



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JULY, 2023

BEFORE

THE HON'BLE MR JUSTICE B M SHYAM PRASAD

WRIT PETITION NO. 49029 OF 2017 (GM-CPC)

BETWEEN:

SMT MANJULA T C
W/O MOHAN KUMAR,
AGED ABPIT 38 YEARS
R/AT MATHRUSHREE NILAYA,
2ND CROSS, TRANSFORMER ROAD,
19TH WARD, KANAKAPURA TOWN,
RAMANAGARA DISTRICT-562 117.

...PETITIONER

(BY SRI. S VENUGOPALA, ADVOCATE)

AND:

1. SRI K H CHANNIGAPPA
(DIED DURING THE PENDENCY OF THE SUIT
OS365/2008 HIS LEGAL
REPRESENTATIVES ARE ON
RECORD AS RESPONDENTS 2 TO 4)
2. SRI.C.VIJAYA KUMAR
S/O LATE K.H.CHANNIGAPPA,
AGED ABOUT 56 YEARS,
3. SMT.KEMPAMMA
W/O LATE K.H.CHANNIGAPPA,
AGED ABOUT 67 YEARS

Digitally
signed by
NARASIMHA
MURTHY
VANAMALA

Location:
HIGH
COURT OF
KARNATAKA



4. SRI.C.CHANDRASHEKAR
S/O LATE K.H.CHANNIGAPPA,
AGED ABOUT 50 YEARS,
5. SMT.UMADEVI
D/O LATE K.H.CHANNIGAPPA,
AGED ABOUT 44 YEARS,
6. SRI.C.NATESH
S/O LATE K.H.CHANNIGAPPA,
AGED ABOUT 41 YEARS,

THE RESPONDENTS 2 TO 6 ARE
R/AT HONNADEVI NILAYA,
J.C.EXTENSION, A.V.R. ROAD,
KANAKAPURA TOWN-562 117
RAMANAGARA DISTRICT.

7. SMT.M.K.SUKANYA
D/O KARIGOWDA W/O LATE PRAKASH
AGED ABOUT 41 YEARS
R/AT MURALE THIMMANADODDI,
KADAHALLI POST, SATHANUR HOBLI,
KANAKAPURA TALUK-562 117
RAMANAGARA DISTRICT.

...RESPONDENTS

(BY SRI. H.N. BASAVARAJU., ADVOCATE FOR R1;

VIDE ORDER DATED 27.01.2020 NOTICE TO R2 TO R5 IS
DISPENSED WITH; R6 SERVED)

THIS W.P. IS FILED UNDER ARTICLE 226 AND 227 OF
THE CONSTITUTION OF INDIA PRAYING TO QUASH THE
IMPUGNED ORDER DATED 23.10.2017 ANNEXURE-A PASSED
ON IA NO.18 IN O.S.NO.365/2008 ON THE FILE OF THE 1ST
ADDL. CIVIL JUDGE AND JMFC KANAKAPURA, BY ALLOWING



THE APPLICATION I.A.NO.18 FILED BY THE D-6 UNDER ORDER 15 RULE 5 READ WITH SECTION 151 OF THE CODE OF CIVIL PROCEDURE.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is by the sixth defendant in O.S. No.365/2008 on the file of the I Additional Civil Judge and JMFC, Kanakapura [for short, '*the civil Court*']. The petitioner is aggrieved by the civil Court's order dated 23.10.2017, and the civil Court by this order has rejected the petitioner's application [I.A. No.18] under Order XIV Rule 5 of the Code of Civil Procedure, 1908 [for short, '*the CPC*']. The petitioner has filed this application for framing of two additional Issues on whether the suit by the plaintiffs¹ is barred by limitation in view of Article 97 of the Limitation Act, 1963 and whether the suit instituted during the lifetime of the second respondent - the first defendant is maintainable.

¹ *The first plaintiff is no more and is represented by the other members of the family, including the second plaintiff-first respondent.*



This Court must at the very outset observe that a detailed discussion on the facts and circumstances of the rival claims is not necessary as the question for consideration lies within a narrow canvass. It is undisputed that the petitioner has filed an application under Order VII Rule 11 of CPC contending that the suit was not maintainable during the lifetime of the second respondent and it was barred by limitation. The civil Court has rejected this application by its order dated 18.07.2014 essentially observing that when the parties are yet to go to trial, there cannot be a decision on either of the two aspects. This would essentially mean that the civil Court refused to exercise jurisdiction under Order VII Rule 11 of CPC because it was of the opinion that the evidence was required to be brought on record by the parties.

The present application under Order XIV Rule 5 of CPC is rejected considering the very said grounds and because of the aforesaid earlier order. This Court must opine that after the rejection of the application under Order VII Rule 11 of



CPC holding that the questions raised therein must be considered in the light of the evidence, the civil Court could not have rejected the present application under Order XIV Rule 5 of CPC on the ground that these aspects are already considered while rejecting the application under Order VII Rule 11 of CPC. Hence the following:

ORDER

- [a] The petition is allowed, and the impugned order dated 23.10.2017 in O.S. No.365/2008 on the file of the I Additional Civil Judge and JMFC, Kanakapura is set aside. The civil Court is called upon to frame additional Issues as proposed by the petitioner in the application in I.A. No.18.
- [b] As the suit is pending for over fourteen years, the civil Court is called upon to identify the suit as a long pending matter and take all such measures as will be required in terms of the administrative directions issued for expeditious disposal of long pending matters. The civil



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Court is also called upon to dispose of the suit
in any event before 30.11.2023.

Sd/-
JUDGE

AN/-