



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 30TH DAY OF DECEMBER, 2025
BEFORE

THE HON'BLE MR. JUSTICE R.NATARAJ

WRIT PETITION NO.110135 OF 2025 (GM-CPC)

BETWEEN:

1. SMT. SHANTABAI
W/O SHYAMRAO GHATANATTI
AGE. 67 YEARS, OCC. HOUSEHOLD WORK,
R/O. TEVARATTI, TQ. ATHANI,
DIST. BELAGAVI-591232.
2. SRI. RAJU
S/O SHYAMRAO GHATANATTI
AGE. 37 YEARS, OCC. AGRI.,
R/O. TEVARATTI, TQ. ATHANI,
DIST. BELAGAVI-591232.
3. SMT. BHARATI
W/O HALAPPA BEKKERI
AGE. 35 YEARS, OCC. AGRI.,
R/O. KRISHNA KITTUR, TQ. KAGAWADA,
DIST. BELAGAVI-591303.

...PETITIONERS

(BY SRI. K.H. BAGI, ADVOCATE)

AND:

SUKHADEV SHYAMARAO GHATANATTI
DEAD BY HIS LRS.,

1. GANGAVVA S/O SUKADEV GHATANATTI
AGE. 43 YEARS, OCC. HOUSEHOLD WORK,
2. VAISHALI D/O SUKADEV GHATANATTI
AGE. 20 YEARS, OCC. STUDENT,



3. AKSHATA
D/O SUKADEV GHATANATTI
AGE. 16 YEARS, OCC. STUDENT,
R-1 IS REPRESENTED AS A
NATURAL MINOR GUARDIAN
4. DARSHAN
S/O SUKADEV GHATANATTI
AGE. 14 YEARS, OCC. STUDENT,
R-1 IS REPRESENTED AS A
NATURAL MINOR GUARDIAN.
ALL ARE R/O. TEVARATTI,
TQ. ATHANI, DIST. BELAGAVI-591232.
5. KAMALAVVA
W/O SHYAMRAO GHATANATTI
AGE. 35 YEARS, OCC. AGRI.,
R/O.KRISHNA KITTUR, TQ. KAGAWADA,
DIST. BELAGAVI-591303.

...RESPONDENTS

(NOTICE TO RESPONDENTS IS DISPENSED WITH)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF MANDAMUS OR DIRECTION OR ANY OTHER WRIT OR ORDER OR DIRECTING TO THE SENIOR CIVIL JUDGE, ATHANI TO DISPOSE OF THE I.A. NO.II FOR STAY DATED 06.01.2023 IN R.A.NO.10/2023 IS PRODUCED AS ANNEXURE 'C' BY ALLOWING THIS WRIT PETITION IN THE INTEREST OF JUSTICE & ETC.

THIS WRIT PETITION COMING ON FOR ORDERS,
THIS DAY, ORDER WAS MADE THEREIN AS UNDER:
CORAM: THE HON'BLE MR. JUSTICE R.NATARAJ



ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE R.NATARAJ)

The petitioners have sought for a direction to the Senior Civil Judge, Athani to dispose of I.A.No.II filed by them in R.A.No.10 of 2023. They have also sought to quash the order dated 17.11.2025 passed by the Principal Civil Judge and JMFC, Athani in F.D.P.No. 62 of 2022.

2. The sum and substance of the case of the petitioners is that, a suit in O.S.No.784 of 2018 was filed by deceased-respondent No.1 and Smt.Kamalavva for declaration that the gift deed in favour of petitioner No.3 was not binding on their share in the suit property. The said suit after contest was decreed and it was declared that the plaintiffs were entitled to one third share each in the suit property. This was challenged by the petitioners in R.A.No.10 of 2023.

3. In the meanwhile, the deceased-respondent No.1 and Smt.Kamalavva filed an application under Order XXVI Rule 10(A) of CPC in FDP No.62/2022 to appoint a Commissioner to divide the property as per the preliminary decree. Though the petitioners purportedly objected the said application, the trial Court allowed the application on the ground that the petitioners



did not object to the said application and appointed a Commissioner to divide the properties as per the preliminary decree. The petitioners are therefore before this Court challenging the order appointing the Commissioner and have also sought for a direction to the Appellate Court to dispose of their appeal.

4. The learned counsel for the petitioners contend that the Appellate Court is not considering the application for stay and in the meanwhile the Final Decree Court is proceeding to divide the property based on the preliminary decree. He therefore prays that the impugned order appointing the Tahsildar and PDO to divide the suit properties be stayed and to issue a direction to the First Appellate Court to dispose off the application for stay in R.A.No.10/2023.

5. A perusal of the impugned order passed by the trial Court appointing a Commissioner shows that the trial Court has merely exercised its jurisdiction to give effect to the preliminary decree passed in O.S.No.784 of 2018 to identify the shares of the petitioners and submit a report. Assuming that the petitioners had filed objections to the said application, the result would have been the same. Therefore the impugned order



insofar as appointing a Commissioner to bifurcate the properties as per the preliminary decree is unexceptionable and therefore does not warrant interference in this petition. It is however open for the petitioners to file objections to the report of the Court Commissioner and such objections shall be duly considered by the Final Decree Court before accepting the report of the Court Commissioner.

6. Insofar as the relief sought for by the petitioners for direction to the Appellate Court to dispose of their application filed in R.A.No.10 of 2023, since the application is pending consideration for nearly 2 years, it is appropriate that a direction is issued to the Appellate Court to dispose of the application filed by the petitioners in accordance with law. Hence, the writ petition is disposed of on the following terms:

- i. The writ petition is ***allowed-in-part***.
- ii. The order passed appointing Tahsildar and PDO of Madhabhavi Panchayat as Commissioners on the file of the Principal Civil Judge and JMFC, Athani in FDP No.62 of 2022 is upheld. It is open for the petitioners to file objections to the report that may be submitted by them and the Court shall consider the objections



before accepting the report of the Court Commissioner.

- iii. A direction is issued to the Additional Senior Civil Judge and JMFC, Athani to dispose of the interlocutory applications filed by the petitioners in R.A.No.10 of 2023, within 1 month from the date of receipt of a copy of this order.

**Sd/-
(R.NATARAJ)
JUDGE**

KGK, CT:VP
LIST NO.: 1 SL NO.: 16