

IN THE HIGH COURT OF KARNATAKA
GULBARGA BENCH

DATED THIS THE 27TH DAY OF AUGUST, 2014

BEFORE

THE HON'BLE MR.JUSTICE S.N.SATYANARAYANA

WRIT PETITION No.204819/2014 (GM-CPC)

BETWEEN

KHAJA PATEL S/O. LADLE PATEL
SINCE DECEASED
THROUGH HIS LRS.,

1. SMT.MEHBOOB BEE
W/O. LATE KHAJA PATEL MALGATTIKAR
AGE: 56 YEARS, OCC: HOUSEHOLD
C/O. AMEER PATEL SARADAGIKAR
YADULLA COLONY, GULBARGA-585103
2. SMT.NOORUNNISA BEGUM
W/O. LATE KHAJA PATEL MALGATTIKAR
AGE: 56 YEARS, OCC: ASST. TEACHER
C/O. M.A.RAHEEM, NEAR MADINA MASJID
GULBARGA-585103

... PETITIONERS

(BY SRI. A. VIJAY KUMAR, ADV.)

AND

1. SYED JAFFAR ALI
S/O. NABI PATEL
AGE: 71 YEARS,
OCC: RETD. EMPLOYEE

R/O. YADULLA COLONY,
GULBARGA-585103

2. AKBAR PASHA
S/O. SYED JAFFAR ALI
AGE: 48 YEARS, OCC: SERVICE
R/O. YADULLA COLONY,
GULBARGA-585103
3. AZGAR ALI
S/O. SYED JAFFAR ALI
AGE: 39 YEARS, OCC: SERVICE
R/O. YADULLA COLONY,
GULBARGA-585103
4. KHURSHEED BEGUM
D/O. SYED JAFFAR ALI
AGE: 46 YEARS, OCC: GOVT. SERVANT
R/O. SEDAM,
TQ & DIST: GULBARGA-584101
5. NIYAZ BEGUM
D/O. SYED JAFFAR ALI
AGE: 43 YEARS, OCC: GOVT. SERVANT
R/O. BAREY HILLS,
GULBARGA-585103
6. SHAHJAHAN BEGUM
D/O. SYED JAFFAR ALI
AGE: 42 YEARS,
OCC: GOVT. SERVANT
R/O. NOORANI MOHALLA,
GULBARGA-585103

... RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING
TO ISSUE A WRIT OF CERTIORARI BY QUASHING THE

ORDER AT ANNEXURE-E PASSED ON IA.VI IN O.S No.99/2010, DATED 09.12.2013 BY III SENIOR CIVIL JUDGE AT GULBARGA.

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

ORDER

The legal representatives of the original defendant in O.S. No.99/2010 pending on the file of III Addl. Senior Civil Judge, Gulbarga, have come up in this proceeding impugning the order dated 09.12.2013 in rejecting their application in IA.VI filed under Order VI Rule 17 of the Civil Procedure Code, seeking amendment to the written statement filed on their behalf.

2. It is seen that the suit in O.S. No.99/2010 for the relief of partition and separate possession is filed by respondents 1 to 6 herein. The suit was initially filed against the original defendant - Khaja Patel, S/o Ladle Patel, wherein he had filed his written statement. Subsequently, he filed I.A.VI seeking amendment of the written statement to the effect that he is the absolute owner

in possession of the suit property in view of the alleged gift by his father in his favour on 08.01.1980, thereby urging plea of ouster of plaintiffs in respect of the suit property.

3. It is seen that the trial Court after hearing the parties to the proceeding, has observed that the alleged gift dated 08.01.1980 said to have made by the father of the original defendant in his favour could have pleaded by him when he filed the written statement on 18.11.2010. The very fact that it was not pleaded by him then would give rise to serious doubt regarding the genuineness of the said claim, more so when the application is filed at the time when plaintiffs` evidence is already closed and the matter was posted for defendant`s evidence. The trial Court taking into consideration the same, dismissed the application by order dated 09.12.2013. Being aggrieved by the same, the present writ petition is filed by the legal representatives of the original defendant.

4. Heard the learned counsel for petitioner. Perused the order impugned. On going through the same,

the reasoning assigned by the trial Court for rejecting I.A.VI filed by the original defendant seeking to amend the written statement filed by him O.S. No.99/2010 appears to be just and proper. In view of the fact that there being neither illegallity nor irregularity in the order impugned, the question of admitting this writ petition filed challenging the said order does not arise. Accordingly, this petition is dismissed.

**Sd/-
JUDGE**

sma