

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF FEBRUARY, 2015

BEFORE

THE HON'BLE MR. JUSTICE B MANOHAR

W.P.No.3798 OF 2015 (GM - CPC)

BETWEEN:

SMT D L RENUKA
W/O GURURAJA,
AGED ABOUT 53 YEARS,
R/AT NO.1287, MIG,
MAGADI ROAD HOUSING COLONY,
(MRHB), 23RD MAIN,
GOVINDARAJA NAGAR,
BANGALORE-560 079.

.. PETITIONER

(By Sri SURESH.P, ADV.)

AND

1. H HAMASAKUMARI
W/O LATE D. SUDHARSHAN,
AGED ABOUT 38 YEARS.
2. YASHASH GOWRAV
S/O LATE D. SUDHARSHAN
AGED ABOUT 12 YEARS,
MINOR.
3. DATTU SHRERAMA RAYADU
S/O LATE D. SUDHARSHAN,
AGED ABOUT 4 YEARS,
MINOR.

RESPONDENTS No.2 TO 3 ARE MINORS
REPRESENTED BY HER NEXT FRIEND
NATURAL MOTHER SMT. H. HAMSAKUMARI,
W/O D. SUDHARSHAN,
ALL ARE R/AT NO.3, 1ST CROSS,
SREE VEERABHADRA KRUPA,
SARASWATHIPURAM,
BEHIND NATIONAL HOTEL,
BANGALORE ROAD,
CHITRADURGA-577 5013.

4. SMT. LAXAMAMMA
W/O LATE DR. DASAPPA,
AGED ABOUT 52 YEARS,
R/O KORLA KUNTE VILLAGE,
PARASHURAMPURA HOBLI,
CHELLAKERE TALUK
PIN: 577 503.
5. LATHA
D/O LATE D.L.C. KUMAR
AGED ABOUT 43 YEARS,
R/O PARASURAMAPURA,
INDIRA CLINIC,
BHAVANI TEXTILE BUILDING,
CHELLAKERE (T),
CHITRADURGA DISTRICT.
PIN: 577 503.
6. GANGA
D/O LATE D.L.C. KUMAR
AGED ABOUT 21 YEARS,
R/O PARASURAMAPURA,
INDIRA CLINIC,
BHAVANI TEXTILE BUILDING,
CHELLAKERE(T),
CHITRADURGA DISTRICT.
PIN-577 503.

7. D.L. ANUSUYA
W/O K.B. RAVI @ K.B. RAYAN,
AGED ABOUT 55 LYERS,
R/O PARASURAMAPURA,
INDIRA CLINIC,
BHAVANI TEXTILE BUILDING,
CHELLAKERE(T),
CHITRADURGA DISTRICT.
PIN-577 503.
8. D.L. RENUKA
W/O GURURAJA,
AGED ABOUT 52 YEARS,
R/O PARASURAMAPURA,
INDIRA CLINIC,
BHAVANI TEXTILE BUILDING
CHELLAKERE (T),
CHITRADURGA DISTRICT.
PIN-577 503.
9. D.L. NATARAJ
S/O LATE DR.DASAPPA,
AGED ABOUT 40 YEARS,
R/O PARASURAMAPURA,
INDIRA CLINIC,
BHAVANI TEXTILE BUILDING,
CHELLAKERE (T),
CHITRADURGA DISTRICT.
PIN-577 503.
10. D.L. REKHA
W/O RAGHUNATHA
D/O DASAPPA
AGED 53 YEARS
LECTURER
R/O NO.1287 MRHB COLONY,
MAGADI MAIN ROAD
BANGALORE-560 079. .. RESPONDENTS

THIS W.P IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS IN O.S.NO.17/2013 ON THE FILE OF THE HON'BLE CIVIL JUDGE (SR.DIVN) CHELLAKERE AND QUASH THE IMPUGNED ORDER AT ANNEX-A i.e. ORDERS ON I.A.NO.V, DTD.3.1.2015 IN O.S.NO.17/2013 ON THE FILE OF THE HON'BLE CIVIL JUDGE (SR.DIVN), CHELLAKERE AND ALLOW THE W.P.

THIS W.P. COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Heard the learned Advocate appearing for the petitioner.

2. Petitioner is the 5th defendant in OS No.17/2013 on the file of the Senior Civil Judge and JMFC, Challakere. Being aggrieved by the order dated 3.1.2015 dismissing I.A.5 filed under 16 Rule 6 of CPC requesting to summon the records from the Manager, Pragathi Gramina Bank of Parashurampura, the petitioner has filed this writ petition.

3. Respondents No.1 to 3 filed the suit seeking for partition and separate possession of their 1/7th share in the suit schedule properties. They claimed

that the suit schedule properties are the joint family properties. The defendants filed written statement. Petitioner is the 5th defendant in the suit. He filed written statement contending that item No.7 property is her self acquired property. She is a doctor by profession. Since she purchased the said property from and out of her own earnings, the other members have no right whatsoever in respect of item No.7 property. On the basis of pleadings of the parties, the Trial Court framed necessary issues. The parties went for trial. When the case was posted for defendants' evidence, petitioner filed I.A.No.5 under Order 16 Rule 6 of CPC requesting the Court to call for records from the Manager, Pragathi Gramina Bank of Parashurampura contending that she availed the loan and put up construction by mortgaging the original documents. In order to prove her case, she wanted to produce original documents showing that item No.7 property stands in her name. The plaintiff and other defendants filed objections to I.A.No.5.

4. The Trial Court after considering the matter in detail found that plaintiffs filed the suit for partition in the family properties including item No.7. There is no dispute that item No.7 property stands in the name of petitioner herein. The specific contention is that item No.7 property was purchased from the nucleus of joint family fund. Hence, the said property has to be included in the suit schedule properties. Even though the property is mortgaged to the Bank for the purpose of construction of building, it continues to be the joint family property. The other members are entitled for share in item No.7 property. It is for the 5th defendant to prove her case that item No.7 property is her self acquired property and not available for partition. Hence, the document pertaining to item No.7 property mortgaged to the Pragathi Gramina Bank is not required.

5. The Trial Court further found that there is dispute regarding the ownership of item No.7 property concerned. The said property stands in the name of the

petitioner herein. The said property was mortgaged to the Bank for the purpose of availing loan and constructing a building. Hence, the said original sale deed is not necessary. It is for the petitioner to prove that she purchased item No.7 property out of her self-earnings and therefore the document is not necessary. The document sought for by the petitioner is a public document. She can obtain certified copy and produce the same. Hence the Trial Court dismissed I.A.No.5 on that ground. I find that there is no infirmity or irregularity in the reason assigned by the Trial Court rejecting I.A.No.5. It is for the petitioner to prove that item No.7 property was purchased out of her self earnings and by mortgaging the documents for availing loan to construct the said building. The petitioner can very well obtain certified copies of documents since the same are public documents. The Trial Court also permitted her to produce certified copies of the documents pertaining to item No.7 property is concerned. I find that there is no infirmity or

irregularity in the order impugned. Accordingly, I pass the following:

ORDER

The writ petition stands dismissed.

Sd/-
JUDGE

Bkm.