



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 23RD DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

WRIT PETITION NO. 202671 OF 2022 (GM-CPC)

BETWEEN:

SMT. SAMEENA @ BANDUMA W/O NAZIRSAB
D/O LATE MURTUZASAB,
AGE: 40 YRS, OCC: HOUSEHOLD,
R/O. AKALWADI VILLAGE,
TQ. JATH, DIST. SANGALI,
MAHARASHTRA.

...PETITIONER

(BY SRI. SHIVANAND PATIL, ADVOCATE)

AND:

1. SMT. FATRUBEE W/O LATE. MURTUZASA,
AGE: 86 YRS, OCC: AGRI.,
R/O. KONDAGULI VILLAGE,
TQ. JEWARGI, DIST. KALABURAGI.
2. MAMATAJA W/O MAHIBOOB
D/O LATE MURTUZASAB,
AGE: 49 YRS, OCC: AGRI.,
R/O. KONDAGULI VILLAGE,
TQ. JEWARGI, DIST. KALABURAGI.
3. SMT. HAZARATHABEE W/O IRFAN MULLA,
AGE: 40 YRS, OCC: AGRI.,
R/O. ALMAIL VILLAGE,
TQ. SINDAGI, DIST. VIJAYAPURA.



4. SMT. MAINABEE W/O MEERASAB MULLA,
D/O. LATE MURTUZASAB,
AGE: 51 YRS, OCC: AGRI.,
R/O. TARAPURA VILLAGE,
TQ. SINDAGI, DIST. VIJAYAPURA.
5. SMT. ASHABI W/O SHAFIQUE NAGARBANDI
D/O LATE MURTUZASAB,
AGE: 47 YRS, OCC: HOUSEHOLD,
R/O. JEWARGI K VILLAGE,
TQ. JEWARGI, DIST. KALABURAGI.
6. SMT. ROSHANBAI W/O MAHIBOOSAB
D/O LATE MURTUZASAB,
AGE: 42 YRS, OCC: HOUSEHOLD,
R/O. KUDARISALOTGI VILLAGE,
TQ. BASAVANA BAGEWADI,
DIST. VIJAYAPURA.
7. SMT. SHABANA W/O FAROOQUE MULLA
D/O. LATE MURTUZASAB,
AGE: 39 YRS,
OCC: HOUSEHOLD,
R/O. NEAR JIMMA MASJID, VIJAYAPURA,
TQ. AND DIST. VIJAYAPURA.
8. SMT. KHASIMBI W/O BANDAGI PATEL,
AGE. ABOUT 59 YRS,
OCC: AGRI.,
R/O. KANAMESHWARA,
TQ. JEWARGI, DIST. KALABURAGI.

...RESPONDENTS

(BY SMT. VEERANI V. NANDI, ADVOCATE FOR
SRI RAVI B. PATIL, ADVOCATE FOR R8;
V/O DTD. 25.01.2025 NOTICE TO R1 TO R3 & R5 TO R7 IS
DISPENSED WITH;
NOTICE TO R4 SERVED)



THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A) A WRIT OF CERTIORARI OR ANY OTHER ORDER OF THE KIND AND SET ASIDE THE IMPUGNED ORDER DATED 07.09.2022 ON IA NO.IV IN RA NO.142/2018 OF THE FILE OF 1ST ADDL. DIST. AND SESSION JUDGE, KALABURAGI AS PER ANNEXURE-D AND CONSEQUENTLY DISMISS THE APPLICATION IA-IV AS PER ANNEXURE-C IN THE SAID APPEAL. B) ISSUE ANY OTHER ORDER DEEMED FIT IN FACTS AND CIRCUMSTANCES OF THE CASE.

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

CORAM: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

ORAL ORDER

1. This writ petition under Article 226 and 227 of the Constitution of India is filed seeking for the following reliefs:

"A) A writ of certiorari or any other order of the kind and set aside the impugned order dated 07.09.2022 on IA No.IV in RA No.142/2018 of the file of 1st Addl. Dist. and Session Judge, Kalaburagi as per Annexure-D and consequently dismiss the application IA-IV as per Annexure-C in the said appeal.

B) Issue any other order deemed fit in facts and circumstances of the case".

2. Heard the learned counsel for the parties.



3. Petitioner herein had filed OS No.3 of 2017 before the Court of Senior Civil Judge and JMFC, Jevargi seeking the relief of partition and separate possession of the suit schedule property. The said suit was partly decreed on 19.03.2018 granting 1/8th share in the suit schedule property to the plaintiff. The said judgment and decree was challenged in RA No.142 of 2018 by defendant nos.1, 3 and 6. In the said appeal, IA No.IV was filed under Section 151 of CPC by the 8th defendant seeking permission of the Appellate Court to file written statement. The said application was allowed by the Appellate Court vide the order impugned. Aggrieved by the same, plaintiff is before this Court.

4. Perusal of the material on record would go to show that, the judgment and decree passed in O.S.No.3 of 2017 was challenged in RA No.142 of 2018 by defendant nos.1, 3 and 6. IA No.IV is filed in RA No.142 of 2018 by respondent no.6 herein, who is 8th defendant in O.S.No.3 of 2017, who has not even challenged the judgment and decree passed in OS No.3 of 2017. I.A.No.IV has been allowed solely for the reason that it was not opposed by any of the parties before the trial Court.



Though respondent no.6 / defendant no.8 had engaged the services of an advocate before the Trial Court, she had not chosen to file any written statement before the Trial Court. It appears that, merely for the reason that appellants in RA No.142 of 2018 had submitted that they have no objection to allow IA No.IV the Appellate Court has allowed the application. Under the circumstances, I am of the opinion that the impugned order cannot be sustained.

5. Accordingly, the following:-

ORDER

- i) Writ petition is allowed.
- ii) The impugned order at Annexure-D passed on IA No.IV in RA No.142 of 2018 dated 07.09.2022 is quashed.
- iii) Appellate Court shall make endeavours to dispose of the appeal on merits expeditiously.

Sd/-
(S.VISHWAJITH SHETTY)
JUDGE