

IN THE HIGH COURT OF KARNATAKA  
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 18<sup>th</sup> DAY OF OCTOBER, 2012

BEFORE

**THE HON'BLE MR.JUSTICE RAM MOHAN REDDY**

**WRIT PETITION NO. 65531/2009 (GM-CPC)**

BETWEEN

1. H.LAKSHMIKANTAMMA  
W/O LATE. SRI H.KRISHNA MURTHY  
AGE 66 YEARS, OCC:HOUSEWIFE  
R/O W.NO.18, NEAR ESHWAR TEMPLE  
S.N.PET GATE, BELLARY.
2. SRI. H. RANGANATHJ GUPTA  
S/O LATE SRI.H.KRISHNA MURTHY  
AGE: 50 YEARS, OCC: BUSINESS,  
R/O PLOT. NO.14, R V NIVAS, T.G. LAYOUT  
GANDHINAGAR, BELLARY.
3. SRI.H.K.SUBRAMANYAM  
S/O LATE SRI H.KRISHNA MURTHY  
AGE: 46 YEARS, OCC: BUSINESS  
R/O W.NO. NO.18,NEAR ESHWAR TEMPLE,  
S.N PET GATE,  
BELLARY. ... PETITIONERS

(BY SRI. ARUN L NEELOPANT, ADVOCATE)

AND

1. GURUPRASAD  
S/O LATE GOPAL, AGE: MAJOR,  
R/O DOOR NO.251, WARD NO.16,  
BALAJI RAO ROAD, BELLARY.

2. SRINIVAS S/O LATE GOPAL,  
AGE: MAJOR, R/O. DOOR NO.251, WARD NO.16,  
BALAJI RAO RAOD, BELLARY.
3. POORNIMA  
D/O LATE GOPAL, AGE: MAJOR,  
R/O DOOR NO.251, WARD NO.16,  
BALAJI RAO ROAD, BELLARY
4. ARCOT SUNIL  
S/O LATE GOPAL, AGE MAJOR  
R/O DOOR NO.251, WARD NO.16,  
BALAJI RAO ROAD, BELLARY
5. SMT. M CHANDRAKALA  
W/O M KUMARASWAMY AGE MAJOR  
R/O BELLARY
6. M TULASIRAM  
S/O M KUMARSWAMY, AGE MAJOR  
R/O BELLARY, REP. BY HIS MOTHER AND  
NATURAL GUARDIAN I.E  
RESPONDENT NO.5.

... RESPONDENTS

(BY SRI. T KOTRESHI ADV. FOR R1 & R4,  
R.5, 6 SERVED,  
NOTICE TO R.2 & 3 HELD SUFFICIENT)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR RECORDS PERTAINING TO THE CASE O.S.NO.4/2008 FROM THE COURT OF CIVIL JUDGE(SR.DN), KUDLIGI AND SET ASIDE THE ORDER DTD. 26/8/2009 PASSED ON PRELIMINARY ISSUE NO.III PASSED IN O.S.NO.4/2008 BY THE COURT OF CIVIL JUDGE(SR.DN), KUDLIGI AS PER ANNEXURE-E.

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

**ORDER**

Petitioners instituted O.S.4/2008 before the Civil Judge (Sr.Dn), Kudligi to declare as not binding upon them the sale deed dt. 7.3.2005 executed by defendants 1 to 5 in favour of defendants 6 and 7 and for permanent injunction by valuing the suit for the purpose of Court fee in respect of the relief of declaration under Section 7(2) of the Karnataka Court Fees and Suits Valuation Act since the suit schedule property is agricultural lands in Sy.No.5 of Yarbanhalli village of Sandur Taluk, subjected to land revenue under the Karnataka Land Revenue Act, 1964. The said suit was opposed by filing written statement of the defendants interalia contending that the Court fee paid is insufficient. The trial Court having framed issue No.3 and treated it as a preliminary issue and returned a finding in the affirmative observing that the agricultural lands lost the character of agriculture as admitted by the plaintiff in paragraph 11 of the plaint that the suit

schedule land is not fit for cultivation, by order dt. 26.8.2009 directed the plaintiff to file a fresh valuation slip and pay advolerum court fee on the sale consideration of Rs.6,38,000/- being the market value. Hence this petition.

2. Having heard the learned counsel for the parties, perused the pleadings and examined the order impugned, what is striking is the fact that in Annexure- 'D-1' written statement at paragraph 6, it is asserted that the 1<sup>st</sup> defendant and family members were cultivating the land through hired labour and eking their livelihood on the income received and that Record of Rights of the said property for the year 1967-68 through to 2005-06 establish that the lands are actually cultivated. The fact that the lands are subjected to land revenue under the Karnataka Land Revenue Act, 1964, is evident from the RTC, Pahani, Annexure-F, as on 2008-09. In the face of the laid facts, the trial court was

not justified in recording a finding that the lands have lost the character of agriculture. Moreover there is no material whatsoever to establish that the lands were permitted to be diverted for use to other than agricultural purpose. On that score too trial court was not justified in directing the petitioner to file a fresh valuation slip and pay advolerum fee on market value of Rs.6,38,000/-.

In the result, the petition is allowed. The order dt. 26.8.2009 Annexure-E of the Civil Judge (Sr.Dn), Kudligi is quashed and the preliminary issue No.3 is answered in the negative.

**SD/-  
JUDGE**

ln