated 06.06.1997 for a sale consideration of Rs.65,000/- and placed him in possession of the suit schedule property. He therefore claimed that, he had acquired exclusive title and possession of the suit property and his name was entered in the revenue records. Based on these contentions, the Trial Court framed the following issues:

> *"1. Whether the Defendant No.5 entitle for the relief as sought in counter claim?*
>
> *2. Whether counter claim is barred by limitation?*
>
> *3. Whether the defendant No.1 and 2 proves that counter claim is not maintainable under law and facts of the case?"*

Later the Trial Court on its own framed an additional issue which is as follows:

> *"Whether the defendant No.1 proves that, the defendant No.3 in order to meet his family and legal necessity he has sold the suit land to him under registered sale deed dated: 06-06-1997 for valuable consideration of Rs.65,000/-?"*

3. After the evidence in the suit was concluded, the defendant Nos.1 and 2 filed an application under Order XIV Rule 5 of CPC, to strike off the additional issue No.4 on the ground that, during the course of cross examination of PW Nos.1 and 2, they had admitted that the land bearing Sy No.1076/1 was the self acquisition of the defendant No.3 and therefore the issue did not arise for consideration. The Trial Court, in terms of the impugned order, rejected the application on the ground that the plaintiffs pleaded in the plaint that the suit property was an ancestral property and the defendant No.1 had claimed that the suit property was sold by defendant No.3 to meet the legal necessities of the family. Therefore, it held that a mere admission in the course of non examination of PW1 and PW2 did not render the additional issue unnecessary. Being aggrieved by the aforesaid order, defendant Nos.1 and 2 have filed this petition.

4. Learned counsel for defendant Nos.1 and 2 submitted that once PW1 and PW2 admitted that the suit property was the self acquisition of the defendant No.3, then the question of proving that that the suit property was sold by the defendant No.3 to the defendant Nos.1 and 2 to meet the family necessities would not arise. Therefore, he contends that the Trial Court committed an error in glossing over the evidence of PW1 and PW2 and in not striking off the additional issue No.4.

5. Per contra, learned counsel for the plaintiffs contended that an issue of fact or law arises based on the pleadings of the parties. The plaintiffs claimed that the suit property was an ancestral joint family property and in response, defendant Nos.1 and 2 contented that the defendant No.3 being the Karta of the family and in order to meet the legal necessities of the family, disposed it off for valuable sale consideration. Therefore he contends that, in light of the pleadings, defendant No.1 was bound to prove that the property was sold for meeting the lawful necessities of the family. Therefore he contends that Trial Court rightly framed an additional issue as to whether the defendant No.1 proved

that the suit property was sold to meet the legal necessities of the family. He further contends that even if PW1 and PW2 admitted that the suit property was the self acquisition of the defendant No.3, the issue already framed by the court cannot be struck off, as the court is bound to answer all issues that are framed.

6. I have considered the submissions of learned counsel for the defendant Nos.1 and 2 and the learned counsel for the plaintiff.

7. As rightly contended by the learned counsel for the plaintiffs, an issue of fact or law arises when one party asserts a fact and the other party denies it. In the case on hand, the plaintiffs claim that the suit property was an ancestral joint family property. The plaintiffs also claimed that they had an undivided right, title or interest therein and that the defendant No.3 had unlawfully sold the suit property without their consent. In response to this, defendant No.1 who filed his written statement, merely denied that the suit property was the ancestral joint family of the plaintiffs and defendant Nos.3 to 5. He also contended that the plaintiffs and defendant Nos.3 to 5 have absolutely no right, title or interest over the suit schedule

property and also denied that the plaintiffs and defendant Nos.3 to 5, constituted a joint family and they were in joint possession of the suit property. It appears that the defendant No.1 did not specifically contend that the suit property was the absolute property of the defendant No.3. On the contrary, the defendant No.1 claimed that the defendant No.3 sold the suit property to meet the family legal necessity. The defendant No.3 did not contest the suit thereby giving an impression that he had admitted the averments made in the plaint.

8. The Trial Court was therefore right in framing an issue, as to whether the defendant No.1 had proved that the sale of the suit property by the defendant No.3 in his favour was to meet any lawful and family necessity. The question whether PW1 and PW2 had admitted that the suit property was the self acquisition property and therefore it affected the final outcome of the suit, could only be decided by the Trial Court at the time of disposing the suit. This does not authorize the court to strike off the issue.

9. Under the aforesaid circumstance, the Trial Court was justified in not entertaining the application filed by

defendant No.1 to strike off the issue already framed. Hence, the writ petition lacks merit and is ***dismissed.***

Sd/-
(R.NATARAJ)
JUDGE

THM
List No.: 1 Sl No.: 37
CT: AK