



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE DR. JUSTICE H.B.PRABHAKARA SASTRY

WRIT PETITION NO. 10238 OF 2020 (GM-CPC)

BETWEEN:

M/S Walwhan Renewable Energy Limited
(Formerly Known As Welspun Renewable Energy
Pvt.Ltd)
Represented by its Authorized Dignitary,

Mrs.Shiva Prasad Karmakar,
S/o. Priya Lal Karmakar,
Aged About 57 Years,
Station Head,
Resident Of Bedareddy Halli Village,
Challakere Taluk-577522,
Chitradurga District.

...Petitioner

(By Sri. B.M. Siddappa, Advocate)



And:

1. Smt. Thimmamma
W/O Late.Narayana Reddcy,
Aged About 72 Years,
Bedareddy Hally Village,
Talaku Hobli, Challakere-577522,
Chitradurga District.
2. Smt.Jayamma
W/O Late G.Shriram Reddy,
Aged About 72 Years,



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3. G.S.Prakash
S/O Late G.Shriram Reddy,
Aged About 52 Years,
4. G.S.Shailaja
D/O Late G.Shriram Reddy,
Aged About 57 Years,

5. G.S.Shobha
D/O Late G.Shriram Reddy,
Aged About 49 Years,

Defendant No.2 to 5 are
R/O No.172, 11th Main, 3rd Cross,
Saraswathipuram,
Mysore-570009.

6. G.Veeranna
S/O Late G.Thimmappa,
Aged About 82 Years,
City Club Road,
Chitradurga-577501.
7. Talakere Veeranna
S/O Late Doddeerappa,
Aged About 72 Years,
Agriculturist.

8. Talakere Thimmaiah
S/O Late Doddeerappa,
Aged About 67 Years,
Agriculturist,

Defendant No.7 & 8
R/O Banjigere Village,
Talak Hobli,
Challakere Taluk-577522,
Chitradurga District.

9. Thimmareddy
S/O Late Dasanna,



Aged About 67 Years,

10. D.Govinda Reddy
S/O Late Dasanna,
Aged About 65 Years,
11. G.Manjunatha
S/O Late Dasanna,
Aged About 62 Years,
12. B.Chidananda Reddy
S/O Late Dasanna,
Aged About 57 Years,
13. Neelakanta Reddy
S/O Late Dasanna,
Aged About 57 Years,
14. Rudramma
W/O Late Kodanda Reddy,
Aged About 62 Years,
15. Manjula
W/O Late Thimma Reddy,
Aged About 57 Years,
16. Krishna Reddy
S/O Govindappa,
Aged About 55 Years,
17. Rukmangada Reddy
S/O Govindappa,
Aged About 52 Years,

Respondents 9 to 17 are
Agriculturist,
R/O Bedareddy Hally,
Talakur Hobli,
Challakere Taluk-577522,
Chitradurga District.



18. Smt.Lakshmidevi
W/O K.B.Narasimhareddy,
Aged About 59 Years,
Muradi Village,
Rayadurga Taluk-515865,
Ananthapur District.

19. Smt.Thimmamma
W/O K.B.Narasimhareddy,
Aged About 57 Years,
Gollalingavanahally,
Sonduru Taluk-583119,
Chitradurga District.

...Respondents

(By Sri. D.R. Rajashekharappa, Advocate for R-1;
R-2 to R-19 - notice dispensed with v/o dt.05-07-2021)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to (a) issue writ of certiorari, or any other writ or order or direction, in the nature of writ quashing order passed by the learned Senior Civil Judge and JMFC, Challakere in FDP No.9/2015 on I.A.No.12 dated 17-01-2020 produced as Annexure D to the writ petition; (b) cost and such other reliefs deems fit to grant under the circumstances of the case in the interest of justice and equity.

This Writ Petition coming on for Preliminary Hearing in 'B' Group, through Physical Hearing/Video Conferencing, this day, the Court made the following:

ORDER

The present petitioner - Company was an applicant in I.A.No.12, filed under Order I Rule 10(2) of the Code of



Civil Procedure, 1908 (hereinafter for brevity referred to as "the CPC") in F.D.P.No.9/2015, in the Court of the Senior Civil Judge and Judicial Magistrate First Class, Challakere (hereinafter for brevity referred to as "the Trial Court"). Under the impugned order dated 17-01-2020, the said application came to be rejected. Aggrieved by the same, the applicant in the Trial Court has filed this writ petition.

2. Heard the argument from both side. Perused the entire material placed before the Court.

3. The present respondent No.1 has initiated an F.D.P.No.9/2015 in O.S.No.2/2013 that was filed by her for partition and separate possession against the respondents therein. Few months prior to the respondent No.1 filing F.D.P.No.9/2015, the respondents No.7 and 8 herein filed an appeal in R.F.A.No.825/2015, challenging the judgment and decree passed by the Trial Court in O.S.No.2/2013. Subsequent to the respondent No.1 filing F.D.P.No.9/2015, i.e. during the pendency of the



proceedings in F.D.P.No.9/2015, a registered agreement of sale is said to have been executed by the respondents No.7 and 8 herein in favour of the present petitioner - Company, with respect to the suit schedule property at item No.2.

