IN THE HIGH COURT OF KARNATAKA,

DHARWAD BENCH

DATED THIS THE 31ST DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 106148 OF 2023 (GM-CPC)

BETWEEN:

MAHADEVI W/O. SHANKAR HIREKUDI,
AGE: 57 YEARS, OCC: HOUSEHOLD WORK,
R/O. KARAJAGI, TQ: HUKKERI,
DIST: BELAGAVI-591309.

...PETITIONER

(BY SRI. AVINASH BANAKAR, ADVOCATE)

AND:

1. ISHWAR S/O. BHAIRU JOGOJI,
   AGE: 63 YEARS, OCC: EX-SERVICEMAN,
   R/O. SIDDAPURWADI,
   TQ: CHIKODI, DIST: BELAGAVI,
   NOW R/O. SHAMRAO VITHAL BANK,
   NEAR CBT, OPP. REGLE TALKIES,
   DHARWAD-580001.

GIRIJA A BYAHATTI
Location: HIGH COURT OF KARNATAKA DHARWAD BENCH

2. GURAPPA S/O. BHAIRU JOGOJI,
   AGE: 60 YEARS, OCC: AGRICULTURE,
   R/O. SIDDAPURWADI,
   TQ: CHIKODI, DIST: BELAGAVI-591201.

3. SIDRAM S/O. BHAIRU JOGOJI,
   AGE: 58 YEARS, OCC: AGRICULTURE,
   R/O. SIDDAPURWADI,
   TQ: CHIKODI, DIST: BELAGAVI-591201.

4. DATTATREYA S/O. BHAIRU JOGOJI,
   AGE: 57 YEARS, OCC: AGRICULTURE,
   R/O. SIDDAPURWADI,
   TQ: CHIKODI, DIST: BELAGAVI-591201.

5. SHOBHA W/O. BASAVANNI JOGOJI,
AGE: 48 YEARS, OCC: AGRICULTURE,
R/O. SIDDAPURWADI,
TQ: CHIKODI, DIST: BELAGAVI-591201.

6. HRISHIKESH @ YUVARAJ,
S/O. BASAVANNI JOGOJI,
AGE: 31 YEARS, OCC: AGRICULTURE,
R/O. SIDDAPURWADI,
TQ: CHIKODI, DIST: BELAGAVI-591201.

7. TEJU D/O. BASAVANNI JOGOJI,
AGE: 30 YEARS, OCC: AGRICULTURE,
R/O. SIDDAPURWADI,
TQ: CHIKODI, DIST: BELAGAVI-591201.

8. VINAYAK S/O. BASAVANNI JOGOJI,
AGE: 23 YEARS, OCC: AGRICULTURE,
R/O. SIDDAPURWADI,
TQ: CHIKODI, DIST: BELAGAVI-591201.

…RESPONDENTS

(BY SRI. GURURAJ R. TURUMARI, ADVOCATE FOR R1;
NOTICE TO R2-R8 IS SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI QUASH THE IMPUGNED ORDER DATED 22.06.2022 ON I.A.NO.4 IN F.D.P.NO.22/2015 ON THE FILE OF PRL SENIOR CIVIL JUDGE, CHIKODI VIDE ANNEXURE-E, IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

THIS PETITION COMING ON FOR ORDERS THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ)

1. The petitioner is before this Court seeking for the following reliefs:

a) *Issue a Writ in the nature of Certiorari quash the impugned order dated 22.06.2022 on I.A.No.4 in F.D.P.No.22/2015 on the file of Prl.Senior Civil Judge, Chikodi vide Annexure-E, in the interest of justice and equity.*

b) *Pass any other orders which this Hon'ble Court deems fit.*

2. A suit in O.S.No.239/2013 had been filed by respondent No.1 against respondents No.2 to 8 seeking for partition of properties said to be the co-ownership property of the plaintiff and defendants. The suit having been decreed and attaining finality, final decree proceedings in FDP No.22/2015 had been filed, wherein the petitioner filed an application for being impleaded as a party respondent, on the ground that the properties were joint family properties obtained from joint labour and that the impleading applicant has also right in the suit properties.

3. The said application came to be rejected by the Trial Court by order dated 22.06.2022 on the ground that the suit of the plaintiff being for the properties that had been purchased jointly by the plaintiff and

defendants No.1 to 3, and the husband and father of defendants No. 4 to 7, the suit is for the partition of co-ownership properties and not that of joint family properties.

4. Since the impleading applicant had filed a suit in O.S.No.140/2017, it was for the impleading applicant to establish her right, title, and interest in the said suit, where it is alleged that the properties are joint family properties and as such, dismissed the above application. It is challenging the said order that the petitioner is before this Court.

5. Submission of Sri.Avinash Banakar, learned counsel for the petitioner, is that there is no dispute as regards the relationship between the impleading applicant and the parties, more particularly the impleading applicant being the sister of the plaintiff and defendants No.1 to 3 and as such, the properties being joint family properties, it cannot be disputed that there is a share in the properties and therefore

is required to be brought on record as a party respondent in the FDP proceedings, since her right in the properties would get affected.

6. Sri. Gururaj R. Turumari, learned counsel for respondent No.1, would further submit that the properties are not joint family properties, coparcenary properties, or ancestral properties. The properties had been purchased by the plaintiff, defendants No.1 to 3, and the husband and father of defendants No.5 to 7. As such, the said properties was held in co-ownership, as regards which the impleading applicant would not have any right, title, or interest. A suit in O.S.No.140/2017 having been filed by the impleading applicant, it is for the impleading applicant to establish her case in the said proceedings and as such, he submits that the order passed by the Trial Court is proper and correct and the above petition is required to be dismissed.

7. Heard Sri.Avinash Banakar, learned counsel appearing for the petitioner and Sri.Gururaj R.

Turamari, learned counsel appearing for respondent No.1. Perused the papers.

8. The suit has been filed contending that the properties are co-ownership properties. The impleading applicant, though being the sister of the plaintiff and defendants No.1 to 4, except taking up a contention that the properties are joint family properties and ancestral properties, has not placed any document on record along with the application to indicate the same. The suit being based on the sale deeds dated 06.06.1993, 14.05.1997, and 30.03.1998, the Trial Court has categorically observed in the decree passed in O.S.No.239/2013, as regards which the FDP proceedings are filed, these properties are co-ownership properties.

9. The trial Court while dealing with the matter in O.S. No.239/2013 has categorically held that the properties are co-ownership properties held jointly by the plaintiffs and defendants. In that view of the

matter, unless the impleading applicant were to establish the properties are ancestral properties or joint family properties, the impleadment applicant cannot claim any right, title and interest, which would be affected in the FDP proceedings. The suit in OS.No.140/2017 filed by the impleading applicant also having been dismissed for non prosecution and civil miscellaneous petition filed for restoration of the said suit. I am of the considered opinion that the impleadment application has rightly been rejected by the Final Decree Court. Impleading applicant is neither a proper nor necessary party until and unless she establishes any right in the properties, as such, I do not find any infirmity in the order passed by the trial Court. Petition stands **dismissed.**

10. In view of disposal of petition itself, pending I.A.No.1/2024 also stands disposed of.

Sd/-
(SURAJ GOVINDARAJ)
JUDGE

GAB 1-7 CKK 8 to end