



**IN THE HIGH COURT OF KARNATAKA,
KALABURAGI BENCH**

DATED THIS THE 22ND DAY OF OCTOBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR
WRIT PETITION NO. 201302 OF 2024 (GM-CPC)

BETWEEN:

SHANTAPPA S/O RAMANNA KUMBAR,
AGE 40 YEARS OCCUPATION AGRICULTURE
RESIDENCE OF DANNUR TQ ALAND DISTRICT
KALABURAGI.

...PETITIONER

(BY SRI. SHIVAKUMAR KALLOOR, ADVOCATE)

AND:

1. SUMAN @ BHAGYASHREE W/O KRISHNA JAGIRDAR
AGE 72 YEARS, OCCUPATION HOUSEHOLD WORK;
RESIDENCE OF FLAT NO. B-6 PHASE -1, SHIVASAGAR
APARTMENTS MANIKBAUG SINHAGAD ROAD, PUNE-51.
2. KALAVATI W/O LATE BABURAO KULKARNI,
AGE 80 YEARS OCCUPATION HOUSEHOLD
RESIDENCE OF RAGHAVENDRA COLONY,
KALABURAGI-585103
3. KAUSALYA @ SANDYA
W/O SHAMSUNDAR BETAGERI AGE 70 YEARS
OCCUPATION HOUSEHOLD RESIDENCE OF AMBA NIVAS
VENKATESH NAGAR KALABURAGI-585103





4. YAMUNAA @ SEEMA W/O ASHOK KATTI AGE 67 YEARS
OCCUPATION HOUSEHOLD WORK RESIDENCE OF
UDNOOR ROAD VARDAN NAGAR KALABURAGI-585103
5. CHAYA W/O JAYAKUMAR DESHPANDE,
AGE 66 YEARS OCCUPATION HOUSEHOLD
RESIDENCE OF H NO. 32 PITRUCHAYA SDBHAVANE
NAGAR NEAR WATER TANK LATUR-413512
6. KISHORI W/O GOVINDRAO UDGIRKAR
AGE 59 YEARS OCCUPATION PVT SERVICE
RESIDENCE OF NEW RAGHAVENDRA COLONY
KALABURAGI-585103
7. SHAILAJA W/O RAVI JOSHI,
AGE 54 YEARS OCCUPATION GOVERNMENT SERVANT
RESIDENCE OF AMBA NIVAS VENKATESH NAGAR
KALABURAGI-585103
8. LATIKA W/O LATE PANDURANGARAO DESHMUKH
AGE 57 YEARS OCCUPATION HOUSEHOLD
9. CHANDAN S/O LATE PANDURANGARAO DESHMUKH
AGE 28 YEARS OCCUPATION STUDENT
10. ROOPALI D/O LATE PANDURANGARAO DESHMUKH
AGE 26 YEARS OCCUPATION STUDENT

ALL ARE RESIDENCE OF H NO. 10-852 UPPER LANE
BRAHMPUR KALABURAGI-585103.
11. MAHABOOB
S/O ISMAIL SAB MUJAWAR AGE 57 YEARS OCCUPATION
AGRICULTURE RESIDENCE OF NELLORE VILLAGE TQ
ALAND DISTRICT KALABURAGI-585302
12. MAHADEVAPPA S/O RAMANNA KAMBAR
AGE 47 YEARS OCCUPATION AGRICULTURE
RESIDENCE OF VILLAGE DANNUR TQ ALAND DISTRICT
KALABURAGI-585302
13. SRIDEVI W/O RAMCHANDRAPPA WADI,
AGE 47 YEARS OCCUPATION AGRICULTURE



RESIDENCE OF VILLAGE NELLORE TQ ALAND
DISTRICT KALABURAGI-585302

...RESPONDENTS

(SRI. SACHIN M. MAHAJAN, ADV. FOR C/R6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR RECORDS AND ISSUE. A) ISSUE A WRIT OF CERTIORARI QUASHING THE IMPUGNED ORDER DATED 9.2.2024 PASSED BY SENIOR CIVIL JUDGE JUDGE ALAND IN O.S.NO. 18/2016 AS PER ANNEXURE-H AND REJECT THE APPLICATION FILED BY THE PLAINTIFFS U/O 1 RULE 10(2) OF CPC AS PER ANNEXURE-F, IN ENDS OF JUSTICE AND EQUITY, ETC.,

THIS PETITION, COMING ON FOR PRL. HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

(PER: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR)

This petition by the impleaded defendant No.7 in O.S.No.18/2016 is directed against the impugned order dated 05.12.2023 by the Senior Civil Judge, Aland, Kalaburagi district, whereby, the application filed by the respondents/plaintiffs under Order I Rule 10 of CPC, seeking impleadment of the petitioner as defendant No.7 to the suit was allowed by the trial Court.



