

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18th DAY OF JANUARY 2010

BEFORE:

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

WRIT PETITION No.34406 OF 2009 (GM-CPC)

BETWEEN:

1. Smt.Latha,
Wife of Chandra Shekar,
Daughter of C.Nagaraj,
Aged 33 years, Hindu,
Residing at No.511,
6th Main Road,
BEML Layout, 4th Stage,
Raja Rajeshwarinagar,
Bangalore-560 085.
2. Smt.Asha,
Wife of Sri.Santhosh,
Daughter of C.Nagaraj,
Aged 32 years, Hindu,
Residing at No.61/1, 2nd Cross,
Jayalakshmi Puram,
Mysore-570 012.

...PETITIONERS

(By Shri.M.Rama Krishna, Advocate)

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AND:

1. Sri.C.Nagaraj,
Son of Late D.R.Chennarudraiah,
Aged 57 years, Hindu,
Residing at No.12,
Upper Pine Line,
Kumara Park West,
Bangalore-560 020.
 2. Smt.N.Suma,
Daughter of C.Nagaraj,
Aged 25 years, Hindu,
Residing at No.12,
Upper Pine Line,
Kumara Park West,
Bangalore-560 020.
 3. Sri.Ravi.N.Tino,
Son of C.Nagaraj,
Aged 24 years, Hindu,
Residing at No.12,
Upper Pine Line,
Kumara Park West,
Bangalore-560 020.
 4. State Bank of Mysore,
Represented by its General Manager,
C & I Division,
Bangalore Branch,
Kempe Gowda Road,
Bangalore-560 009.
- ... RESPONDENTS

(By Shri.N.Suryaprakash, Advocate for Respondent 4)

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This Writ Petition is filed under Articles 226 and 227 of the Constitution of India praying to quash and set aside the order dated: 20.10.09 passed by the court of 38th Additional City Civil Judge, at Bangalore (CCH-39) in O.S.No.955/05, marked as Annexure-C, on its file and etc.,

This Writ Petition coming on for preliminary hearing in 'B' group this day, the Court made the following: -

ORDER

The petitioner is the plaintiff before the trial court. The suit was for partition and separate possession. Incidentally, the plaintiff has also sought for a declaration that a debt created by defendant No.1 in favour of defendant No.4 shall not be binding on the plaintiff to the extent of his share. This, in effect, is a declaration as to the liability which defendant No.1 has created with defendant No.4. This is an issue that would have to be adjudicated. If the plaintiff should succeed, to that extent, defendant No.4 would not be able to lay claim against the plaintiff for any relief. The trial court has rightly held that the relief of

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declaration against the fourth defendant would attract court fees.
There is no infirmity in the opinion of the Trial Court.

2. The counsel for the petitioner would emphasize that in a suit for partition there are incidental reliefs which are claimed as being consequential to the main relief of partition that may be granted. And would contend that this is one such suit where an incidental relief is claimed against the fourth defendant and it is only in the nature of an ancillary relief which would not attract court fees. Such an argument is attractive, but is not tenable. Hence, the petition is rejected.

Sd/-
Judge

nv