



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 25TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

WRIT PETITION NO.100012 OF 2023 (GM-CPC)

BETWEEN:

1. SMT. SHAMSHADBEGAUM
W/O. BUDENSAB ANEGUNDI,
AGE. 47 YEARS, OCC. HOUSEWIFE,
R/O. STATION ROAD, BAGALKOTI,
TQ. AND DIST. BAGALKOT.
2. SMT. SHAHANAZBEGAUM
W/O. BABUSAB UMACHAGI,
OCC. HOUSEWIFE,
R/O. REHAMAT NAGAR ROAD,
ITI GALLI, GADAG, TQ. GADAG.
3. SMT. NAZAMA W/O. MAHIDDINBAIG MULLA,
AGE. 38 YEARS, OCC. HOUSEWIFE,
R/O. JAMALAPUR, NEAR MRBC COLONY,
AT. NARAGUND, TQ. NARAGUND, DIST. GADAG.
4. SMT. PARAVVENBANU
W/O. ZAKIR HUSAIN MULLA,
AGE. 36 YEARS, OCC. HOUSEWIFE,
R/O. NEAR KSRTC DEPOT, AT AND
TQ. HUNASUR DISTRICT MYSORE.
5. SMT. REHANABANU W/O. DIVANASAB HOSAMANI,
AGE. 31 YEARS,
R/O. BHAGYA NAGAR, AT AND
TQ. RAMADURGA, DIST. BELAGAVI.
6. SMT. SHABIRABEGAUM
W/O. ABUBAKA HOSAMANI,
AGE. 29 YEARS, OCC. HOUSEWIFE,
R/O. SOMAPUR, NARAGUND,
TQ. NARAGUNDA, DIST. GADAG.

VIJAYALAKSHMI
M KANKUPPI



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7. ANVARHUSAIN S/O. ABDULLKHADARASAB
ARABJAMADAR,
AGE. 34 YEARS, OCC. AGRICULTURE,
R/O. SOMAPUR, NARAGUND, DIST. GADAG.

...PETITIONERS

(BY SRI. J.S. SHETTY, ADVOCATE)

AND:

1. SMT. ASHABI W/O. ABDULLKHADRASAB
ARABJAMADAR,
AGE. 55 YEARS, OCC. HOUSEWIFE,
R/O. SOMAPUR, NARAGUND,
TQ. NARAGUND, DIST. GADAG.
2. SMT. RABIYABEGUM W/O. MUZARHUSAIN MULLA,
AGE. 32 YEARS, OCC. HOUSEWIFE,
R/O. MAKANA GALLI, GADAG,
TQ. AND DIST. GADAG.
3. ISMAILSAB S/O. ABDULLKHADARSAB ARBAJAMADAR,
AGE. 30 YEARS, OCC. AGRICULTURE,
R/O. SOMAPUR, NARAGUND,
TQ. NARAGUND, DIST. GADAG.
4. SADIK S/O. ABDULLKHADARASAB ARABJAMADAR,
AGE. 27 YEARS, OCC. AGRICULTURE,
R/O. SOMAPUR, NARAGUND,
TQ. NARAGUND, DIST. GADAG.
5. SADDAMHUSAIN S/O. ABDULLKHADARASAB
ARABJAMADAR,
AGE. 25 YEARS, OCC. AGRICULTURE,
R/O. SOMAPUR, NARAGUND,
TQ. NARAGUND, DIST. GADAG.
6. RAFIQ AHMED S/O. ABDULLKHADARASAB ARABJAMADAR,
AGE. 24 YEARS, OCC. AGRICULTURE,
R/O. SOMAPUR, NARAGUND,
TQ. NARAGUND, DIST. GADAG.
7. SMT. KARIMBI W/O. ABDULLKHADARSAB ARABJAMADAR,
AGE. 64 YEARS, OCC. HOUSEWIFE,



R/O. SOMAPUR, NARAGUND,
TQ. NARAGUND, DIST. GADAG.

SINCE DECEASED, THE PETITIONER AND THE
RESPONDENT NO.8 WHO ARE HER LRS, WHO ARE
ALREADY ON RECORD.

8. MEHABUBSAB S/O. ABDULLKHADARASAB
ARABJAMADAR,
AGE. 45 YEARS, OCC. PRVT. SERVICE,
R/O. SOMAPUR, NARGUND,
TQ. NARAGUND, DIST. GADAG.
9. SMT. NOORAJANABI S/O. KHUTABUSAB BHUDIHAL,
AGE. 59 YEARS, OCC. AGRICULTURE,
R/O. SOMAPUR ONI, AT NARAGUND,
DIST. GADAG.

...RESPONDENTS

(BY SRI. C.S. SHETTAR, ADVOCATE FOR R1 TO R6;
SRI. K.L. PAWAR, ADVOCATE FOR R8;
R7 DEAD)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA, PRAYING TO A) ISSUE A WRIT OF
CERTIORARI TO QUASH THE ORDER DATED 31-1-2022, ON I.A.NO.6
IN O.S.NO.21/2014, PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE
AND CJM GADAG, THE ORDER SHEET OF WHICH HAS BEEN
PRODUCED HERewith AT ANNEXURE-A AND ORDER DATED 29-10-
2022, PASSED ON I.A.NO.VII, IN O.S.NO.21/2014, PASSED BY THE
PRINCIPAL SENIOR CIVIL JUDGE AND CJM GADAG, THE COPY OF
WHICH HAS BEEN PRODUCED HERewith AND MARKED AS
ANNEXURE-B AND ETC.,.

