

: 1 :

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT DHARWAD

DATED THIS THE 18TH DAY OF JUNE, 2010

BEFORE

THE HON'BLE MR.JUSTICE H.N.NAGAMOHAN DAS

WRIT PETITION No.63826/2010 (GM-CPC)

BETWEEN:

SMT. NEELAVVA W/O. MALLAYYA BARADUR,
AGED ABOUT 85 YEARS
AGRICULTURE,
R/O: ATTIKATTI, TQ: MUNDARGI
DIST:GADAG

...PETITIONER

(BY SRI.S.G.KADADAKATTI, ADV)

AND:

1. SHEKARAYYA S/O MALLAYYA BARADUR,
AGED ABOUT 41 YEARS
AGRICULTURIST,
R/O: ATTIKATTI, TQ: MUNDARGI, DIST: GADAG
2. SIDRAMAYYA S/O. MALLAYYA BARADUR
AGED ABOUT 47 YEARS
EMPLOYEE,
C/O: MAHADEVAPPA, RTD., HEAD MASTER,
9TH CROSS, BASAVESHWAR NILAYA,
DHAMUNDESHWARAI NAGAR,
K.T.NO.259, MANDYA CITY.



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3. PANCHAYYA S/O MALLAYYA BARADUR
AGED ABOUT 45 YEARS
AGRICULTURIST,
R/O: ATTIKATTI, TQ: MUNDARGI, DIST: GADAG
4. ANANDAYYA S/O MALLAYYA BARADUR,
AGED ABOUT 34 YEARS
AGRICULTURIST,
R/O: ATTIKATTI, TQ: MUNDARGI, DIST: GADAG
5. SHAMBHULINGAYYA S/O MALLAYYA BARADUR,
AGED ABOUT 25 YEARS
AGRICULTURIST,
R/O: ATTIKATTI, TQ: MUNDARGI, DIST: GADAG
6. SMT. ANASAVVA W/O THIPPAYYA PUJAR
AGED ABOUT 49 YEARS
HOUSE MAKER,
VIDHYANAGAR, SHIRAHATTI TOWN,
DIST: GADAG
7. SMT. BASAVANNEVVA W/O SHEKARAYYA YALAVATTI,
AGED ABOUT 41 YEARS
HOUSE MAKER,
R/O: ATTIKATTI, TQ: MUNDARGI, DIST: GADAG
8. KAMALAVVA D/O MALLAYYA BARADUR
AGED ABOUT 27 YEARS
HOUSE MAKER,
R/O: ATTIKATTI, TQ: MUNDARGI, DIST: GADAG
9. SMT. SHIVALEELA W/O SHIDRAMAYYA BARADUR
@ SHIVALEELA D/O SANGAYYA ITAGI,
AGE: MAJOR, HOUSE MAKER,
R/O: ATTIKATTI VILLAGE, TQ: MUNDARGI,
DIST: GADAG

...RESPONDENTS

(NOTICE TO R3, R7 AND R8 DISPENSED WITH)



: 3 :

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER PASSED BY THE LEARNED CIVIL JUDGE (SR.DN.) AND CJM, GADAG, DATED 22/04/2010, IN I.A.NO.VIII, IN O.S.NO.205/2006, FILED BY THE 2ND DEFENDANT AND ALLOWS I.A.NO.VIII, AND PERMITTED TO AMEND THE PLEADINGS AND ETC.

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

ORDER

Petitioners and respondent No.2 to 9 are defendants and respondent No.1 is the plaintiff before the trial Court in O.S.No.205/2006. In this order, for convenience, the parties are referred to their status before the trial Court.

2. Plaintiff filed O.S.No.205/2006 against the defendants for partition and separate possession. The defendants have entered appearance and filed written statement. At the time of cross examination, the defendants, they filed an application under Order 6 Rule 17 of CPC for amendment of written statement by way of incorporating additional facts. Under the impugned order, the trial Court



: 4 :

rejected the application filed by the defendants for amendment of the written statement. Hence, this writ petition.

3. The plaintiff contends that, the schedule properties are the joint family / ancestral properties. The defense of the defendants is that, they are self acquired properties of 1st defendant. Proposed amendment is with reference to the execution of registered gift deed by 1st defendant in favour of the 2nd defendant and also a 'will'. The said gifted deed and the 'will' by 1st defendant in favour of 2nd defendant has bearing on the claim of plaintiff. Therefore, the proposed amendment is not necessary to resolve the real controversy between the parties. I find no justifiable ground to interfere with the impugned order.

4. Accordingly, this writ petition is hereby rejected without reference to the respondents.

Sd/-
JUDGE

MBS/-

HNNDJ:
18.06.2010

WP No.63826/2010

ORDER ON MEMO DATED 14.06.2010

Learned counsel for the petitioner files a memo seeking dispensation of notice on R3, R7 and R8. At the risk of learned counsel for the petitioner, notice on R3, R7 and R8 is hereby dispensed.

Sd/-
JUDGE

MBS/-