

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH, GULBARGA

DATED THIS THE 28TH DAY OF SEPTEMBER 2012

BEFORE

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

W.P.No.85713/2012(GM-CPC)

BETWEEN:

1. TIPRARI @ TIPRAJ
S/O GUNDAPPA GOULI
AGE: 69 YEARS
2. RAJU
S/O TIPRARI @ TIPRAJ
AGE: 46 YEARS
3. MOHAN
S/O TIPRARI @ TIPRAJ
AGE: 44 YEARS
4. VIJAY
S/O TIPRARI @ TIPRAJ
AGE: 34 YEARS
5. PRAKASH
S/O TIPRARI @ TIPRAJ
AGE: 32 YEARS
6. DAYANAND
S/O TIPRARI @ TIPRAJ
AGE: 32 YEARS

ALL R/O CHITGUPPA
TQ. HUMNABAD
DIST. BIDAR – 585 326

... PETITIONERS

(BY SRI SACHIN M. MAHAJAN, ADVOCATE)

AND:

1. MOHD. VILAYAT ALI
S/O MOHD. HYDER ALI
AGE: 57 YEARS
OCC: BUSINESS
R/O CHITGUPPA
TQ. HUMNABAD
DIST. BIDAR – 585 326

2. ABEDA BEGUM
W/O MOHD. VAZEERSAB
AGE: 74 YEARS
R/O CHITGUPPA
TQ. HUMNABAD
DIST. BIDAR – 585 326

3. MOHD. GOUSUDDIN
S/O MOHD. VAZEERSAB
AGE: 46 YEARS
R/O CHITGUPPA
TQ. HUMNABAD
DIST. BIDAR – 585 326

4. MOHD. KHAZA
S/O MOHD. VAZEERSAB
AGE: 36 YEARS
R/O CHITGUPPA
TQ. HUMNABAD
DIST. BIDAR – 585 326

5. MOHD. SABER
S/O MOHD. VAZEERSAB
AGE: 30 YEARS
R/O CHITGUPPA
TQ. HUMNABAD
DIST. BIDAR – 585 326

6. MOHD. IFTIQUAR
S/O MOHD. VAZEERSAB
AGE: 28 YEARS
R/O CHITGUPPA

TQ. HUMNABAD
DIST. BIDAR – 585 326

7. MOHD. ATTAULLA
S/O MOHD. VAZEERSAB
AGE: 22 YEARS
R/O CHITGUPPA
TQ. HUMNABAD
DIST. BIDAR – 585 326
8. SHAHIDA BEGUM
D/O MOHD. VAZEERSAB
W/O ASAD PASHA
AGE: 46 YEARS
R/O DUBALGUNDI VILLAGE
TQ. HUMNABAD
DIST. BIDAR – 585 326
9. SAYEDA BEGUM @ MUNNI BEGUM
D/O MOHD. VAZEERSAB
W/O MOHD. AKMALMIYA
AGE: 41 YEARS
R/O CHITGUPPA
TQ. HUMNABAD
DIST. BIDAR – 585 326
10. BIBI D/O MOHD. VAZEERSAB
W/O SYED HARUN
AGE: 35 YEARS
R/O SHAHAPUR
DIST. YADGIR
11. QURESHA BEGUM
D/O MOHD. VAZEERSAB
W/O KHURRAM
AGE: 33 YEARS
R/O CHITGUPPA
TQ. HUMNABAD
DIST. BIDAR – 585 326
12. SHAHAJAHAN BEE
D/O MOHD. VAZDEERSAB
AGE: 24 YEARS
R/O CHITGUPPA

