

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU****DATED THIS THE 8<sup>TH</sup> DAY OF DECEMBER, 2023****BEFORE****THE HON'BLE MR JUSTICE S.G.PANDIT****WRIT PETITION NO. 27285 OF 2023 (GM-CPC)****BETWEEN:**

SRI. S. N. ASHWATH REDDY,  
S/O NARAYANAPPA,  
AGED ABOUT 68 YEARS,  
R/A SINGANAYAKANAHALLI VILLAGE,  
YELAHANKA HOBLI,  
BENGALURU NORTH TALUK,  
BANGALORE - 560 064.

...PETITIONER

(BY SRI. RAGHAVENDRA A V., ADVOCATE)

**AND:**

1. SMT. JAYAMMA N,  
W/O LATE RAMAKRISHNAPPA,  
AGED ABOUT 50 YEARS,
2. SRI. RAGHUNATHA REDDY,  
S/O LATE RAMAKRISHNAPPA,  
AGED ABOUT 40 YEARS,
3. SMT. R. LATHA,  
D/O LATE RAMAKRISHNAPPA,  
AGED ABOUT 37 YEARS,
4. SMT. VINODA,  
D/O LATE RAMAKRISHNAPPA,  
AGED ABOUT 35 YEARS,
5. SRI. R. MOHAN,  
S/O LATE RAMAKRISHNAPPA,





AGED ABOUT 50 YEARS,  
RESPONDENT NO.1 TO 5  
ARE R/AT NO.401,  
12<sup>TH</sup> 'A' MAIN, 8<sup>TH</sup> 'A' CROSS,  
'A' SECTOR YELAHANKA NEW TOWN,  
BANGALORE - 560 064.

6. SMT. SARASWATHI,  
W/O GOPALA REDDY,  
AGED ABOUT 60 YEARS,  
R/A THUBARAHALLI VILLAGE,  
VARTHUR HOBLI,  
BANGALORE SOUTH TALUK - 560 034.
7. SMT. SUSHEELA,  
W/O JAISHANKAR REDDY,  
AGED ABOUT 58 YEARS,  
R/AT LEPAKSHI MANDAL,  
NAYANAPALLI, HINDUPUR TALUK,  
DHARMAVARAM DISTRICT,  
ANDHRA PRADESH - 544 344.
8. SMT. LEELAVATHI,  
W/O SRI. JAYARAMA REDDY,  
AGED ABOUT 54 YEARS,  
R/A S.O.S. POST,  
RAMAIAH GARDEN,  
HULIMAVU, BEGUR HOBLI,  
BANGALORE SOUTH TALUK,  
BANGALORE - 560 078.

...RESPONDENTS

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE ORDER DATED 23.11.23 PASSED BY THE XI ADDL. CITY CIVIL JUDGE, BANGALORE, (CCH 8) IN O.S. NO.3948/15 IN IA NO. 16 AT ANNEXURE - E TO THE WP AND ALLOW THE APPLICATIONS FILED BY THE PETITIONERS/PLAINTIFF AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:



### **ORDER**

The petitioner, plaintiff in O.S.No.3948/2015 on the file of the XI Additional City Civil and Sessions Judge, Bengaluru City, is before this Court questioning the order dated 23.11.2023, rejecting I.A.No.16 filed under Order 16 Rule 1(2) of the Code of Civil Procedure, 1908 (for short 'CPC') to summon witnesses stated therein.

2. Heard Sri. A.V.Raghavendra, learned counsel for the petitioner and perused the writ petition papers.

3. Learned counsel for the petitioner would submit that the suit of the petitioner is one for partition and separate possession. During the course of trial, the petitioner-plaintiff filed I.A.No.16 under Order 16 Rule 1(2) of CPC, praying to summon the witnesses stated therein and to issue witness summons. Learned counsel would further submit that the petitioner-plaintiff requested the Court to issue witness summons to defendant No.2 and counsel who is appearing for defendant Nos.1 to 5. The trial Court under impugned order rejected the



said application. Learned counsel for the petitioner would submit that the trial Court committed an error in rejecting the said application and would further submit that summoning said witnesses before the Court would be absolutely necessary. Learned counsel for the petitioner would submit that counsel name stated in the application had acted on behalf of defendant No.2. Hence, it would be necessary to call the said counsel as one of the witness.

4. On hearing the learned counsel for the petitioner and on perusal of the writ petition papers, I am of the view that the trial Court rightly rejected the application-I.A.No.16 filed by the petitioner-plaintiff under Order 16 Rule 1(2) of CPC. In the affidavit accompanying the application, the purpose for which the witnesses to be summoned is not forthcoming. Moreover, when the plaintiff intends to summon any one of the defendant as his witness, the plaintiff shall have to make out exceptional ground under which he intends to summon one of the defendant as witness. Moreover, learned



counsel who has acted on behalf of the parties cannot be summoned for mere asking. The party shall have to make out exceptional circumstances for summoning the Advocate. The application filed by the petitioner-plaintiff is frivolous.

5. There is no merit in the writ petition. Accordingly, writ petition is dismissed with cost of Rs.10,000/- payable to the Legal Services Authority. On producing the receipt for having paid cost, the trial Court shall proceed further.

**Sd/-  
JUDGE**

SMJ  
List No.: 1 SI No.: 44