

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF NOVEMBER 2018

BEFORE

THE HON' BLE MR. JUSTICE S.G. PANDIT

W.P.Nos.49572/2018 & 49573-49581/2018 (GM-CPC)

BETWEEN:

1. SRI P. RAJESHWARI
AGED ABOUT 57 YEARS
W/O B S HARI PRASAD
RESIDING AT NO.26/A
SECOND FLOOR, 3RD CROSS
JUDICIAL OFFICERS LAYOUT,
SANJAYA NAGAR, RMV-II STAGE
BENGALURU-560094.

2. SRI NAVEEN KUMAR
AGED ABOUT 34 YEARS
W/O B S HARI PRASAD
R/AT NO.26/A
SECOND FLOOR, 3RD CROSS
JUDICIAL OFFICERS LAYOUT,
SANJAYA NAGAR, RMV-II STAGE
BENGALURU-560094.

... PETITIONERS

(BY SRI PAPI REDDY G, ADV.)

AND:

1. SMT. B S LALITHA
D/O LATE M G SATYANARAYANA
W/O SRI K VENKATESH
AGED ABOUT 62 YEARS
RESIDING AT NO.324
'RENUKADEVINILAYA'
1ST MAIN , B. NARAYANAPURA
WHITEFIELD ROAD
DOORAVANI NAGAR POST
BENGALURU-560016.
2. SMT. B S USHA
D/O LATE M G SATYANARAYANA
W/O SRI E VENKATESH
AGED ABOUT 58 YEARS
RESIDING AT NO.2152/1
'D' BLOCK, SAHAKARA NAGAR
BENGALURU-560092.
3. SMT. B S VANDANA
D/O LATE M G SATYANARAYANA
W/O SRI N MANJUANTHA
AGED ABOUT 53 YEARS
R/A NO.495, 5TH CROSS
M S RAMAIAH NAGAR
BENGALURU-560054.
4. SMT. B S GAYATHRI
D/O LATE M G SATYANARAYANA
AGED ABOUT 60 YEARS
R/AT NO.26/A, 3RD CROSS
JUDICIAL OFFICERS LAYOUT
SANJAY NAGAR, RMV-II STAGE
BENGALURU-560094.
5. SRI B S KUMAR

S/O LATE M G SATYANARAYANA
AGED ABOUT 69 YEARS
R/AT NO.26/A, 3RD CROSS
JUDICIAL OFFICERS LAYOUT
SANJAY NAGAR, RMV-II STAGE
BENGALURU-560094.

6. SRI B S HARIPRASAD
S/O LATE M G SATYANARAYANA
AGED ABOUT 78 YEARS
R/AT NO.26/A, 3RD CROSS
JUDICIAL OFFICERS LAYOUT
SANJAY NAGAR, RMV-II STAGE
BENGALURU-560094.
7. GNANAJYOTHI TRUST
A REGISTERED TRUST
FORMED UNDER TRUST DEED
OF ITS TRUSTEES
BY CHAIRMAN OF
BOARD OF TRUSTEES
AT NO.26/A, 3RD CROSS
JUDICIAL OFFICERS LAYOUT
SANJAY NAGAR, RMV-II STAGE
BENGALURU-560094.
8. SMT. DHANALAKSHMI
W/O B S KUMAR
AGED ABOUT 52 YEARS
R/AT NO.26/A, 3RD CROSS
JUDICIAL OFFICERS LAYOUT
SANJAY NAGAR, RMV-II STAGE
BENGALURU-560094
9. SRI B S KARTHIK
S/O B S KUMAR
AGED ABOUT 30 YEARS
R/AT NO.26/A, 3RD CROSS
JUDICIAL OFFICERS LAYOUT

SANJAY NAGAR, RMV-II STAGE
BENGALURU-560094.

10. SRI B S VIVEK
S/O B S KUMAR
AGED ABOUT 28 YEARS
R/AT NO.26/A, 3RD CROSS
JUDICIAL OFFICERS LAYOUT
SANJAY NAGAR, RMV-II STAGE
BENGALURU-560094.

... RESPONDENTS

(BY SRI RAMESH P KULKARNI, ADV. FOR R7
SRI N JAYAVELU, ADV. FOR R1 TO R3
SRI K.S. SREEKANTHA, ADV. FOR R4
SRI R.B.SADASIVAPPA, ADV. FOR R5 & R6
SRI K.S. NANDISH BABU, ADV. FOR R8 TO R10)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE COMMON ORDER DTD:31.10.2018 PASSED BY THE COURT OF ADDITIONAL CITY CIVIL COURT, BANGALORE ON IA NOS.14 TO 23 IN O.S.NO.2227/09 VIDE ANNEXURE-L AND ETC.

