

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT DHARWAD

DATED THIS THE 30<sup>TH</sup> DAY OF NOVEMBER, 2012

BEFORE

THE HON'BLE MR.JUSTICE SUBHASH B. ADI

C.R.P.No.1097/2010

BETWEEN:

MANOHAR S/O.CHANDRASEKHARAPPA ARKACHARI,  
AGE :51 YEARS, OCC:AGRICULTURE,  
R/O.HOSARITTI, TQ & DIST:HAVERI. ...PETITIONER

(BY SRI.F.V.PATIL, BY  
SRI.VIJAYENDRA BHIMAKKANNAVAR, ADV)

AND:

1. VIRUPAXAPPA S/O.VEERAPPA ARKACHARI,  
AGE 46 YEARS, OCC:AGRICULTURE,  
R/O.HOSARITTI, TQ & DIST :HAVERI
2. ISHWARAPPA S/O.VEERAPPA ARKACHARI,  
AGE:41 YEARS, OCC:AGRICULTURE,  
R/O.HOSARITTI, TQ & DIST :HAVERI. ...RESPONDENTS

(BY SRI.R.K.HATTI, ADV. FOR R1 AND R2)

THIS PETITIN IS FILED UNDER SECTION 115 OF CPC AGAINST THE ORDERS IN IA NO.1 DATED 29.10.2007 PASSED IN O.S.NO.116/1999 ON THE FILE OF THE PRL. CIVIL JUDGE (JR.DN.) AT HAVERI, DISMISSING THE IA NO.1 FILED TO RECALL THE COMPROMISE DECREE PASSED ON 29.01.2000 BASED ON THE COMPROMISE PETITION.

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

ORDER

Learned counsel for the petitioner submits that by impersonating the petitioner, O.S.116/1999 was filed before the Prl. Civil Judge (Jr.Dn.) and JMFC, Haveri, and same has been compromised. He submits that the petitioner was not a party nor was present during the settlement nor is it his signature in the compromise petition. He also submits that the trial Court without referring the signature for handwriting expert and only on bare look has observed that the signature on the compromise petition is that of the petitioner. He also submits that when serious question of fraud is raised, the trial Court should not have dismissed the application without even considering the evidence. He also submits that if the petitioner is given liberty to file a suit seeking for declaration that the compromise decree is a result of fraud and impersonation, he would pursue said remedy.

2. Since there are serious allegations against the respondents of impersonation and if a decree is obtained by means of fraud, it has to be set at naught and in such a case if

liberty is given to the petitioner to file a separate suit and work out his remedy, no prejudice will be caused to the respondents.

3. Accordingly, this writ petition is disposed of reserving liberty to file a suit and work out his remedy. However, if the petitioner files a fresh suit, the said court shall not be influenced by any of the observations made by the trial court in its order dated 29.10.2007 in O.S.No.116/1999 on the file of the Prl. Civil Judge (Jr.Dn.), Haveri.

(Sd/-)  
JUDGE

Jm/-