

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU****DATED THIS THE 13TH DAY OF FEBRUARY, 2024****BEFORE****THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR****WRIT PETITION NO. 18234 OF 2023 (GM-CPC)****BETWEEN:**

ROOPASHREE @ SARITHA
W/O H S SHANMUKH
AGED ABOUT 45 YEARS,
AGRICULTURIST
R/O HUCCHAVANAHALLI,
KASABA HOBLI, HIRIYUR TALUK,
CHITRADURGA DISTRICT

...PETITIONER

(BY SRI. REVANNA BELLARY.,ADVOCATE)

AND:

SRI KARTHIK H S
S/O H S SHANMUKHA,
AGED ABOUT 31 YEARS,
NO OCCUPATION
R/O HUCCHAVVANAHALLI VILLAGE,
HIRIYUR TALUK – 577 508.

...RESPONDENT

(BY SRI. C BABU.,ADVOCATE)



THIS W.P IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DTD 01.08.2023 PASSED ON IA-5 U/O 1 RULE 10(2) OF CPC IN G AND WC 34/2022 OF SR CIVIL JUDGE AND JMFC COURT HIRIYUR AT ANNEX-E AND PRAYS FOR DISMISS THE IA-5 U/O 1 RULE 10(2) OF CPC IN G AND WC 34/2022 OF SR CIVIL JDUGE AND JMFC COURT HIRIYUR AT ANNEXURE-B.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:



ORDER

This petition by the petitioner in G & WC No.34/2022 is directed against the impugned order dated 01.08.2023 passed by the Senior Civil Judge and JMFC, Hiriyr,, whereby the application I.A.5 filed by the respondent seeking impleadment in the said proceedings was allowed by the trial court.

2. Heard learned counsel for the petitioner as well as the learned counsel for the respondent and perused the material on record.

3. A perusal of the material on record will indicate that the petitioner is the mother of one Inchara whose property bearing Sy.No.3/5 measuring 2 acres 38 guntas of Hucchavanahalli village, Kasaba Hobli, Hiriyr taluk, Chitradurga district, was sought to be alienated by initiating proceedings under the Guardians and Wards Act. During the pendency of the said proceedings, the respondent herein sought impleadment on the ground that he was the grand son and legal heir of Smt.Muddamma, who is said to have executed Will in his favour and entitled to be impleaded as respondent to the G & WC proceedings. The said application having been opposed by the petitioner, the trial court proceeded to



pass the impugned order allowing I.A.No.5, aggrieved by which, the petitioner is before this Court by way of the present petition.

4. A perusal of the impugned order will indicate that the trial court has failed to consider and appreciate the limited scope and ambit of proceedings under the Guardians and Wards Act that impleadment of persons claiming rival title / possession over the subject matter of the G & WC proceedings is impermissible in law, since the same would enlarge the scope of G & WC proceedings. Under these circumstances, I am of the view that the impugned order passed by the trial court allowing I.A.5 deserves to be set aside and the application is liable to be dismissed.

5. At this stage, learned counsel for the respondent submits that in addition to the aforesaid G & WC No.34/2022 filed by the petitioner, the respondent along with his brother Rama have instituted one more suit against the husband of petitioner Sri.Shanmukha and Inchara daughter of the petitioner herein in O.S.No.51/2024 for partition and separate possession of their alleged share in the suit schedule property. It is submitted that in the said suit, the subject matter of G & WC No.34/2022 is including as Item No.3 of the plaint schedule property; it is submitted that the



said suit which is pending before the Prl.Civil Judge and JMFC, Hiriya, may be withdrawn from the said court and transferred to the Senior Civil Judge and JMFC, Hiriya to be clubbed, consolidated, tried and disposed of along with G & WC No.34/2022 pending before the trial court. The said submission is placed on record.

6. I find considerable force in the submission made by the learned counsel for respondent that both O.S.No.51/2024 and G & WC No.34/2022 should be clubbed, consolidated, tried and disposed of together, particularly when Item No.3 of the plaint schedule property in O.S.No.51/2024 is also the subject matter of G & WC No.34/2022 and the petitioner and respondent herein are both parties to O.S.No.51/2024. Under these circumstances, in addition to allowing the present petition by setting aside the impugned order, I deem it just and appropriate to exercise my powers under Section 227 of the Constitution of India r/w Section 24 of CPC and issue certain directions for disposal of both the proceedings.



7. In the result, I pass the following:-

ORDER

(i) Petition is hereby allowed.

(ii) The impugned order dated 01.08.2023 passed on I.A.No.5 in G & WC No.34/2022 by the trial court is hereby set aside.

(iii) I.A.5 filed by the respondent is hereby dismissed.

(iv) O.S.No.51/2024 which is currently pending on the file of Civil Judge and JMFC, Hiriya, is directed to be withdrawn from the said Court and transferred to the court of Senior Civil Judge and JMFC, Hiriya, to be clubbed, consolidated, tried and disposed of along with G & WC No.34/2022.

(v) All rival contentions on all aspects of the matter are kept open and no opinion is expressed on the same.

**SD/-
JUDGE**

Srl.