



CNR: KAHC010321492026

NC: 2026:KHC:39701
WP No. 15797 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JULY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 15797 OF 2026 (GM-CPC)

BETWEEN:

SRI DYAVAPPA
S/O LATE. LOKAPPA,
AGED ABOUT 55 YEARS,
R/O NIMBEGONDI VILLAGE,
HOSUR HOBLI, SHIKARIPURA TALUK,
SHIVAMOGGA DISTRICT.
REP. BY HIS GPA HOLDER
KOTRESHAPPA
S/O BASAVANYAPPA,
AGED ABOUT 65 YEARS,
R/O NIMBEGONDI VILLAGE,
SHIKARIPURA TALUK,
SHIVAMOGGA DISTRICT- 577 427

...PETITIONER

(BY SRI. SAMEER S.N., ADVOCATE)

AND:

1. SRI.KOTRESHAPPA
S/O LATE. LOKAPPA,
AGED ABOUT 45 YEARS,
R/O NIMBEGONDI VILLAGE,
HOSUR HOBLI,
SHIKARIPURA TALUK,
SHIVAMOGGA DISTRICT - 577 427
2. SRI. SHIVARAJA
S/O LATE. LOKAPPA,
AGED ABOUT 43 YEARS,



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R/O NIMBEGONDI VILLAGE,
HOSUR HOBLI,
SHIKARIPURA TALUK,
SHIVAMOGGA DISTRICT-577 427

3. SMT. HIRIYAMMA
W/O LATE. NINGAPPA,
THE LRS OF DECEASED 3RD
DEFENDANT ALREADY RECORDED
AS A 4TH DEFENDANT
SMT LAXMAMMA
W/O LATE. NINGAPPA,
AGED ABOUT 54 YEARS,
R/O NIMBEGONDI VILLAGE,
SHIKARIPURA TALUK,
HOSUR TALUK,
SHIVAMOGGA DISTRICT-577 427
4. SRI. PRAKASHA
S/O LATE. HUCHAPPA PARATHANNANAVARA,
AGED ABOUT 52 YEARS,
R/O NIMBEGONDI VILLAGE,
HOSUR HOBLI, SHIKARIPURA TALUK,
SHIVAMOGGA DISTRICT- 577 427
5. SRI.CHANDRAPPA
S/O LATE. BASAPPA,
AGED ABOUT 76 YEARS,
R/O 16TH WARD,
KANUR SHIKARIPURA TOWN,
SHIKARIPURA TALUK,
SHIVAMOGGA DISTRICT-577 427
6. SRI. KARIBASAPPA
S/O LATE. BASAPPA,
AGED ABOUT 66 YEARS,
R/O NELAVAGILU VILLAGE AND POST,
SHIKARIPURA TALUK,
SHIVAMOGGA DISTRICT- 577 427



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7. SRI. SHASHIDARA
S/O BASAVARAJAPPA KADDIPUDIYAR MANE,
AGED ABOUT 34 YEARS,
R/O NIMBEGONDI VILLAGE,
HOSUR HOBLI, SHIKARIPURA TALUK,
SHIVAMOGGA DISTRICT-577 427
8. SRI.SANNA GOWDA PATIL
S/O RUDRA GOUDA PATIL,
R/O RAGHAVENDRA COLONY AREA,
HIREKERURU TOWN AND TALUK
HAVERI DISTRICT-581 111
9. SMT. RATHNAMMA
W/O LATE. LOKAPPA,
AGED ABOUT 79 YEARS,
R/O NIMBEGONDI VILLAGE,
HOSUR HOBLI, SHIKARIPURA TALUK,
SHIVAMOGGA DISTRICT-577 427
10. SMT. KOTRAMMA
D/O LATE. LOKAPPA,
W/O DEVENDARAPPA,
AGED ABOUT 57 YEARS,
R/O NIMBEGONDI VILLAGE,
HOSURU HOBLI,
SHIKARIPURA TALUK,
SHIVAMOGGA DISTRICT-577 427
11. SMT. BASAMMA
D/O LATE. LOKAPPA,
AGED ABOUT 53 YEARS,
R/O MASOOR VILLAGE,
HIREKERUR TALUK,
HAVERI DISTRICT-581 210
12. SMT.SAKAMMA
D/O LATE. LOKAPPA,
W/O BASAVARAJAPPA,



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AGED ABOUT 49 YEARS,
R/O SURAHONNE VILLAGE,
HONNALI TALUK,
DAVANAGERE DISTRICT-577 223

...RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OR ORDER IN THE NATURE OF CERTIORARI QUASHING ANNEXURE-A IMPUGNED ORDER PASSED BY THE HON'BLE SENIOR CIVIL JUDGE AND JMFC AT SHIKARIPURA, DISMISSING FILED BY THE PLAINTIFF UNDER ORDER 14 RULE 1 TO 4 R/W 151 OF CPC IN O.S.NO.12/2017 SEEKING TO RECAST THE ISSUE NO.4 AND ALSO FOR FRAMING ADDITIONAL ISSUES ON 03-01-2026.

