

IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH

DATED THIS THE 12<sup>TH</sup> DAY OF MARCH 2020

BEFORE

THE HON'BLE MR. JUSTICE B.M. SHYAM PRASAD

WRIT PETITION NO.138907 OF 2020 (GM-CPC)

BETWEEN

NISSAR S/O. JAFARSAB  
@ MOHAMMED JAFAR  
KILLEDAR @ MULLA,  
AGE ABOUT 60 YEARS,  
OCC: BUSINESS,  
R/O: MIG-35, NAVANAGAR,  
HUBBALLI – 580025.

... PETITIONER

(BY SRI. M. R. MULLA, ADVOCATE)

AND

1. FARUKH S/O. JAFARSAB  
@ MOHAMMED KILLEDAR @ MULLA,  
AGE ABOUT 58 YEARS,  
OCC: AGRICULTURE AND BUSINESS,  
R/O: ROTSON APARTMENT,  
NEAR K. C. PARK,  
DHARWAD - 580001
2. SMT. ZARINA W/O. K. QUADRI,  
AGE ABOUT 62 YEARS,  
OCC: MEDICAL PRACTITIONER,  
R/O: 14/A, SEERET NAGAR,  
CIVIL LINES, HUTAGI ROAD,  
SOLAPUR-413005  
STATE OF MAHARASHTRA
3. SMT. SHIRIN

W/O. JAFARSAB KILLEDAR  
AGE ABOUT 55 YEARS,  
OCC: TEACHER,  
R/O: ROTARY ENGLISH MEDIUM SCHOOL,  
NAVANAGAR, HUBBALLI,  
DISTRICT: DHARWAD - 580025

4. SMT. SULTANA A. SHAIKH  
AGE ABOUT 54 YEARS,  
OCC: HOUSEHOLD WORK,  
R/O 261, 5<sup>TH</sup> CROSS,  
KHB COLONY, KORAMANAGALA,  
BENGALURU-560095
5. SMT. NAAZ N. NARAGUND  
AGE ABOUT 51 YEARS,  
OCC: HOUSEHOLD WORK,  
R/O: G-3, KAKODA RESIDENTIAL BUILDING,  
CURCHOREM, GOA-403706
6. SMT. NASEEMA Z. HOSAMANI  
AGE ABOUT 42 YEARS,  
OCC: HOUSEHOLD WORK,  
R/O: NEAR SHABRI NAGAR,  
KUSUGAL ROAD,  
KESHWAPUR, HUBBALLI,  
DISTRICT DHARWAD - 580025
7. SMT. NADEEM Z. KHAZI  
AGE ABOUT 45 YEARS,  
OCC: HOUSEHOLD WORK,  
R/O: SHAGUTHI BUILDING,  
2<sup>ND</sup> CROSS, A-BLOCK,  
BASAVESHWAR NAGAR,  
HAVERI - 581110.
8. SMT. SAVITHA  
W/O. NARESH PATEL  
AGE ABOUT 46 YEARS,  
OCC: HOUSEHOLD WORK,  
R/O: KILLEDAR COMPLEX,  
VIJAY ROAD, DHARWAD-01

9. SMT. VIMALA  
W/O. KHIMJI PATEL,  
AGE ABOUT 44 YEARS,  
OCC: HOUSEHOLD WORK,  
R/O: KILLEDAR COMPLEX,  
VIJAY ROAD, DHARWAD-01
10. SMT. GOURI  
W/O. JETULAL PATEL,  
AGE ABOUT 42 YEARS,  
OCC: HOUSEHOLD WORK,  
R/O: KILLEDAR COMPLEX,  
VIJAY ROAD, DHARWAD-01
11. SMT. JAYA  
W/O. PURUSHOTTAM PATEL,  
AGE ABOUT 40 YEARS,  
OCC: HOUSEHOLD WORK,  
R/O: KILLEDAR COMPLEX,  
VIJAY ROAD, DHARWAD-01
12. SMT. FHARJANA  
W/O. NISSAR KILLEDAR  
AGE ABOUT 56 YEARS,  
OCC: HOUSEHOLD WORK,  
R/O: MIG-35, NAVANAGAR,  
HUBBALLI – 580025.  
DISTRICT DHARWAD
13. SHABEJA  
S/O. NISSAR KILLEDAR  
AGE ABOUT 26 YEARS,  
OCC: STUDENT,  
R/O: MIG-35, NAVANAGAR,  
HUBBALLI  
DISTRICT DHARWAD – 580025
14. SANIA D/O. NISSAR KILLEDAR  
AGE ABOUT 24 YEARS,  
OCC: STUDENT,  
R/O: MIG-35, NAVANAGAR,  
HUBBALLI,

DISTRICT DHARWAD -580025

... RESPONDENTS

(BY SRI. G S SAVADATTI, ADV., FOR C/R1)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE AN ORDER, DIRECTION OR WRIT IN THE NATURE OF CERTIORARI QUASHING THE IMPUGNED ORDER OF THE TRIAL COURT AT ANNEXURE-A, PASSED ON UNNUMBERED I.A. IN O.S.NO.19/2014 DATED 14.01.2020, BY THE LEARNED PRINCIPAL SENIOR CIVIL JUDGE AND CJM DHARWAD.

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

ORDER

Heard the learned counsel for the petitioner and perused the impugned order dated 14.01.2020 in O.S.No.19/2014 on the file of the Principal Senior Civil Judge and CJM, Dharwad (*for short "Civil Court"*).

2. The first respondent has filed a suit in O.S.No.19/2014 for declaration that the gift deed executed by the petitioner in favour of certain co-

defendants would not be binding and for partition of the suit schedule properties.

3. The petitioner's defence *inter alia* is that his father, Sri. Jafarsab Killedar was the absolute owner and he has gifted this property in favour of the petitioner, and as such the revenue records for the subject property were made in the name of the petitioner. The petitioner has filed an application under Order XVI of the Code of Civil Procedure, 1908 (*for short "CPC"*) for issuance of summons to produce the documents available with the State Bank of India and to give evidence. This application is rejected because the bank in its communication has not stated that no such documents are available. The present application is again filed under Order XVI of CPC for issuance of summons to the Tahasildar to produce certain documents and give evidence. The petitioner has mentioned a list of documents to be summoned from

the Tahasildhar's office and such list includes a copy of Varadi submitted by him and his wife, the statement recorded by the Tahasildar and a copy of the memorandum of oral gift by Sri. Jafarsab Killedar.

4. The Civil Court has rejected this application on the ground that the revenue authorities and the Bank have already stated that no such documents are available with them. The learned counsel for the petitioner submits these documents would constitute secondary evidence and enable the petitioner to establish his defence of a gift by his father. But, if the authorities do not have the custody of documents, they cannot be compelled to produce the same and therefore, there is no room for interference. However, this Court would observe that if the petitioner proposes to introduce secondary evidence, he could produce such evidence in the manner known into law and the current

application would be not necessary. As such, the writ petition is accordingly disposed of.

Sd/-  
JUDGE

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