

**IN THE HIGH COURT OF KARNATAKA
AT BENGALURU**

Dated this the 31st day of October, 2014

BEFORE:

THE HON'BLE MR JUSTICE K L MANJUNATH

Writ Petition No. 39445 of 2012 (GM-CPC)

BETWEEN:

SRI CHINNARAJ
AGED ABOUT 62 YEARS
S/O KANNAIYAN
R/AT MITTAKOTHUR VILLAGE
KYASAMBALLI HOBLI,
BANGARPET TALUK – 563 122

... PETITIONER

[By Sri J G Chandra Mohan, Adv.]

AND:

1. SRI MUNIVENKATAPPA
S/O A K VENKATARAMANAPPA
AGED ABOUT 45 YEARS
2. SMT MUNIVENKATAMMA
W/O MUNIVENKATAPPA
AGED ABOUT 40 YEARS
3. LAKSHMI
D/O MUNIVENKATAPPA
AGED ABOUT 18 YEARS

ALL ARE R/AT
MALLAMPALLI VILLAGE
KYASAMBALLI HOBLI,

BANGARPET TALUK – 563 122
KOLAR DISTRICT

... RESPONDENTS

[By Sri K Raghavendra Rao, Adv. for R3]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE ORDERS OF THE I ADDL. CIVIL JUDGE [JR.DN], KGF, IN ALLOWING THE APPLICATION IA-8 U/O 1 RULE 10(2) R/W SEC. 151 OF CPC., ON 09.08.2012, IN OS NO. 23/01, AS PER ANNEXURE – A TO THE PETITION & GRANT SUCH OTHER RELIEFS AND ETC.,

THIS PETITION COMING ON FOR PRELIMINARY HEARING, 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The short question that arises for consideration in this petition is as to whether the third respondent can file an application to bring the vendor of the petitioner as co-defendant in a suit filed by the petitioner for injunction , wherein the third respondent has filed counter claim, claiming partition and separate possession of her share in the very same property? The trial court has allowed the application and this order is questioned in this petition.

2. Having heard the learned counsel for the parties, it is seen that the petitioner is not disputing third respondent

as the daughter of Munivenkatappa, who has sold the property in question to one Balakrishna, who in turn sold the property to the petitioner herein. In other words, the petitioner has stepped in to the shoes of Balakrishna. Petitioner is also not disputing that he has not derived the title from Balakrishna. According to petitioner, Balakrishna is not a necessary party even to consider the case of the counter claim of third respondent, in view of the sale made by Balakrishna in favour of the petitioner.

3. The counter claim of third respondent has to be adjudicated *inter se* between her and her mother – second respondent. The question is whether the father of third respondent was entitled to sell the property in favour of Balakrishna and whether Balakrishna has passed on a valid title to the petitioner herein? Therefore, this court is of the opinion that since the petitioner has stepped in to the shoes of Balakrishna, he need not be made as a party to the suit.

4. Accordingly, this petition is allowed and order of the trial court in allowing the impleading application at the instance of the third respondent is set aside.

**Sd/-
JUDGE**

*pjk