

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s)for Special Leave to Appeal (Civil) No(s).13227/2008

(From the judgement and order dated 26/03/2008 in RFA No. 287/2008
Of The HIGH COURT OF KARNATAKA AT BANGALORE)

NANJAMMA Petitioner(s)

VERSUS

AKKAYAMMA & ORS. Respondent (s)

(With prayer for interim relief and office report)

(For final disposal)

Date: 17/11/2011 This Petition was called on for hearing
today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s) Mr.R.S.Hegde, Adv.
Mr. P.P. Singh,A.O.R.(Not Present)

For Respondent(s) Mr.M.Gireesh Kumar, Adv.
Mr.S.K.Kulkarni, Adv.
Mr. Vijay Kumar,Adv.

Mr.Kashi Vishweshar, Adv.
Ms. A. Sumathi,A.O.R.(Not Present)

Dr. Kailash Chand,A.O.R.(Not Present)

Mr.Rameshwar Prasad Goyal,AOR.(Not Present)

Mr. T. Mahipal,A.O.R.(Not Present)

UPON hearing counsel the Court made the following
O R D E R

This petition is directed against an interlocutory order
passed by the Division Bench of the Karnataka High Court whereby
the appeal filed by the petitioner against judgment and decree

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dated 4.2.2008 passed by the trial Court in O.S. No. 5805/2001 was
admitted but her prayer for stay was declined with the rider that
1/6th share of the appellant shall not be alienated till the
disposal of the appeal. Paragraph 9 of the impugned order, which
contains the reasons for declining the petitioner's prayer for
total stay is extracted below:

"9. As observed by the Hon'ble Supreme Court in the case of Gurudas, while granting interim order of injunction, the Court is required to keep in mind the relevant factors like existence of a prima facie case and other factors like balance of convenience of the parties, irreparable injury, if any, that may suffered by the plaintiff in case of refusal, etc. Almost in a situation similar to one in hand, taking judicial notice and undisputed fact that these lands are now valuable and commercial, if they are not used, it would deteriorate the condition. These lands are almost part of Bangalore and as the prices of the lands of this nature are coming up, it would not be in the interest of both parties, keep the lands idle by not allowing the joint development as is put by the respondents. However, her interest can be protected by reserving her 1/6th share, in case of her success in the appeal and that would meet ends of justice or otherwise for the sake of 1/6th share yet to be decided of the appellant, the remaining 5/6th share of the respondents would be without development and likely to fall in the hands of land grabbers. As such, after considering the entire matter at length, giving anxious consideration and in the interest of justice, after looking into the joint development agreement, we find that respondent No.21 has agreed to give 25% of the constructed area to the owners (other respondents). If out of this portion, 1/6th share is reserved by directing the respondents not to alienate the same till disposal of the appeal. After hearing of the appeal, if the appellant succeeds, that portion can be allotted to her. Similar is the position in respect of the area under development in respect of Sy.Nos. 117/3 and 118/1. In these lands also, we direct that 1/6th share of the appellant should be kept unalienated till the final disposal of the appeal."

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We have heard learned counsel for the parties and perused the record.

In our view, the discretion exercised by the Division Bench of the High Court not to accept the petitioner's prayer for total stay against the alienation of the suit property does not suffer from any patent legal infirmity and the impugned order does not call for interference under Article 136 of the Constitution.

The special leave petition is accordingly dismissed.

However, it is made clear that this order shall not, in any manner, prejudice the proceedings pending before the Mediator or influence the adjudication of the first appeal pending before the High Court.

(Satish K. Yadav)

(Phoolan Wati Arora)

