



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 5TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO.104179 OF 2024 (GM-CPC)

BETWEEN:

1. SMT. RAHAMATBI W/O. ABDULSALAM BELLARY,
AGE: 80 YEARS, OCC: HOUSEHOLD,
R/O. PLOT NO.73, EX-SERVICEMAN COLONY,
BENGALURU BY-PASS ROAD, COWL BAZAR,
BELLARY-583102.
2. SMT. JAMEELABI W/O. KASHIMSAB TAHASILDAR,
AGE: 72 YEARS, OCC: HOUSEHOLD,
R/O. NETAJI COLONY, GOKUL ROAD,
HUBLI-580030.
3. SMT. JAINABI W/O. SIKANDARSAB SINDAGI,
AGE: 70 YEARS, OCC: HOUSEHOLD,
R/O. SETTLEMENT, GANDHINAGAR,
GADAG-BETAGERI, BETAGERI-582102, DIST: GADAG.

...PETITIONERS

(BY SRI. M.R. HIEMATH, ADVOCATE FOR P1;
SRI. VIJAY MALALI, ADVOCATE FOR P2 AND P3)

AND:

1. MIYAJAN S/O. MUKTUMSAB ABBIGERI,
AGE: 67 YEARS, OCC: AGRICULTURE,
R/O. JAWALI BAZAAR, NEAR TANGAKOOT,
GADAG-582101, DIST. GADAG.
2. MOHAMMAD GHOSH S/O. MUKTUMSAB ABBIGERI,
AGE: 65 YEARS, OCC: AGRICULTURE,
R/O. JAWALI BAZAAR, NEAR TANGAKOOT,
GADAG-582101, DIST. GADAG.





3. NOOR AHAMED S/O. MUKTUMSAB ABBIGERI,
AGE: 62 YEARS, OCC: AGRICULTURE,
R/O. JAWALI BAZAAR, NEAR TANGAKOOT,
GADAG-582101, DIST. GADAG.
4. SMT. YASMIN W/O. SHAIK AHAMED,
AGE: 60 YEARS, OCC: HOUSEHOLD WORK,
R/O. ELAHI COLONY, BASAVAPATNA ROAD,
GANGAVATI-583227, KOPPAL DISTRICT.
5. MOHAMMED ANEEF S/O. MOHAMMED GHOSH,
AGE: 55 YEARS, OCC: TEACHER,
R/O. ELAHI COLONY, BASAVAPATNA ROAD,
GANGAVATI-583227, KOPPAL DISTRICT.
6. SMT. PARVEEN W/O. BABU SAB,
AGE: 61 YEARS, OCC: HOUSEWIFE,
R/O. ELAHI COLONY, BASAVAPATNA ROAD,
GANGAVATI-583227, KOPPAL DISTRICT.
7. SMT. MUBBEN W/O. MOHAMMED YUSUF,
AGE: 47 YEARS, OCC: HOUSEHOLD,
R/O. ELAHI COLONY, BASAVAPATNA ROAD,
GANGAVATI-583227, KOPPAL DISTRICT.
8. KUM. JABEEN D/O. MOHAMMED GHOSH,
AGE: 42 YEARS, OCC: PRIVATE JOB,
R/O. ELAHI COLONY, BASAVAPATNA ROAD,
GANGAVATI-583227, KOPPAL DISTRICT.

...RESPONDENTS

(BY SRI. C.S. SHETTAR, ADVOCATE FOR R1 AND R2;
NOTICE TO R3 IS SERVED;
SERVICE OF NOTICE TO R4 TO R8 ARE DISPENSED WITH)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA, PRAYING TO A) ISSUE WRIT IN THE NATURE OF CERTIORARI AND TO QUASH THE ORDER ON I.A.NO.7 DATED 18/03/2024 I.E., ANNEXURE-Q PASSED BY THE HON'BLE ADDL. SENIOR CIVIL JUDGE, GADAG IN O.S.NO.52/2012 IN THE INTEREST OF JUSTICE AND EQUITY. B) TO PASS SUCH ORDER OR DIRECTION AS DEEM FIT UNDER THE FACTS AND CIRCUMSTANCES NARRATED IN THE INTEREST OF JUSTICE AND EQUITY.



THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

ORAL ORDER

Aggrieved by the order dated 18.03.2024 passed on I.A. No.7 in O.S. No.52/2012 by the Additional Senior Civil Judge, Gadag (hereinafter referred to as 'the Trial Court' for short), the plaintiffs are before this Court.