TQ. HUMNABAD
DIST. BIDAR – 585 326

13. ZAREENA BEGUM
D/O MOHD. VAZEERSAB
AGE: 20 YEARS
R/O CHITGUPPA
TQ. HUMNABAD
DIST. BIDAR – 585 326
14. ABDUL KAREEM
S/O REHMAN SAB
AGE: 59 YEARS
OCC: MECHANIC
R/O CHITGUPPA
TQ. HUMNABAD
DIST. BIDAR – 585 326
15. MEHTABSAB
S/O MASTANSAB
AGE: 54 YEARS
OCC: MECHANIC
R/O CHITGUPPA
TQ. HUMNABAD
DIST. BIDAR – 585 326
16. SHABBIR AHMED
S/O MASTANSAB
AGE: 56 YEARS
OCC: MECHANIC
R/O CHITGUPPA
TQ. HUMNABAD
DIST. BIDAR – 585 326
17. KISHOREBHAI
S/O MAGANJIBHAI
AGE: 49 YEARS
OCC: BUSINESS
R/O CHITGUPPA
TQ. HUMNABAD
DIST. BIDAR – 585 326
18. MANJUNATH

S/O NOT KNOWN
AGE: 49 YEARS
OCC: BAKERY BUSINESS
R/O CHITGUPPA
TQ. HUMNABAD
DIST. BIDAR – 585 326

19. DASHRATH
S/O GUNDAPPA
AGE: 54 YEARS
OCC: WINE VENDOR
R/O CHITGUPPA
TQ. HUMNABAD
DIST. BIDAR – 585 326
20. MUKINDRAO
S/O KESHAVRAO GUTTEDAR
AGE: 59 YEARS
OCC: AGRICULTURE
R/O CHITGUPPA
TQ. HUMNABAD
DIST. BIDAR – 585 326

... RESPONDENTS

THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OR ORDER OR DIRECTION IN THE NATURE OF CERTIORARI AND QUASH THE ORDER DATED 21.8.2012 IN OS.NO.31/1998 PASSED BY THE HON'BLE SENIOR CIVIL JUDGE & JMFC AT HUMNABAD, WHICH IS PRODUCED AS ANNEXURE J AND ALLOW THE I.A.NO.24.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Heard Sri Sachin M. Mahajan, learned counsel appearing for petitioners. Perused the impugned order dated 21.08.2012 Annexure-J whereunder I.A.No.24

filed by defendant Nos.13 to 18 requesting the Trial Court to permit them to file objections to the Court Commissioner's report has been rejected is called in question.

2. It is the contention of Mr. Sachin M. Mahajan, learned counsel appearing for defendant Nos.13 to 18 – writ petitioners that these defendants have disputed the signature found on the agreement to sale in respect of which specific performance of contract has been sought for by the plaintiff and at the behest of the plaintiff same was sent for finger print expert report, who had submitted the report and petitioners herein could not file objections on account of death of previous Advocates who were conducting the case and there was change of hand and as such objections to the Commissioner's report was not filed. If this was the only reason this Court would have definitely considered the prayer of the petitioners, but it does not stop at it. Records would

disclose that plaintiff had filed I.A.No.23 under Order 16 Rule 1 and 2 of CPC seeking summoning of the said expert who had given the report to tender evidence on the report. Defendant Nos.13 to 18 would have easily accepted the said offer but resisted the said application by filing objections to the same and as such Trial Court virtually accepted the contention of defendant Nos.13 to 18 and rejected the prayer of plaintiff to summon the said witness and I.A.No.23 filed by the plaintiff seeking summoning of the finger print expert who had filed the report came to be rejected by order dated 13.12.2011 Annexure-E. This would clearly go to show that petitioners therein wanted the said report to be accepted. However, it was claimed in I.A.No.24 that on account of change of counsel this fact was not noticed namely, non filing of objections to the report of Commissioner as such they intend to file statement of objections. In fact, plaintiff also filed I.A.No.25 seeking permission of the Court to mark the report of the Court

commissioner both these applications have been dismissed by the Trial Court by the impugned order.

3. As already observed hereinabove, writ petitioners having resisted the move of plaintiff to summon the finger print expert who had submitted the report cannot be heard now to contend that said report is to be objected to, more particularly when they themselves resisted, the move of plaintiff to summon the said witness. In that view of the matter, I find no merit in the writ petition, same stands rejected.

Rejection of this writ petition would not come in the way of petitioners raising this ground in the event of judgment and decree being passed against them and they propose to file an appeal.

Sd/-
JUDGE

NB*