

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF NOVEMBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE R. NATARAJ

CIVIL REVISION PETITION NO.243 OF 2021 (IO)

BETWEEN:

SMT. CHALUVAMMA
W/O. SRI.KEMPEGOWDA,
AGED ABOUT 69 YEARS
RESIDING AT SABANKUPPE VILLAGE,
K SHETTY HALLI HOBLI,
SRIRANGAPPTNA TALUK,
MANDYA DISTRICT 571807.
REPRESENTED BY HER GPA
HOLDER S K MANJESHA
S/O SRI. KEMPEGOWDA

... PETITIONER

(BY SRI. M.KUMARA SWAMY, ADVOCATE)

AND:

- 1 . SMT. MANASA
D/O. SRI. KEMPEGOWDA,
AGED ABOUT 37 YEARS,
RESIDING AT SAMBAVANAHALLI VILLAGE,
KASABA HOBLI,
PANDAVAPURA TALUK 571 431
- 2 . SRI. DEEP DARSHAN
D/O. SRI. KEMPEGOWDA,
AGED ABOUT 35 YEARS,
RESIDING AT SAMBAVANAHALLI VILLAGE,
KASABA HOBLI,
PANDAVAPURA TALUK 571 431

- 3 . SRI. BETTEGOWDA
S/O. SMT. MARIYAMMA,
AGED ABOUT 74 YEARS
- 4 . SRI. HANUMANTHEGOWDA,
S/O. SMT. MARIYAMMA,
AGED ABOUT 72 YEARS,
- 5 . SMT. BHAGYAMMA
W/O. SRI. RAMEGOWDA,
AGED ABOUT 65 YEARS,
RESIDING AT RAGHURAMAPURA VILLAGE,
CHEENYA POST,
HONAKERE HOBLI,
NAGAMANGALA TALUK 571431
- 6 . SMT. SHANTHAMMA
W/O. SRI. C PUTTASWAMY,
AGED ABOUT 64 YEARS,
RESIDING AT KENNALUGRAMA VILLAGE,
KASABA HOBLI,
PANDAVAPURA TALUK 571 435
- 7 . SRI. SRINIVAS
S/O. SRI. NINGEGOWDA,
AGED ABOUT 59 YEARS,

RESPONDENT NOS.3, 4 AND 7 ARE
RESIDING AT VASABELENAHALLI GRAMA,
K SHETTY HOBLI,
SRIRANGAPATNA TALUK,
MANDYA DISTRICT 571807
- 8 . SRI. KEMPEGOWDA
S/O. SMT.SANNAPUTTAMMA AND GOWDEGOWDA,
AGED ABOUT 53 YEARS
RESIDING AT SAMBAVANAHALLI VILLAGE,
KASABA HOBLI,
PANDAVAPURA TALUK 571 435

... RESPONDENTS

(BY SRI.N.MARIGOWDA, ADVOCATE (ABSENT))

THIS CIVIL REVISION PETITION IS FILED UNDER SECTION 115 OF THE CPC, AGAINST THE ORDER DATED 05.03.2021 PASSED ON I.A.XII IN O.S.NO.254/2008 ON THE FILE OF THE ADDITIONAL CIVIL JUDGE AND JMFC, PANDAVAPURA, DISMISSING THE I.A.NO.XII FILED UNDER ORDER VII RULE 11(D) R/W SEC.151 OF CPC FOR REJECTION OF PLAINT.

THIS CIVIL REVISION PETITION COMING ON FOR **ORDERS**, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This Revision Petition is filed challenging the order dated 05.03.2021 passed by the Additional Civil Judge and JMFC, Pandavapura (henceforth referred to as 'trial Court') in O.S.No.254/2008, by which the trial Court rejected an application filed by the defendant No.1 under Order VII Rule 11(d) read with Section 151 of Civil Procedure Code.

2. The parties shall henceforth be referred to as they were arrayed before the Trial Court.

3. The suit in O.S.No.254/2008 was filed for partition and separate possession of the share of the plaintiff in the suit schedule properties.

4. The defendants filed their written statement and contested the suit. After evidence was recorded and

the case was listed for arguments, an application under Order VII Rule 11(d) read with Section 151 of Civil Procedure Code, 1908 by defendant No.1 was filed to reject the plaint, on the ground that the relief in the suit was barred under Order XXIII Rule 3-A of the Code of Civil Procedure, 1908. It is contended that an earlier suit was filed by the father of the plaintiff in O.S.No.103/2007, which was settled between the parties and as the plaintiff had sought for declaration that the decree in O.S.No.103/2007 did not bind her interest, it was contended that the present suit was not maintainable in view of the express bar against filing fresh suit to challenge a compromise decree.

5. The Trial Court rejected the application on the ground that the plaintiffs did not seek for setting aside the compromise decree in O.S.No.103/2007 but sought for a declaration that the said decree did not bind the plaintiffs.

6. It is not in dispute that the plaintiffs in O.S.No.254/2008 were not parties to the compromise decree in O.S.No.103/2007. The plaintiff No.1 claims to be

the daughter and a co-parcener who is interested in the suit properties. If that be so, the compromise decree in O.S.No.103/2007 definitely does not bind the right, title and interest of the plaintiffs in the present suit. The trial Court has considered the same and has rightly rejected the application. There is no merit in this writ petition and the same is ***rejected***.

7. It is seen that the defendant No.1 has attempted to prolong the proceedings in the suit by filing the present application when the suit had rolled from the year 2008 till 2019. Hence, the defendant No.1 is liable to be penalized for interfering in the course of justice. Hence, the petitioner shall pay cost of Rs.5,000/- to the plaintiffs before the trial Court on the date of hearing.

Office is directed to intimate the order passed by this Court to the trial Court forthwith.

**Sd/-
JUDGE**

NBM