

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29<sup>TH</sup> DAY OF MARCH, 2019

BEFORE

THE HON'BLE MR.JUSTICE B.VEERAPPA

WRIT PETITION NO.50518/2018 (GM-CPC)

BETWEEN

1. SMT. B. R. GOWRAMMA,  
W/O LATE M. SRINIVASA,  
AGED ABOUT 91 YEARS,  
R/O NO.813, 17<sup>TH</sup> 'E' MAIN,  
5<sup>TH</sup> BLOCK, RAJAJINAGAR,  
BANGALORE-560010.

2. SMT. S. BHAGYALAKSHMI  
W/O SRI S KRISHNAKUMAR  
AGED ABOUT 49 YEARS  
NO.1, KRS MAIN ROAD  
OPP. SUJATHA TALKIES  
BRINDAVAN EXTENSION  
MYSORE.

... PETITIONERS

(BY SRI BALAGANGADHAR G S, ADV.)

AND

1. SRI S. GOVINDA  
S/O LATE M SRINIVASA  
AGED ABOUT 51 YEARS  
R/AT NO.813, 17<sup>TH</sup> E MAIN,  
5<sup>TH</sup> BLOCK, RAJAJINAGAR,  
BANGALORE-560010.

2. SRI S.PRAKASH  
 S/O LATE M SRINIVASA  
 AGED ABOUT 45 YEARS  
 R/AT NO.813, 17<sup>TH</sup> E MAIN,  
 5<sup>TH</sup> BLOCK, RAJAJINAGAR  
 BANGALORE-560010. ... RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDERS PASSED BY THE LEARNED XXIV ADDL. CITY CIVIL SESSIONS JUDGE, BANGALORE CITY [CCH NO.6] DTD 28.09.2018 IN O.S.NO.3479/2013 ON I.A.NO.6, FILED UNDER ORDER 6 RULE 17 READ WITH SECTION 151 OF CPC VIDE ANNEX-E.

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

### **ORDER**

The defendants 1 and 3 have filed the present writ petition against the order dated 28.9.2018 on I.A.6 in OS 3479/13 wherein the trial Court has allowed the application filed by the plaintiff under Order 6 Rule 17 read with Section 151 of Code of Civil Procedure, 1908.

2. First respondent-plaintiff filed suit for partition and separate possession of the suit schedule properties claiming 1/4<sup>th</sup> share of the suit schedule properties

more fully described in the schedule to the plaint i.e. Schedule A and B properties contending that plaintiff and defendants are members of joint Hindu family and they are all entitled to  $1/4^{\text{th}}$  share.

3. Defendants filed written statement wherein they have not disputed the relationship and geneology tree furnished by the plaintiff. The defendants denied the other contents contending that the very suit filed by the plaintiff is not maintainable and sought for dismissal of the suit.

4. When the matter was posted for evidence, at that stage, the plaintiff filed an application for amendment under Order 6 Rule 17 read with Section 151 of CPC to amend certain averments at paras.11, 17 and in prayer column instead of  $1/4^{\text{th}}$  share to substitute as  $1/3^{\text{rd}}$  share and alternatively, in the event of non-materialisation of deduction/assessment, necessary orders be passed for disposal A and B

Schedule properties through Court for apportionment of sale proceeds amongst co-owners equally and also to incorporate the para.19(a) to the effect that father of plaintiff died on 1.9.2005 at Bengaluru earlier to the amendment of Hindu Succession Act.

5. The said application came to be resisted by the defendants. The trial Court, considering the application and objections, allowed the application. Hence, the present writ petition is filed.

6. I have heard the learned counsel for the petitioners Sri G.S.Balagangadhar.

7. Sri G.S.Balagangadhar, learned counsel for the petitioners-defendants contended that the impugned order passed by the trial Court allowing the application for amendment to amend the prayer as 1/3<sup>rd</sup> share instead of 1/4<sup>th</sup> share is erroneous and contrary to material on record is liable to be quashed. The amendment will change the nature of suit and it is not admissible at all. He would further contend that learned

Judge committed an error in relying upon the Hindu Succession Act which is not proper and correct interpretation. The petitioners have not been properly heard in the matter. The inference drawn by the learned trial Judge that the defendants would have an opportunity to rebut the case of plaintiff at the time of final hearing of the suit. The reasons assigned by the learned Judge are contrary to the material on record. Therefore he sought to allow the writ petition.

8. Having heard the learned counsel for the petitioners, there is no dispute with regard to the relationship between the plaintiffs and defendants who are members of the joint family. According to the plaintiff at the inception, he was entitled to  $1/4^{\text{th}}$  share, by way of amendment stating that his father died on 1.9.2005 therefore, he wants to incorporate in the prayer column the share as  $1/3^{\text{rd}}$  instead of  $1/4^{\text{th}}$ .

9. The application though opposed, the learned Judge proceeded to allow the application for

amendment mainly on the ground that proposed amendment neither changes the nature of the suit nor cause of action. Though defendants contended that plaintiff is not entitled to share, they have got liberty to rebut the case. Accordingly, the application came to be allowed.

10. Though the learned counsel for the petitioners made an attempt before this Court that the application for amendment should not have been allowed, the fact remains that merely allowing an application for amendment of plaintiff's share would not take away the defence in respect of shares of the parties and the trial Court has to determine the shares after affording opportunity to both the parties.

11. It is also needless to observe that in view of the allowing of the application for amendment, the defendants can always file additional written statement if any. Amendment will not change the nature of the suit. Therefore, the impugned order passed by the trial

Court is just and proper. The petitioner has not made out any ground to interfere in exercise power under Article 226 of the Constitution of India.

However, needless to observe that, in view of allowing amendment to the prayer column, defendants are at liberty to file additional written statement if any within a period of 20 days from the date of receipt of a copy of this order and ultimately, the trial Court has to decide the suit based on the oral and documentary evidence to be adduced and produced by both the parties and to pass appropriate orders in accordance with law.

The Writ Petition is disposed of accordingly.

**Sd/-  
JUDGE**

Sk/-  
CT-HR