

IN THE HIGH COURT OF KARNATAKA

GULBARGA BENCH

DATED THIS THE 24TH DAY OF APRIL 2014

BEFORE

THE HON'BLE MR. JUSTICE H.G.RAMESH

WRIT PETITION NO.202733/2014 (GM-CPC)

BETWEEN:

1. SIDDALINGAREDDY S/O MALLAREDDY
AGE: 48 YEARS
2. CHANDRAKANT S/O MALLAREDDY
AGE: 44 YEARS
3. SHARANGOUDA S/O MALLAREDDY
AGE: 41 YEARS
4. SIDDALINGAMMA D/O MALLAREDDY
AGE: 36 YEARS
5. NINGAPPA S/O SHIVAREDDY
AGE: 29 YEARS

ALL R/O VILLAGE HATTIKUNI
TQ. & DIST. YADGIR

.... PETITIONERS

(BY SRI SACHIN M. MAHAJAN, ADVOCATE)

AND:

1. SIDRAMREDDY S/O DUNDAPPA
AGE: 66 YEARS
2. DEVENDRAPPA S/O DUNDAPPA
AGE: 43 YEARS
3. SHANTAGOUDA S/O DUNDAPPA
AGE: 46 YEARS
4. SANGAREDDY S/O NINGAPPA
AGE: 61 YEARS

5. GANGAMMA D/O CHANNAREDDY
AGE: 29 YEARS

ALL R/O VILLAGE HATTIKUNI
TQ. & DIST. YADGIR

.... RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO PASS A WRIT OR ORDER OR DIRECTION IN THE NATURE OF CERTIORARI AND QUASH THE ORDER DATED 19.02.2014 BY THE SENIOR CIVIL JUDGE AT YADGIR PASSED IN R.A. NO.17/2013 WHICH IS PRODUCED AS ANNEXURE-G AND CONSEQUENTLY ALLOW I.A.NO.2 BY ALLOWING THE WRIT PETITION.

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

ORDER

H.G.RAMESH, J.(Oral):

This writ petition is by the appellants (defendants) before the First Appellate Court in the appeal in R.A.No.17/2013 and is directed against an interlocutory order dated 19.2.2014 passed in the aforesaid appeal dismissing the petitioners' application-I.A.No.2 filed for amendment of the *written statement* in the suit in O.S.No.136/2008.

2. I have heard the learned counsel for the petitioners and perused the impugned order. Learned counsel for the petitioners, in support of the writ petition, relied on a judgment of this Court in *John C.Thomas vs. P.M.Chandy*

[2006(2) KCCR 814] and specifically invited my attention to para 5 of the said judgment.

3. The suit in O.S.No.136/2008 was filed for *declaration* and *injunction*. The trial court has decreed the suit. As could be seen from para 8 of the impugned order, the amendment sought by the petitioners reads as follows:

“Plaintiffs are not in possession of the suit property and the suit of the plaintiffs without seeking the relief of possession is not maintainable. Plaintiffs will have to pay the court fee on the market value of the suit property, as they are not in a possession of suit property. So suit of the plaintiffs’ is barred by the law of limitation. Therefore the suit is liable to be dismissed in limine.”

4. I have examined the matter in the light of the principles laid down by the Supreme Court in **SURYA DEV RAI vs. RAM CHANDER RAI (AIR 2003 SC 3044)** relating to exercise of jurisdiction under Articles 226 and 227 of the Constitution of India pertaining to interlocutory orders passed by Courts subordinate to the High Court.

5. In my opinion, the impugned order does not suffer from any error of jurisdiction or cannot be said to have resulted in failure of justice to warrant interference under

the extraordinary jurisdiction of this Court under Articles 226 & 227 of the Constitution of India. Having regard to the facts of the case, the application for amendment was made only to prolong the proceeding. The writ petition is devoid of merit and is accordingly dismissed.

Petition dismissed.

**Sd/-
JUDGE**

hkh.