THIS WRIT PETITION, COMING ON FOR ORDERS, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:



ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI)

1. The petitioners have filed this writ petition challenging the order on I.A. No. VII dated 29.10.2022 passed in O.S. No. 21/2014 by the Principal Senior Civil Judge and CJM, Gadag.

2. Respondent Nos. 1 to 6 instituted a suit for declaration, partition, and separate possession in O.S. No. 21/2014 before the Court of the learned Principal Senior Civil Judge and CJM, Gadag. The petitioners, who were defendants in the said suit, filed their written statement denying the averments made in the plaint. The Trial Court framed issues based on the pleadings and recorded the evidence of the parties. By judgment dated 21.09.2016, the Trial Court decreed the suit of the plaintiffs.

3. Aggrieved by the said judgment and decree, some of the defendants preferred an appeal in RFA No. 10296/2016 before this Court. The Division Bench, by judgment dated 08.07.2021, allowed the appeal, set aside the judgment,



and decree passed in O.S. No. 21/2014, and remitted the matter to the Trial Court for a fresh consideration/retrial commencing from the stage of recording the evidence of the plaintiffs' witnesses. The Division Bench also granted a liberty to the parties to file applications seeking amendment of pleadings, if they so desired, subject to the condition that no such amendment should take away the rights accrued to the other party under the law of limitation. The relevant paragraph No. 8 of the judgment in Regular First Appeal reads as under:

"8. At this juncture, both the learned counsel would submit that, there are ambiguities in the pleadings and therefore, if the parties intend to amend the pleadings, they should be given an opportunity. The submission is accepted and the parties are permitted to file an application seeking amendment of the pleadings, if they so desire, however, it shall be subject to the condition that no such pleading would be permitted which would take away the right accrued to the other party on the law of limitation. The appellants/defendant Nos. 1 to 9 shall pay costs of ₹6,000/- to the



plaintiffs on the first date of hearing fixed by this Court or on any other further date fixed for payment of costs by the trial Court. "

4. Pursuant to the liberty granted by this Court, the petitioners filed I.A. No. 7 seeking amendment of the written statement. In the application, the petitioners contended that the earlier written statement was incomplete, that proper pleas had not been taken, and that certain facts and subsequent events had not been brought on record, resulting in ambiguities which required to be cured by way of amendment.

5. The respondents/plaintiffs opposed the said application by filing objections, denying the averments made in the affidavit accompanying the application. They contended that the petitioners had already filed a detailed written statement and that the application, having been filed after commencement of trial, did not satisfy the requirement of due diligence under the proviso to Order VI



Rule 17 of the Code of Civil Procedure. They, therefore, sought for dismissal of the application.

6. The Trial Court, after hearing the learned counsel for the parties, rejected I.A. No. 7 vide order dated 29.10.2022. Aggrieved by the said order, the petitioners have filed this writ petition.

7. Heard the arguments of the learned counsel for the petitioners, and the learned counsel for respondent Nos.1 to 6.

8. Learned counsel for the petitioners submits that the petitioners filed the amendment application pursuant to the liberty granted by the Division Bench of this Court in RFA No. 10296/2016. He submits that the proposed amendment is necessary for the proper adjudication of the dispute. He further submits that the Trial Court failed to consider the observations made by the Division Bench, and rejected the application solely on the ground that it was filed at a belated stage. Accordingly, on these grounds prays to allow the petition.



9. Per contra, learned counsel for the respondent Nos.1 to 6/plaintiffs submits that the petitioners filed the application after commencement of trial and failed to establish due diligence as required under the proviso to Order VI Rule 17 of the Code of Civil Procedure. Hence, he submits that the Trial Court has rightly rejected the application and accordingly, on this ground prays for dismissal of the writ petition.

10. Perused the records and considered the submissions of the learned counsel for the parties.

11. It is evident that the Division Bench of this Court, while remitting the matter, specifically observed that ambiguities existed in the pleadings, and granted liberty to the parties to seek amendment. The petitioners, in exercise of the said liberty, filed I.A. No. 7 seeking amendment of the written statement to clarify ambiguity in the pleadings and to bring subsequent events on record.

12. Although, the petitioners filed the application after commencement of trial, they have shown that despite



due diligence, they could not have sought the amendment earlier. The proposed amendment is necessary for the effective adjudication of the dispute. However, the Trial Court rejected the application solely on the ground of delay, without considering the liberty granted and the observations made by the Division Bench of this Court. The impugned order at Annexure-B is therefore contrary to the observations made by the Division Bench of this Court in the earlier appeal, and is liable to be set aside.

13. In view of above discussions, this Court proceeds to pass the following:

ORDER

- i) The writ petition is **allowed**.
- ii) The impugned order dated 29.10.2022 passed on I.A. No. VII in O.S. No. 21/2014 by the learned Principal Senior Civil Judge and CJM, Gadag, is hereby **set aside**.



- iii) I.A. No. 7 filed by the petitioners stands allowed subject to the payment of costs of ₹3,000/- payable to respondent Nos. 1 to 6 on the next date of hearing before the Trial Court.
- iv) Pending interlocutory applications, if any, do not survive for consideration and are accordingly disposed of.

Sd/-
(ASHOK S. KINAGI)
JUDGE

VB/CT: UMD
List No.: 2 Sl No.: 2