

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30<sup>TH</sup> DAY OF JUNE 2015

## BEFORE

# THE HON'BLE MR. JUSTICE A.V.CHANDRASHEKARA

WRIT PETITION No.25230/2015 (GM-CPC)

## BETWEEN:

M.S.ANANDA KUMAR  
S/O LATE SHIVANNA  
AGED ABOUT 27 YEARS  
RESIDING AT MUDAGANDUR VILLAGE  
DUDDA HOBLI  
MANDYA TALUK  
PIN-571405 ...PETITIONER

(BY SRI SHARATH S.GOWDA, ADVOCATE)

AND:

JAYAMMA  
D/O KALAIAH  
AGED ABOUT 37 YEARS  
RESIDING AT MUDAGANDUR  
VILLAGE, DUDDA HOBLI  
MANDYA TALUK  
PIN-571 405 ... RESPONDENT

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH OR SET ASIDE THE ORDER DATED 7.2.2015

PASSED ON I.A.NO.9 BY THE CIVIL JUDGE, SR.DN., & CJM, MANDYA, IN O.S.NO.263/2006 VIDE ANNEXURE-A.

THIS W.P. COMING ON FOR PREIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

Heard the learned Counsel for the petitioner.

Perused the records.

2. Petitioner is the lone defendant in the original suit bearing O.S.No.263/2006, pending on the file of the court of Principal Civil Judge, Sr.Dn., Mandya. Respondent has filed a suit for declaration of title and for consequential relief of permanent injunction in respect of two items of immovable properties as described in the schedule appended to O.S.No.263/2006. The petitioner who is the lone defendant in the said suit has specifically averred in the statement that the suit itself is not maintainable

since the sale deed dated 12.7.2006 is not challenged by the plaintiff. During the pendency of the suit, an application came to be filed by the plaintiff requesting the Court to permit her to add additional prayer regarding cancellation of the alleged sale deed. The said application came to be allowed after contest by the order dated 7.2.2015 on I.A.No.9. It is this order which is called in question on various grounds as set out in the present petition filed under Article 227 of the constitution of India.

3. Learned counsel for the petitioner has vehemently argued that the trial Court could not have allowed I.A. filed under Order 6 Rule 17 of CPC, more particularly, when the evidence of the plaintiff was already over. He has relied upon the proviso to Rule 17 of Order 6 of CPC which has

come into effect from 1.7.2012. He has argued that when the very amendment is being allowed by the court, right accrued to the defendant is virtually taken.

4. Normal rule is to allow the application filed under Order 6 Rule 17 of CPC and exception is to reject the same. The consideration made by the learned Judge has allowed additional prayer to be incorporate in the plaint based on the main prayer Rule 17 of Order 6 of CPC and proviso have been harmoniously read in this case by the Learned Judge. It is true that there is an embargo on the Court to consider an application filed under Order 6 Rule 17 of CPC after the trial has commenced in a civil case. The trial in a civil case commences after the framing of issues. The embargo found in

proviso to Rule 17 of Order 6 cannot be read in isolation of main Order 6 Rule 17.

5. The learned Judge has made a detailed discussion and has allowed the additional prayer which is dependent upon the main prayer of declaration of title. If the defendant's case is that a right has already accrued and the suit of the plaintiff insofar as the additional prayer is concerned is barred by time, nothing comes in the way of court to frame appropriate issue regarding limitation and all contentions of parties inclusive of the aspect of limitation are kept open. No illegality or perversity is found in the approach adopted by the trial court as the trial Court has exercised its discretion wisely. Since the matter is of the year 2006, the trial court to expedite the matter.

With the above observations, the writ petition  
is dismissed.

Sd/-  
JUDGE

Yn.