

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF SEPTEMBER 2018

BEFORE:

THE HON'BLE MR. JUSTICE K.N.PHANEENDRA

MISCELLANEOUS FIRST APPEAL No.10312/2013 [CPC]

BETWEEN:

SRI. BASTY NARAYAN SHANBOGUE,
S/O. BASTY RAMAYYA SHANBOGUE,
AGED ABOUT 80 YEARS,
R/AT PINTO'S LANE,
MANGALORE,
D.K. DISTRICT-575 004.

SINCE DECEASED BY LR's:

A1 (a) BASTY LALITHA SHENOY,
AGED 81 YEARS,
RESIDING AT
D NO.3/32, 2731/2,
"LALITHA NARAYAN",
PINTO LANE, BEJAI,
KODIYALBAIL VILLAGE,
MANGALORE,
D.K. DISTRICT-575 004.

REPRESENTED BY HER GPA HOLDERS:

SMT. B. SHEELA SHENOY,
W/O. BASTY SUDHIR SHENOY,
AGED 51 YEARS,
AND
SMT. B. SARASWATHI SHENOY,
W/O. BASTY SUNIL SHENOY,
AGED 48 YEARS,
BOTH ARE RESIDING AT
D NO.3/32, 2731/2,
"LALITHA NARAYAN",
PINTO LANE, BEJAI,
KODIYALBAIL VILLAGE,

MANGALORE,
D.K. DISTRICT-575 004.

A1 (b) BASTY SUDHIR SHENOY,
S/O. LATE BASTY NARAYANA SHENOY,
AGED 57 YEARS,
RESIDING AT
D NO.3/32, 2731/2,
"LALITHA NARAYAN",
PINTO LANE, BEJAI,
KODIYALBAIL VILLAGE,
MANGALORE,
D.K. DISTRICT-575 004.

REPRESENTED BY HIS GPA HOLDER,
SMT. B. SHEELA SHENOY,
W/O. BASTY SUDHIR SHENOY,
AGED 51 YEARS,
RESIDING AT
D NO.3/32, 2731/2,
"LALITHA NARAYAN",
PINTO LANE, BEJAI,
KODIYALBAIL VILLAGE,
MANGALORE,
D.K. DISTRICT-575 004.

A1 (c) BASTY SUNIL SHENOY,
S/O. LATE BASTY NARAYANA SHENOY,
AGED 54 YEARS,
RESIDING AT
D NO.3/32, 2731/2,
"LALITHA NARAYAN",
PINTO LANE, BEJAI,
KODIYALBAIL VILLAGE,
MANGALORE,
D.K. DISTRICT-575 004.

REPRESENTED BY HIS GPA HOLDER,
SMT. B. SARASWATHI SHENOY,
W/O. BASTY SUNIL SHENOY,
AGED 48 YEARS,
RESIDING AT
D NO.3/32, 2731/2,
"LALITHA NARAYAN",
PINTO LANE, BEJAI,
KODIYALBAIL VILLAGE,

MANGALORE,
D.K. DISTRICT-575 004.

A1 (d) SMT. SABITHA SHENOY PAI,
D/O. LATE BASTY NARAYANA SHENOY,
W/O. PRASAN KOCHIKAR PAI,
RESIDING AT 28441,
FIELDBROOK, MISSION VIEJO,
CA 92692, AND ALSO AT
D NO.3/32, 2731/2,
"LALITHA NARAYAN",
PINTO LANE, BEJAI,
KODIYALBAIL VILLAGE,
MANGALORE,
D.K. DISTRICT-575 004.

REPRESENTED BY HER GPA HOLDER:
SMT. B. SHEELA SHENOY,
W/O. BASTY SUDHIR SHENOY,
AGED 51 YEARS,
AND
SMT. B. SARASWATHI SHENOY,
W/O. BASTY SUNIL SHENOY,
AGED 48 YEARS,
BOTH ARE RESIDING AT
D NO.3/32, 2731/2,
"LALITHA NARAYAN",
PINTO LANE, BEJAI,
KODIYALBAIL VILLAGE,
MANGALORE,
D.K. DISTRICT-575 004.

... APPELLANTS

[BY SRI. G. RAVISHANKAR SHASTRY, ADVOCATE]

AND:

MR. UMESH PAI,
S/O. P.KESHAVA PAI,
AGED ABOUT 69 YEARS,
R/AT MELKAR ROAD, N.H.,
PANEMANGALORE,
BANTWAL TALUK,
D.K. DISTRICT-574 219.

... RESPONDENT

[BY SRI. KRISHNAMOORTHY D., ADVOCATE]

THIS MFA IS FILED UNDER SECTION 43, RULE (1)(q) OF CODE OF CIVIL PROCEDURE, AGAINST THE ORDER DATED 21.11.2013 PASSED ON I.A. NO.2 IN O.S NO.23/2012 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE & JMFC, BANTWAL, D.K., REJECTING I.A. NO.2 FILED U/O 38 RULE 5 OF CPC.

THIS MFA COMING ON FOR ADMISSION, THIS DAY THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The appellants, who are the legal heirs of the original plaintiff in O.S. No.23/2012 have filed I.A. No.2 under Order 38 Rule 5 of C.P.C., seeking for conditional order of attachment before Judgment with regard to the schedule property mentioned in the application i.e., immovable property situated at Narikombu village of Bantwal taluk comprised in Sy. No.80-1A2P10 measuring 72 cents of land. The trial Court has rejected the said application mainly on the ground that proper description of the property and boundaries have not been given in the schedule.

2. During the course of the arguments, learned counsel for the appellants submits that he reasonably suspects that the respondent has alienated the portion of the aforesaid property by means of Settlement Deed in favour of

his son and brother in order to defeat the rights of the plaintiff. The plaintiff's suit is for recovery of a huge amount of Rs.35,94,901/-. If a decree is passed in his favour, if no property is left in the hands of the defendant and it could be very difficult for the appellant to reap the fruits of the decree. Therefore, he submits that proper order is required to be passed as the trial Court has not done the same.

3. As could be seen from the schedule mentioned in the plaint, as rightly observed by the trial Court, proper description of the suit property has not been given. However, the remedy is not completely shut so far as the appellant is concerned. He can very well furnish details of the property in question to the trial Court and make his submission at the time of the arguments on merits for attaching the property at the time of drawing up of the Final Decree if the suit of the plaintiff is decreed. Hence, I pass the following:

The appeal is dismissed. However, the plaintiff/appellants are at liberty to make necessary application before the trial Court for attachment of the property by specifically mentioning description of the property

to be attached at the time of drawing up of the decree by the trial Court if the plaintiff succeeds in his suit, so that, the plaintiff can go against the property for recovery of the decretal amount while executing the decree.

**Sd/-
JUDGE.**

Ksm*
CT-JLR