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

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

ORAL ORDER

Aggrieved by the orders passed on I.A.No.30 in OS.No.12/2017 dated 03.01.2026 by the Senior Civil Judge & JMFC, Shikaripura, the petitioner/plaintiff is before this Court.

2.The plaintiff had filed a suit for partition and for declaration of the suit schedule property. When the matter is coming up for the cross-examination of defendant No.6, at that point of time, the petitioner has filed an application under Order XIV Rule 1 R/w 151 of CPC for recasting of the issues. By way



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of this application, the petitioner wants the court to recast the issues which reads as thus:

- 1. Whether the Defendants No 6 and 7 prove that they have indefeasible title holder owners by virtue of the Registered Gift deed dated 28/1/1971 alleged to have been executed by late Smt Nimbegondi Hulugamma W/O late Kumsi Dyavappa permanent R/O Nimbegondi Village Shikaripura taluk Shivamogga District pertaining to the Suit Schedule item no 7?***
- 2. Does both the defendant Numbers 6 and 7 respectively prove that late Smt Nimbegondi Hulugamma W/O Late Kumsi Dyavappa or Dyavanna who was a permanent resident of Nimbegondi Village Hosur Hobali Shikaripura taluk Shivamogga District during her life time had executed the registered Gift deed dated 28/01/1971 in their favour being herself personally present on 28/01/1971 during their minority that too for them as their minor guardian representing regarding item no 7 of the immovable property?***
- 3. Does the defendants No 6 and 7 respectively prove on what specified date the acceptance of the said gift deed dated 28/01/1971 was made by whom and also specifically in which mode by the recipient of the Gift that too as minor guardian grandmother to the 6th and 7th defendant when the said Gift deed dated 28/01/1971 was executed?***
- 4. Does the Defendant Nos 6 and 7 respectively prove the zenisis or origin their Genealogical tree as pleaded in their written statement?***

3.The trial court by order impugned has dismissed the application and while dismissing the application, the court has given two reasons. One is that this application is filed at a



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belated stage only to drag on the proceedings and further the court on perusal of the entire pleadings of both the parties, has come to the conclusion that it is not necessary to cast the burden on the defendant Nos.6 and 7, because in this case the plaintiff has taken a contention regarding creation of the gift deed dated 28.01.1971 executed in favour of defendant Nos.6 and 7. Hence it is the duty of the plaintiff to prove the same. Further in this case, the plaintiff has produced the decisions regarding point of law and recasting the issues and regarding the burden of proving the documents. But it is the duty of the plaintiff to prove the gift deed dated 28.01.1971 executed in favour of defendant Nos.6 and 7 is created one and the judgments relied up on by the petitioner are not applicable to the facts of the case and accordingly rejected the application.

4. Learned counsel appearing for the petitioner submits that it is the duty of the trial court to recast the issues and delay cannot be a ground to dismiss the application. It is submitted that when defendants are asserting their rights with regard to the said gift deed, the trial court ought to have recasted the issues by casting the burden on the defendant to



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prove the same, but all these aspects were not considered by the court.

5. Having heard the learned counsel for the petitioner, perused the entire material on record. The plaintiff has filed the suit for partition and declaration. According to the plaintiff, the gift deed dated 28.01.1971 is a created one which is executed in favour of defendant Nos.6 and 7. Hence, at the time of cross-examination of defendants, the petitioner filed the instant application seeking recasting of the issue, where an issue has to be framed casting burden on the defendants that came to be dismissed by the court on two grounds. One is with regard to the delay and other is with regard to the fact that the burden cannot be placed on the defendant.

6. In the considered opinion of the trial Court, the trial Court has rightly considered these aspects and rightly held that the burden cannot be cast upon the defendant. When it is the specific case of the plaintiff, that the gift deed dated 28.07.1971 is a created one. In that view of the matter, this Court do not find any reasons to interfere with the order passed by the trial court.



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7. Accordingly, this court is passing the following:

ORDER

- i. The writ petition is ***dismissed***.
- ii. Pending I.As., in this petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

TS
List No.: 1 SI No.: 50