

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

DATED THIS THE 12TH DAY OF MARCH, 2020

BEFORE

THE HON'BLE MR.JUSTICE KRISHNA S.DIXIT

WP No.223781/2020 (GM-CPC)

Between:

1. Dr. Vijayakumar D. Kalmankar,
S/o Late D.B. Kalmankar,
Age: 62 years, Occ: Medical Practitioner,
R/o No.184, 2nd A Cross, R.K.Gardens,
(Behind Gouri Apartment), New B.E.L. road,
Bengaluru-560 054.
2. Sanjay D. Kalmankar
S/o Late D.B.Kalmankar,
Age: 56 years, Occ: Business,
R/o 1-2-68, Sadicha, Balghat Compound,
Khuba Plot, Station Road,
Kalaburagi-585 102.

... Petitioners

(By Sri.Venkatesh C. Mallabadi Advocate for
Sri. Ameet Kumar Deshpande, Advocate)

And:

1. Smt. Rohini S. Kulkarni
D/o Late D.B. Kalmankar,
Age: 58 years, occ: Household,
R/o No.40, 2nd Floor, Patankar Layout,
6th main, 13th Cross, Malleshwaram,
Bengaluru-560 003.

2. Sri. Jayateerth D/o Late krishnacharya,
Age: 49 years, Occ: Business,
R/o 7-1-54, Near KannikaParameshwari Hostel,
Gajgarper, Raichur.
3. Smt. Vijaylaxmi G. Kulkarni
D/o Late Krishnacharya,
Age: 55 years, Occ: Household,
R/o Sri. Govindam No.474, 9th Cross,
2nd Phase, Rashi Residency, Kadabgere gate,
Magadi Main Road,
Bengaluru-562 130.

... Respondents

(By Sri. Aftab Ahmed Advocate for S.R. Malgatti,
Advocate C/R 1 in C.P.No.30133/2020)

This writ petition is filed under Articles 226 & 227 of the Constitution of India, praying to issue an appropriate writ more so in the nature of certiorari and grant any other appropriate writ in the following terms:

1. Quash the order dated 17.02.2020 passed on application filed under order 1 Rule 10 (2) of C.P.C. passed in O.S.No.212/2017 on the filed of The II Addl. Senior Civil Judge Kalaburagi, the certified copy of which is at Annexure-F.
2. Issue any order, direction or writ as this Hon'ble Court may deem fit in the facts and circumstances of the case and in the interest of justice.

This petition coming on for Preliminary Hearing this day, the court made the following:-

ORDER

Petitioners being the defendants in a suit for partition & separate possession in O.S.No.212/2017 filed by the first respondent herein is invoking the writ jurisdiction for assailing the order dated 17.02.2020, a copy whereof is at Annexure-F, whereby his application filed under Order I Rule 10(2) CPC 1908 having been rejected the learned II Additional Senior Civil Judge, Kalaburagi, has refused to implead the other person.

2. The first respondent plaintiff having entered Caveator through her counsel opposes the writ petition contending that the petitioners have not filed any Counter Claim and therefore they cannot seek impleadment of a third party much against the will of the plaintiff. So contending they seek dismissal of the writ petition.

3. Having heard the learned counsel for the parties and having perused the petition papers, this

Court declines to grant indulgence in the matter because:

(a) in a partition suit ordinarily the status of the parties as plaintiff or defendant pales in to insignificance; however, it is so if there is a counter claim or the like from the side of the defendants, subject to all just exceptions into which the case of the petitioners does not fit;

(b) Ordinarily it is the prerogative of the dominant litis to choose as to who should be his opponents in the proceedings initiated by him and that the opponents cannot load some third person to the array of parties against his will; however, the opponents can resist such proceedings on the ground of non-joinder of necessary parties; in fact at the instance of the petitioners, additional issues No.1 & 2 as to non-joinder of necessary party and non inclusion of all properties in the suit have been framed by the learned

Trial Judge vide order dated 03.06.2019; thus it is open to the petitioners to oppose the suit on that ground.

In the above circumstances, the writ petition being devoid of merits is rejected.

All other contentions of the parties are kept open.

No costs.

**Sd/-
JUDGE**

SMP