2. A perusal of the material on record will indicate that the respondents instituted the aforesaid suit against the defendant Nos.1 to 6 for partition and separate position of their alleged share in the suit scheduled properties and for other reliefs. The defendant Nos.1 to 6 are contesting the suit and have filed their written statement. During the course of the suit, the respondents filed the instant application. At the time of evidence, the respondents filed the instant application seeking impleadment of the petitioner as additional defendant No.7 on the ground that one of the suit schedule properties had been sold by their father in favor of the petitioner/proposed defendant No.7 with a registered sale deed dated 25.03.2006, on account of which the petitioner was both, a proper and necessary party to the suit. The said application having been opposed by the petitioner, the trial court proceeded to pass the impugned order allowing the application by holding as under:

**APPLICATION FILED U/O 1 RULE 10(2) R/W SECTION
151 OF CPC BY THE PLAINTIFFS.**

This is an application filed by the plaintiff No.6 U/O., 1 Rule 10(2) r/w 151 of CPC to implead the proposed Defendant No.7 as Defendant No.7 in this case by allowing the application in the interest of justice and equity.



2. In the affidavit annexed to the application, it is stated that herself and her sisters have filed suit for partition and declaration with respect to the suit schedule properties. It is averred that the suit schedule properties are ancestral and joint family properties of herself and defendants and they have challenged the sale deed of defendant No.4 and also mortgage deed of defendant No.5 and 6 on the ground that without family and legal necessities, the husband of defendant No.1 and father of defendant No.2 and 3 had executed false and bogus sale deed and mortgage deed in favour of defendant No.4 to 6. It is further averred that after commencement of her evidence, the counsel for the defendants cross examined and after closing the evidence of the plaintiff, the defendants evidence was started and on the last occasion, the defendant No.5 filed his examination in chief and examined as DW2 and submitted the registered sale deed dated 25.03.2006 alleged to be executed by the father of the plaintiffs in favour of proposed defendant No.7 in respect of land bearing Sy.No.131 measuring 05 Acres without any family and legal necessities and behind back of them. Thereafter, immediately, herself and other sisters have obtained digital sale deed from the Sub-Registrar Office, Aland and same is produced before this court.

3. It is specific case of the plaintiffs that there was no partition in between themselves and defendants during the life of their father Hanumanth Rao and after his death, there was no any partition in between their family members and the suit properties are ancestral and joint family properties of themselves and defendant No.1 to 3. The defendant No.4 to 6 in their written statement taken specific contention that the plaintiffs have not included the property sold by their father Hanumant Rao in favour of defendant No.7 and purchasers are not made necessary parties and their presence is very much necessary for adjudication of the matter and to resolve the controversy between the parties to the suit and in view of the above facts and circumstances of the case, the proposed defendant No.7 is necessary party to the suit. Otherwise, they will be put to great and irreparable loss. Hence, sought for allow the application.



4. On the other hand the counsel for proposed defendant No.7 filed detailed objection contending that the application is not maintainable in the eye of law and same is hopelessly barred by limitation. It is further contended that the sale deed has been executed in the year 2006 and daughters of Hanumant Rao after lapse of 16 years, the present application has been filed which is not maintainable. The plaintiffs are aware of the execution of sale deed during the year 2006 itself and therefore, the sale deed executed by karta of the family cannot be challenged after 03 years of the execution of the sale deed and also after 12 years of the execution of sale deed.

5. It is further contended that the defendant No.4 to 6 in their written statement categorically stated that the father of the plaintiff by name Hanumant Rao had sold many properties and they were not included in the suit schedule hotchpot, in spite of knowledge of the plaintiffs and moreover, the plaintiff did not search the person to whom such property were sold. Moreover, it is the duty of the plaintiff to search all those properties and challenge those sale deeds and to make the purchaser as defendants to the suit. The plaintiffs have falsely stated before this court that they did not know the execution of sale deed ins spite of knowledge of them after filing the written statement by the defendant No.4 to 6. The defendants have filed written statement in the year 2016 and it was brought to the notice of the plaintiff that there are other sale deeds also sold of properties by Hanumant Rao and Pandurang Rao, for that reason, it was for the plaintiff to search from the Registered Office at Aland by filing an application to get encumbrance certificate, so that they could have found out the sales made by the father and son, but having not done. So, this petition cannot be said to be in time. On these grounds, prayed for dismissal of application with costs.

6. Heard arguments on both side.

7. On the basis of application and objection, the following points arise for my consideration:

- 1) Whether the plaintiffs have made out sufficient grounds to allow their application?
- 2) What order?



8. *My answers to the above points are as follows:*

Point No.1 : In the Affirmative.

