

**ORDERS ON PETITION FILED U/O 23 RULE 3 R/W 151 OF
CPC**

The plaintiff, defendant No.1, 2 and 4 have filed the compromise petition seeking permission to compromise the matter.

It is submitted that the plaintiff and defendants are close relative. As per the Will and Codicil of late Y. Ramayya Shetty dated 02.04.2007 the defendant No.3 was not inherited the property. But the plaintiff is inherited some property in that Will. Now the plaintiff, defendants No.1, 2 and 4 on mutual discussion and with the intervention of well wishers and elders have entered into compromise. There upon the plaintiff accept that the Will dated 14.11.1998 and codicil dated 02.04.2007 was duly executed by his father late Y.R. Shetty when he was in sound disposing state of mind. Even the defendants No.1, 2 and 4 have accept the said Will and codicil. Further they have agreed that the plaintiff will receive Rs.75,00,000/- in full settlement in lieu of bequest made in his favour. In addition to that the defendants No.1, 2 and 4 have already given the plaintiff Ambassador Car bearing No.MEG-677 which was sold by the plaintiff and received the amount. Further the defendants No.1, 2 and 4 have paid the house loan arrears of the plaintiff house to a sum of R.7,37,230/-. As on date of filing the compromise petition a sum of Rs.25,00,000/- was paid to the plaintiff and the remaining Rs.50,00,000/- was

paid through cheque dated 30.06.2018. There upon the plaintiff has no right, title or interest in the property whatsoever bequeathed by late Y.R. Shetty. Even the parties have agreed that so far as Maragodu property the case is still pending and in that property the plaintiff is entitled for 25% and remaining 75% shall belongs to defendants No.1, 2 and 4.

The same was opposed by the defendant No.3 by filing memo and stated that the compromise petition filed by the plaintiff and defendants No.1, 2 and 4 is not proper. Even he has got undivided right and share in respect of the property left behind by his father Y.R. Shetty. Now without proving the will and codicil the alleged compromise application filed is against law. The defendant No.3 may be transposed as plaintiff and plaintiff, defendant No.1, 2 and 4 may be transposed as defendants in the above suit.

Heard both parties and satisfied.

This is the suit filed for division of property. Now the matter is set forth for hearing on I.A.No.7. At this stage the plaintiffs, defendant No.1, 2 and 4 have entered into compromise and filed the compromise petition as aforesaid. The same was opposed by the defendant No.3 contending that he too has share in the property left by late Y.R. Shetty. Admittedly evidence commenced and when the matter was for cross examination of DW1 the I.A.No.7 came to be filed which is pending. Therefore it is clear that still the right of the parties

over the suit property and the validity of the will and codicil is not yet decided. Under these circumstances if the plaintiff, defendants No.1, 2 and 4 are permitted to enter into compromise and also permit to withdraw the suit then the right of the defendant No.3 will be frustrated. Hence in the interest of justice and under the circumstance of this case I feel it just and proper to provide an opportunity to the defendant No.3 to prove his case by transposing him as the plaintiff and the plaintiff, defendant No.1, 2 and 4 as the defendants. But there is no bar in receiving the cheque by the plaintiff which is subject to the result of this suit. Hence the defendant No.3 is directed to file necessary application so as to transpose him as the plaintiff and to proceed with the suit.

II Addl. Sr. C.J. & CJM
Mangaluru.