

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 29TH DAY OF APRIL 2016

BEFORE

THE HON'BLE MR. JUSTICE ARAVIND KUMAR

WRIT PETITION NO.22682/2016 (GM-CPC)

BETWEEN:

1. APANNAIAH
DEAD BY LRS.
- a. SRI. MAHADEVVAIAH @ MAHEDEVAPARASAD
W/O LATE APPAJAIAH
AGED ABOUT 41 YEARS
- b. SRI. NINGAPPA @ LINGADEVARU
S/O LATE APPAJAIAH
AGED ABOUT 38 YEARS
- c. SMT. SAVITHRAMMA
W/O RAJANNA, D/O LATE APPAJAIAH
AGED ABOUT 36 YEARS
R/O YADAHALLY
KUNIGAL TALUK, TUMAKUR DISTRICT – 572 101
- d. SMT. SUNANDAMMA
W/O MURTHY S/O LATE APPAJAIAH
AGED ABOUT 34 YEARS
R/O BHEEMANAKERE VILLAGE
KASABA HOBLI, MADDUR TALUK – 571 428
- e. SMT. PUTTATHAYAMMA @ SUSHEELA
W/O JAYANNA D/O LATE APPAJAIAH
AGED ABOUT 32 YEARS
R/O YADAHALLY, HULIYURDURGA HOBLI
KUNIGAL TALUK, TUMAKUR DISTRICT – 572 101
- f. MAHALINGAIAH DEAD
(UNMARRIED, NO LEGAL HEIRS)

g. SRI. SHANKARA
S/O LATE APPAJAIAH
AGED ABOUT 28 YEARS

h. SRI. MAHESH
S/O LATE APPAJAIAH
AGED ABOUT 26 YEARS

PETITIONER NO.1, 2, 7 & 8 ARE
R/A ANAKANATHAPURA VILLAGE
ATHAGUR HOBLI, MADDUR TALUK
MANDYA DISTRICT – 571 401

...PETITIONERS

(BY SRI. KALYAN.R., ADV.,)

AND:

SRI. SHIVAMADAIAH
S/O LATE PUTTAIAH
AGED ABOUT 55 YEARS
ATHAGUR HOBLI
MADDUR TALUK
MANDYA DISTRICT – 571 401

... RESPONDENT

THIS WRIT PETITION IS FILED UNDER ARTICLES 227
OF THE CONSTITUTION OF INDIA PRAYING TO QUASH
THE IMPUGNED ORDER DATED 30.01.2016 IN FDP
NO.5/2005 PASSED BY THE PRL. CIVIL JUDGE (JR.DVN..)
AND JMFC AT MADDUR AT ANNEX-A TO W.P.

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

ORDER

Heard Sri. Kalyan R., learned counsel appearing on behalf of the petitioner. Perused the impugned order dated 30.01.2016 whereunder trial Court has directed issuance of commission warrant to the Court Commissioner.

2. It is the contention of learned counsel Sri.Kalyan R., that commissioner warrant had been issued pursuant to the amendment carried out by the respondent/plaintiff and order allowing the amendment dated 09.11.2015 has been challenged by the writ petitioner-defendant in Miscellaneous Appeal No.18/2015 and records of the trial Court has been called for in said appeal and as such, the Court adjudicating the final decree proceedings ought not to have proceeded to issue commissioner's warrant.

3. When undisputedly, petitioner-defendant has challenged the order of amendment before the Appellate Court by filing Miscellaneous Appeal

No.18/2015, it is open to the petitioners-defendants to seek for stay of the order under challenge or such other orders as may be advised.

4. In that view of the matter, I do not find any good ground to entertain this petition. Hence, writ petition is hereby ***rejected.***

**SD/-
JUDGE**

BS