Point No.2 : As per final order

for the following:

REASONS

9. **Point No. 1:** *It is pertinent to note that the plaintiffs have filed this suit for partition and separate possession and declaration against the defendants with respect to the suit schedule properties.*

10. *When the matter was posted for further evidence of defendants, the plaintiffs have come up with the present application to implead the proposed defendant No.7 as necessary party in this case. According to the plaintiffs, the defendant No.5 has filed his examination in chief of affidavit and submitted the registered sale deed dated 25.03.2006, then they came to know about the execution of sale deed by their father in favour of proposed defendant No.7 and thereafter, they have obtained the certified copy of the said sale deed and thereafter, they have filed the present application to implead the proposed defendant No.7 as necessary party to the suit and without impleading the proposed defendant No.7, the right of the parties cannot be adjudicated and even, the defendants have taken contention in their written statement about suit is bad for non joinder of necessary parties and hence, they have filed this application.*

11. *The plaintiffs in support of their case, got produced certified copy of registered sale deed dated 25.03.2006 alleged to be executed by their father Hanumant Rao in favour of proposed defendant No.7 and same is obtained by them on 25.11.2022. It is specific case of the defendant No.5 that the plaintiffs have knowledge of the execution of sale deed in the year 2006 itself and after lapse of 16 years, the plaintiffs have challenged the same and filed the present application which is not maintainable and even, barred by law of limitation.*



12. However, on perusal of the written statement of the defendant No.4 to 6 at Para No.22, the defendants have taken specific contention that the suit of the plaintiffs is not maintainable in the present form and suit is defective for non joinder of necessary parties i.e., other purchasers of the property sold by Hanumant Rao and Pandurang Rao. Now the question arose before this court that the proposed defendant No.7 is necessary and proper party to the suit. It is undisputed fact that the proposed defendant No.7 not denied the purchase of the property from the father of the plaintiffs by name Hanumant Rao and even, it is settled principles of law that the proposed defendant No.7 has to bound by decree even he made party of not. So, in order to avoid the multiplicity of proceedings, the proposed defendant No.7 is very much necessary party to the suit and without impleading him, the rights of the parties cannot be decided in this case. At this juncture it is profitable to mention the decision of Honorable apex court reported in **(1995) 3 SCC 147 in a case of Anilkumar Vs Shivanath** and another decision reported in **AIR 2005 S.C 2813 in a case of Kasturi Vs Iyyamperumal and Others** their lordships have held that

"The object of rule of necessary to party is to bring on the record who are parties to the dispute relating to the subject matter so as to avoid multiplicity of proceedings and inconvenience.

Their lordships have further held that Plaintiff is the best judge of his interest and it is for him to choose his opponent against whom the relief can be claimed. If the court comes to a conclusion that the presence of person is necessary to effectively decide the suit then irrespective of the wish of the plaintiff, the court may join the person as a party. And power under Rule 10(2) can be exercised either on application of the party or suo moto by the court."

13. In the instant case also, as I have already held that the proposed defendant No.7 is necessary party to the suit and without impleading him, the rights of the



*parties cannot be decided in this case and in his absence, no decree or effective order can be passed. Hence, the ratio of the above decisions squarely applicable to the present case in hand. If the application is allowed, it is helpful for proper disposal of this case and also in order to decide the legal rights of the parties, the proposed defendant No.7 is very much necessary party to this suit. If the application is allowed, no loss or hardship will cause to the proposed defendant No.7. Otherwise, the plaintiffs will be put into great and irreparable loss. Moreover, the plea taken by the proposed defendant No.7 is to be considered at the time of merits of this case and not at this stage. In the light of above discussion and reason assigned by me, the plaintiffs have made out reasonable grounds to allow their application. Accordingly, I answer **point No.1 in affirmative.***

14. **Point No.2:** For the above said reasons, I proceed to pass the following;

ORDER

Interim Applications filed by the plaintiffs U/O., 1 Rule 10(2) R/w Section 151 of CPC, is hereby allowed on costs of Rs.500/-. The plaintiffs are permitted to implead the proposed defendant No.7 as defendant No.7 in this case by amending the plaint. The plaintiffs counsel is permitted to amend the plaint and to furnish amended plaint subject to payment of costs and limitation."

3. A perusal of the material on record will indicate that the trial court has correctly and properly considered and appreciated the material on record, including the undisputed fact that the petitioner is a purchaser of one of the suit scheduled properties under a registered sale dated 25.10.2013 from the plaintiff's father and as such, the petitioner was both, a proper and necessary party to the suit. It is also an undisputed fact that the petitioner purchased one of the suit



schedule properties from the plaintiffs' father and as such, the petitioner would clearly be both a proper and necessary party to the suit and the impugned order passed by the trial court cannot be said to have occasioned failure of justice nor caused any prejudice to the petitioner warranting interference by this Court in the exercise of its jurisdiction under Article 227 of the Constitution of India, as held by the Hon'ble Apex Court in the case of ***Radhey Shyam v. Chhabi Nath and others, (2015) 5 SCC 4234.***

4. Insofar as the various contentions urged by the petitioner, including the defence of limitation, maintainability, jurisdiction, non-joinder of all parties and properties, etc, are concerned, the petitioner would always be at liberty to file a detailed written statement upon being impleaded as defendant No.7 and contest the suit on merits and put forth all defences, including the aforesaid contentions.

5. Under these circumstances, in the result, I pass the following:



ORDER

(i) Petition is hereby disposed of without interfering with the impugned order;

(ii) Liberty is reserved in favor of the petitioner to file written statement and take up all defences, including limitation, jurisdiction, maintainability, non-joinder of parties and properties, etc., which shall be considered by the trial court while adjudicating upon the suit.

(iii) All rival contentions on all aspects of the matter are kept open and no opinion is expressed on the same.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

SVH
List No.: 1 Sl No.: 25