4. It is further the contention of the petitioner - Company that, on the date 30-06-2016, respondents No.7 and 8 executed a Sale Deed also in respect of the suit schedule property at item No.2 in favour of the present petitioner - Company.

5. However, the vendors of the property i.e. respondents No.7 and 8 herein contended that the said Sale Deed came to be cancelled under a registered Cancellation Deed dated 08-08-2016. Similarly, the General Power of Attorney (GPA) said to have been executed in favour of the petitioner - Company by them also came to be cancelled.

6. In the above background, in the FDP, the alleged purchaser (petitioner herein) of the property from



respondents 7 and 8 filed an application under Order I Rule 10 (2) of the CPC, seeking its impleadment as respondent No.19 in the F.D.P. No.9/2015. The same was opposed by the petitioner therein. After hearing both side, the Trial Court rejected the said application.

7. Learned counsel for the petitioner (applicant in I.A.No.12 in the Trial Court) in his brief argument submitted that, the present petitioner is the purchaser of one of the items of the suit schedule properties from respondents No.6 and 7 therein (respondents No.7 and 8 herein), who were the judgment debtors. Therefore, in the interest of equity and to submit to the Trial Court that the share that is going to be allotted to the respondents No. 6 and 7 therein be that particular item which was sold to it, the applicant - Company has filed an application seeking its impleadment under Order I Rule 10 (2) of the CPC, as such, the same deserves to be allowed.

8. Per contra, the learned counsel for the respondent No.1 in his argument submitted that, the



alleged Sale Deed in favour of the present petitioner - Company has stood cancelled under a registered Cancellation Deed dated 08-08-2016. Further, even according to the petitioner/applicant, the alleged transaction has taken place during the pendency of O.S.No.2/2013, as such, by virtue of Section 52 of the Transfer of Property Act, 1882, it is a transaction *pendente lite*, as such, would be bound by the outcome of the suit. Therefore, the applicant - Company, which claims itself to be the purchaser of the property is not a necessary party, as such, its application was rightly rejected by the Trial Court.

9. A perusal of the interlocutory application - I.A.No.12 filed by the present petitioner as an applicant in the Trial Court and the argument of the learned counsel for the petitioner - Company would go to show that, the applicant claims its impleadment as respondent No.19 in the FDP proceedings, only on the contention that the respondents No.7 and 8 herein had executed a registered



agreement of sale in its favour on the date 09-12-2015 and that thereafter, a Sale Deed also came to be executed in its favour on the date 30-06-2016, as such, it (petitioner) being a *bona fide* purchaser of the property, must be given an opportunity to participate in the FDP proceedings.

10. The respondent No.1 herein (petitioner therein) opposing the application filed by the petitioner-Company in the Trial Court, under Order I Rule 10(2) of the CPC, vehemently denied the alleged execution of agreement of sale as well the Sale Deed by respondents No.7 and 8 in favour of the applicant - Company (petitioner herein). The respondent No.1 further contended that the respondents No.7 and 8 had no manner of right to enter into any kind of agreement. Furthermore, the respondent No.1 contended that the alleged agreement to sell and the power of attorney dated 09-12-2015 have been cancelled under a registered Cancellation Deed dated 08-08-2016 and thus no necessity arises or any circumstance is called



for the impleadment of the applicant - Company as respondent No.19 in the FDP proceedings.

11. From a perusal of the record, it does not show that the respondents No.7 and 8 herein have anywhere stated that the alleged agreement of sale, the alleged General Power of Attorney and the alleged subsequent Sale Deed dated 30-06-2016 were all executed by them in favour of the applicant - Company. On the other hand, it is the contention of the respondent No.1 before the FDP Court that, any such alleged existence of those documents has come to an end by virtue of a registered Cancellation Deed dated 08-08-2016.

12. Under the said circumstance, when a document, which according to the applicant Company, gives it a right to claim its alleged interest in the property itself is said to have been cancelled and said to be not in existence by virtue of the subsequent registered Cancellation Deed, then it would be first required of the alleged purchaser of the property to get the said Cancellation Deed ineffective



as against it i.e. not binding upon it and to ascertain its right over the property.

13. When no such steps are shown to have been taken by petitioner-Company, merely its application involving itself in the FDP proceedings between the petitioner -Company and the respondents therein alleging the alleged agreement dated 09-12-2015 with respondents No.7 and 8 would not give it any *locus standi* to seek its impleadment in the matter nor does it become a proper and necessary party to be impleaded as one of the respondents in the matter. If at all its intention is to seek equity regarding allotment of that particular portion of the property to respondents No.7 and 8, who, according to it, are its vendors, then, such a submission can also be made by those alleged vendors themselves, for which, the presence of the present petitioner as respondent No.19 in FDP No.9/2015 is not warranted.

14. Since the Trial Court also, after coming to an opinion that, the applicant before it i.e. the present



petitioner -Company was not a necessary party, has proceeded to reject its interlocutory application -I.A.No.12 filed under Order I Rule 10(2) of the CPC, I find no error warranting any interference in it.

Accordingly, I proceed to pass the following:

ORDER

The writ petition filed by the applicant-Company stands ***dismissed*** as devoid of merit.

**Sd/-
JUDGE**

BMV*
List No.: 1 Sl No.: 54