

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

Dated this the 31<sup>st</sup> day of January 2014

Before

**THE HON'BLE MR.JUSTICE N.KUMAR**

Writ Petition No.66502/2011 (GM-CPC)

Between:

1. Kushanappa,  
S/o Venkatappa Hunashikatti,  
aged about 48 years,  
r/at Metagudda, Tq: Mudhol,  
Dist: Bagalkote.
2. Smt. Bhagawwa,  
W/o Shivappa Hadimani,  
aged about 53 years,  
r/at Kadarkoppa, Tq: Badami,  
Dist: Bagalkote.
3. Smt. Chinnawwa,  
W/o Ramangouda Patil @ Goudar,  
aged about 42 years,  
r/at Metagudda, Tq: Mudhol,  
Dist: Bagalkote.

...Petitioners

Petitioners  
Rep by the GPA Holder,  
Sri. Ramesh,  
S/o Shivappa Hadimani,  
Aged about 33 years,

R/at Kadarkoppa, Tq. Badami,  
Dist: Bagalkote,  
Presently r/at Siddapur,  
Tq Siddapur, Dist: Uttar Kannada.

(By Sri. Mrutyunjay Tata Bangi, Advocate)

A n d :

1. Kamalavva,  
W/o Laxmappa Lakkam,  
Aged about 85 years,  
R/at Jeeragal, Tq: Mudhol,  
Dist: Bagalkote.
2. Paddavva, W/o Timmappa Asangi,  
Aged about 55 years,  
R/at Maharaja Colony, Mudhol,  
Dist: Bagalkote.
3. Nagavva, W/o Shivappa Melli,  
Aged about 65 years,  
R/at Yaragatti, Tq: Saundatti,  
Dist: Belgaum.
4. Sagareppa,  
S/o Gireppa Masareddi,  
Aged about 48 years,  
R/at Metaguuda, Tq: Mudhol,  
Dist: Bagalkote.
5. Kallappa, S/o Laxmappa Lakkam,  
Aged about 52 years,  
R/at Jeeragal, Tq: Mudhol,  
Dist: Bagalkote.

6. Bhimappa, S/o Gireppa Desai,  
Aged about 50 years,  
R/at Kamakeri, Tq: Ramadurga,  
Dist: Belgaum.

...Respondents

(By Sri. M.G.Naganuri, Advocate for R2 & R3 and L.Rs.  
of R1; Sri. N.L.Batakurki, Advocate for R4 & R5)  
(R6 – deleted)

This petition is filed under Articles 226 & 227 of the Constitution of India praying to quash the order passed by the Senior civil Judge, at Jamkhandi sitting at Mudhol passed in O.S.No.22/2009 dated 17.06.2011 on I.A.No.2 under Order 14 Rule 2(1) copy as per Annexure-K and allow I.A.No.2 by allowing the present writ petition.

This petition coming on for Preliminary Hearing in 'B' Group this day, the Court made the following:

### **ORDER**

This writ petition is filed challenging the order of the Trial Court which has dismissed the application filed by the defendant for treating the issue regarding *res judicata* as preliminary issue. The order dated 17.06.2011 reads as under:

“ Oral objection submitted by RHC/HKB.

I.A.No.2 regular suit. Hence, application of Deft. No.1 to 3 filed U/o 14 R-2(1) CPC is rejected.

For evidence call on 5/7”

No reasons are given and therefore, the said order cannot be sustained. It was contended on behalf of the respondents that *res judicata* is a mixed question of law and fact and evidence has to be adduced and after closure of evidence, it cannot be treated as preliminary issue. There is no substance in the said contention. The law provides for the Court to record evidence even before framing of the issues. If the plea of *res judicata* is urged in the written statement, the issue regarding *res judicata* cannot be decided purely looking into the pleadings. For the purpose of deciding *res judicata*, the evidence that is required to be looked into is copy of the plaint and written statement of the previous proceedings, issues framed in the said case and the

judgment rendered in the said case. Those documents have to be compared with the present pleadings and the issues framed. If the parties, by consent, agree to get those documents marked, no evidence is required to be recorded and there is no need to enter the witness box. If not, plaintiff has to step into the witness box and only mark those documents and nothing else. The Trial Court has not applied its mind and without giving any reason has dismissed the application. in the circumstances, the order cannot be sustained. Hence, I pass the following:

**ORDER**

- (i) Writ petition is allowed.
- (ii) The impugned order is hereby set aside.
- (iii) The Trial Court shall consider and decide the said application on merits and in accordance with law in the light

of the observations made above and also looking into the decision of the Apex Court which has held that plea of *res judicata* can be tried as a preliminary issue.

**SD/-  
JUDGE**

Kms