



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 31<sup>ST</sup> DAY OF JULY, 2023**

**BEFORE**

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

**WRIT PETITION NO. 12239 OF 2023 (GM-CPC)**

**BETWEEN:**

H.S. NINGAPPA,  
S/O SHIVAPPA,  
AGED ABOUT 61 YEARS,  
LECTURER,  
R/AT PUSHPAGIRI NILAYA,  
OPP: TALUK OFFICE,  
KUVEMPU NAGAR,  
HASSAN.

NOW RESIDING AT:  
HEBBANDI KAVALAGUNDI POST,  
BHADRAVATI TALUK,  
SHIVAMOGGA DISTRICT - 577 201.

...PETITIONER

(BY SRI. M. V. MAHESHWARAPPA, ADVOCATE)

**AND:**

1. H.S. NANJUNDAPPA,  
S/O SHIVAPPA,  
AGED ABOUT 65 YEARS,  
R/AT HEBBANDI VILLAGE,  
KAVALAGUNDI POST,  
NOW RESIDING AT  
BASAVESHWARA BADAVANE,  
BHADRAVATI TALUK,  
SHIVAMOGGA DISTRICT - 577 201.
2. H.S. PUTTA @ PUTTASWAMY,  
S/O SHIVAPPA,  
AGED ABOUT 65 YEARS,



R/AT HEBBANDI VILLAGE,  
KAVALAGUNDI POST.

NOW RESIDING AT:  
BASAVESHWARA BADAVANE,  
BHADRAVATI TALUK,  
SHIVAMOGGA DISTRICT - 577 201.

3. SMT. GOWRAMMA,  
W/O NANJUNDAPPA,  
AGED ABOUT 78 YEARS,  
R/AT MUGULAHALLI VILLAGE,  
CHANNAGIRI TALUK,  
DAVANAGERE DISTRICT - 586 201.
4. SMT. HALAMMA,  
W/O MALLESHAPPA M.,  
AGED ABOUT 70 YEARS,  
R/AT BETTADAHALLI VILLAGE,  
TARIKERE TALUK,  
CHIKKAMAGALURU DISTRICT - 587 201.
5. SMT. MALLAMMA,  
W/O H.S. RAJAPPA,  
AGED ABOUT 64 YEARS,  
R/AT HEBBALAGERE VILLAGE,  
CHANNAGIRI TALUK,  
DAVANAGERE DISTRICT - 586 201.
6. SMT. REVATHI,  
W/O C. RAJAPPA,  
AGED ABOUT 56 YEARS,  
R/AT CHIKKAHNAVANGALA VILLAGE,  
AJJAMPURA TALUK,  
CHIKKAMAGALURU DISTRICT - 587 201.

...RESPONDENTS

(BY SRI. CHANDRAKANTH R. PATEL, ADVOCATE FOR R1 AND R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE  
WRIT IN THE NATURE OF CERTIORARI BY PASSING THE



IMPUGNED JUDGEMENT AND ORDER ON IA NO. 6 IN EX NO. 21/2021 DATED 02.03.2023 THE PETITIONER IS HERewith PRODUCE COPY OF THE IA NO. 6 AND MARKED AS ANNEXURE-E OR ISSUE WRIT IN THE NATURE OF ANY APPROPRIATE WRIT OR ORDERS OR DIRECTIONS PASSED ON IA NO. 6 IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.,

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

**ORDER**

Petitioner/defendant No.2 before the trial Court is before this Court under Article 227 of Constitution of India challenging the order dated 02.03.2023 on I.A.No.6 in Execution No.21/2021 on the file of the Additional Senior Civil Judge and JMFC, Bhadravathi.

2. Heard Sri.M.V.Maheshwarappa, learned counsel for the petitioner and Sri.Chandrakanth R. Patel, learned counsel for the respondent Nos.1 and 2. Perused the writ petition papers.

3. Learned counsel for the petitioner would submit that I.A.No.6 was filed under Section 151 of CPC to recall the order dated 12.01.2023. The execution Court has dismissed I.A.No.6 and re-issued delivery warrant. It is submitted that the sisters of the petitioner/defendant have filed separate suit for partition



in respect of property in execution petition and when the said suit is pending, issuance of delivery warrant against the said property in question is not maintainable.

4. Learned counsel for respondent Nos.1 and 2 would submit that the writ petition would no more survive for consideration since the execution petition is closed by order dated 19.04.2023. Further, he submits that the judgment and decree in O.S.No.181/2000 has become final and the challenge to it has been dismissed.

5. Having heard the learned counsel for the parties and on perusal of the writ petition papers, I am of the view that no ground is made out to interfere with the order under challenge under Article 227 of Constitution of India.

6. Admittedly, the judgment and decree in O.S.No.181/2000 has become final and binding on the parties to the suit as submitted by the learned counsel for the parties. The challenge to the said judgment and decree has also been dismissed and has become final. The judgment and decree in O.S.No.181/2000 is put to execution in E.P.No.21/2021. Mere institution of another suit would not come in the way of



executing the decree which has become final unless there the decree is stayed in any other proceedings. When there is no other impediment for execution of the decree, the trial Court is justified in issuing the deliver warrant. The application filed to recall the said order appears to be only to drag the execution proceedings. The trial Court has rightly dismissed I.A.No.6. Jurisdiction under Article-227 is exercised only where it is established that order under challenge is so unreasonable and when it is shown that order causes greater injustice. No ground is made out to interfere with the order under challenge under Article 227 of Constitution of India. Accordingly, the writ petition is ***dismissed***.

**Sd/-**  
**JUDGE**

MH/-  
List No.: 1 Sl No.: 20  
CT:PH