THESE WRIT PETITIONS COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners are before this Court under Article 227 of the Constitution of India, assailing the common order dated 31.10.2018 passed on I.A.Nos.14 to 23 in

O.S.No.2227/2009 on the file of Additional City Civil Court, Bangalore.

2. The petitioners are defendant Nos.6 and 9 and respondents 1 to 3 are plaintiffs and respondents 4 to 10 are defendants 1 to 5, 7 and 8 in O.S.No.2227/2009 filed for partition and separate possession of 1/6th share each in schedule A, C and D properties. Defendants 6 and 9 filed applications I.A.Nos.14 to 23. I.A.No.14 is filed under Section 151 of CPC to recall the order dated 26.10.2018 and seeking permission to adduce their evidence. I.A.No.15 is filed under Section 151 of CPC to re-open the case and permit them to adduce their evidence. I.A.Nos.16 and 17 are filed under Order XVIII Rule 17 of CPC seeking to recall the order dated 22.10.2018 and to reopen the case and permit defendants 6 and 9 to cross-examine DW.1. I.A.No.18 is filed under Order 18 Rule 17 of CPC to recall the order dated 22.10.2018 and permit defendant Nos.6

and 9 to cross-examine DW.3. I.A.No.19 is filed under Order XVIII Rule 17 of CPC to reopen the case and permit to cross-examine DW.3. I.A.No.20 is filed under Order XVIII Rule 17 of CPC to recall the order dated 25.10.2018 and permit the defendants 6 and 9 to cross-examine DW.4. I.A.No.21 is filed under Order XVIII Rule 17 of CPC to reopen the case and permit to cross-examine DW.4. I.A.No.22 is filed under Order XVIII Rule 17 of CPC to recall the order dated 25.10.2018 and permit to cross examine DW.5. I.A.No.23 is filed under Order XVIII Rule 17 of CPC to reopen the case and permit to cross-examine DW.5. The trial Court on consideration of all the above applications by common order dated 31.10.2018 rejected the said applications, which order is impugned in these writ petitions.

3. Heard the learned counsel for the petitioners as well as the respondents and perused the writ papers.

4. Learned counsel for the petitioners submits that the Court below by its order dated 22.10.2018 had taken the cross-examination of DWs.1, 3, 4 and 5 as Nil and posted the suit for arguments. It is his further submission that even though he had engaged counsel, she was suffering from ailment and hence could not attend the Court. He further submits that petitioners took No Objection from the previous counsel and engaged the present counsel, who filed applications I.A.Nos.14 to 23 on 29.10.2018 to re-open the case and seeking permission to lead evidence and also to cross-examine DWs.1, 3, 4 and 5.

5. The trial Court is justified in rejecting I.A.Nos.14 to 23. But before this Court, the learned counsel for the petitioners submits that as the defendants 6 and 9, who are petitioners herein had no opportunity to cross-examine DWs.1, 3, 4 and 5 to lead their evidence and seeks for an opportunity to lead evidence and cross-

examine DWs.1, 3, 4 and 5. The respondents have not disputed the fact that the earlier counsel of petitioners was ailing and she could not attend the Court.

6. Accordingly, the writ petitions are **allowed**. In the interest of justice and to provide an opportunity to the petitioners/defendants 6 and 9, the common impugned order dated 31.10.2018 passed on I.A.Nos.14 to 23 is set aside. The applications I.A.Nos.14 to 23 are allowed. Petitioners/defendant Nos.6 and 9 are permitted to lead evidence and they are also permitted to cross-examine DWs.1, 3, 4 and 5. Learned counsel appearing for respondents submits that they would keep DWs.1, 3, 4 and 5 present before the Court on **04.12.2018**. Learned counsel for the petitioners submits that he would cross-examine DWs.1, 3, 4 and 5 on that day. He assures that within two dates he would complete cross-examination of the witnesses. Further, he undertakes to complete evidence of petitioners/defendants 6 and 9

without taking much time and adjournment. After completion of cross-examination of witnesses DWs.1, 3, 4 and 5, the petitioners/defendants 6 and 9 shall go on with the case without seeking any adjournment.

**SD/-
JUDGE**

NG*
CT:bms