2. The plaintiffs have filed a suit for partition and separate possession which came to be decreed. In the said suit, with an inordinate delay, when the defendants wanted to file their written statements, the same was rejected, against which a writ petition was filed and as no stay orders were granted, the suit was proceeded and the suit came to be decreed. Against that, Regular First Appeal was filed i.e. RFA No.100037/2014 which came to be disposed of by the judgment dated 05.03.2022 whereby the judgment and decree passed by the Trial Court was set-aside and the matter was remanded back to the Trial Court. The Division Bench of this Court in RFA No.100037/2014 has directed the Trial Court to accept the written statement filed by



the defendant Nos.1 to 3 and permit the parties to adduce additional evidence and it was made clear that the defendants shall not be permitted to file any additional defence and for the inconvenience caused, the defendant Nos.1 to 3 were directed to pay costs of Rs.50,000/- to the plaintiffs within four weeks from the date of receipt of the certified copy of the order. It is the case of the petitioners/plaintiffs that, in spite of an order passed on 05.03.2022 in RFA No.100037/2014, the defendant No.1 to 3 have failed to pay costs imposed and when they sought the leave of the Court at a later point of time, the Trial Court had dismissed the said application. Then against that, they preferred WP No.101125/2023 whereby, the petition came to be allowed on 02.08.2023 by setting aside the order subject to the defendants paying additional costs of Rs.10,000/- to the plaintiffs on the next date of hearing before the Trial Court and the Trial Court was directed to permit the defendant Nos.1 to 3 to lead rebuttal evidence as indicated in earlier order passed by this Court in RFA No.100037/2014 and directed the Trial Court to expedite the matter and decide the matter within 3 months. Thereafter, the respondents had paid Rs.50,000/- and also filed their fresh written statement through I.A.No.6. That written



statement was taken on record. It is the contention of the petitioners that, no opportunity was given to them to file their objections. The order in RFA No.100037/2014 is very clear that the written statement filed by the respondents on 21.02.2013 shall be taken on record and shall not file any additional defence which makes it clear that the written statement i.e. filed on 21.02.2013 shall be taken on record. It is the case that the defendant Nos.1 to 3 filed the fresh written statement in the year 2024 through I.A. No.6 and the same was accepted without giving opportunity to the petitioners/plaintiffs to file their objections. Hence, the petitioners/plaintiffs filed the impugned I.A. No.7 to recall the said order, but the Trial Court without appreciating the contentions raised on behalf of the petitioners, had dismissed I.A. No.7 vide order dated 18.03.2024. Thus, the petitioners/plaintiffs are before this Court.

3. Learned counsel appearing for the respondents/defendants submits that nowhere in the entire order passed in W.P. No.101125/2023 it is stated that the written statement filed by the defendants on 21.02.2013 shall be taken on record or considered and not mentioned that the defendants



are precluded from filing a fresh written statement. The Trial Court had rightly considered and permitted the defendants/respondents to file the written statement and there is no infirmity with the said order. It is submitted that the Trial Court had rightly considered the orders passed in RFA No.100037/2014 and W.P. No.101125/2023 and rightly rejected the I.A. No.7 filed by the plaintiffs and there are no grounds to interfere with the same.

4. Having heard the counsels on either side, perused the material on record. The suit is filed in the year 2012. The respondents/defendants have failed to file their written statement and without written statement, the suit came to be decreed. Against that, RFA No.100037/2014 was filed which came to be disposed of on 05.03.2022. A perusal of the judgment passed in RFA No.100037/2014 clearly indicates that the Trial Court has been directed to accept the written statement filed by defendant Nos.1 and 3 on 21.02.2013 and to permit the parties to adduce additional evidence. However, it is made clear that the defendants shall not be permitted to file any additional defence. On the first count, when the suit itself is of the year



2012 and RFA No.100037/2014 came to be disposed of on 05.03.2022, the absence of any reference to the written statement until 2024 remains wholly unexplained. Right from the beginning, even as per the order in RFA No.100037/2014, the only grievance is that, without the written statement of the defendants on record, the suit has been decreed. Then the Trial Court has directed that the written statement to be taken on record and that they are not permitted to file any additional defence. In that view of the matter, the RFA Court is very clear that the written statement as on the day i.e. filed on 21.02.2013 shall be taken on record. The respondents/defendants, in spite of an order passed by this Court in WP No.101125/2023 that the suit has to be disposed of within 3 months, in view of all these applications, the same could not be disposed of. In the considered opinion of the Trial Court, it has wrongly dismissed I.A. No.7. Hence, this Court is passing the following:

ORDER

- (i) Accordingly, the writ petition is ***disposed of*** by setting aside the order dated 18.03.2024



passed on I.A. No.7 in O.S. No.52/2012 by the Additional Senior Civil Judge, Gadag.

- (ii) Consequently, I.A. No.7 filed by the plaintiffs is ***allowed***.
- (iii) The Trial Court shall take into consideration the written statement filed by the defendants on 21.02.2013 prior to the dismissal of the suit.
- (iv) The Trial Court shall expeditiously dispose of the suit within a period of 3 months from the date of receipt of the copy of this order.
- (v) The Trial Court shall not grant unnecessary adjournments to the parties.
- (vi) All I.As. in this writ petition shall stand closed.

Sd/-
JUSTICE LALITHA KANNEGANTI

RH
CT: UMD
List No.: 1 Sl No.: 60