



CNR: KAHC010417222021

NC: 2026:KHC:42238  
W.P. No.20061/2021

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**  
**DATED THIS THE 10<sup>TH</sup> DAY OF AUGUST, 2026**  
**BEFORE**  
**THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL**  
**WRIT PETITION NO.20061/2021 (GM-CPC)**

**BETWEEN:**

1. JAYADEVA  
S/O LATE SHEKARAPPA  
AGED 50 YEARS.
2. USHA  
W/O MOHAN KUMAR  
AGED 38 YEARS.
3. PREMA B.M.  
D/O MOHAN KUMAR  
AGED 23 YEARS.
4. HEMA B.M.  
D/O MOHAN KUMAR  
AGED 31 YEARS.
5. ANJALI B.M.  
D/O MOHAN KUMAR  
AGED 18 YEARS.
6. PRADEEPA  
S/O SHEKARAPPA  
AGED 38 YEARS.

ALL ARE R/O A.D. COLONY  
NEW AJJAMPURA ROAD  
BIRUR TOWN, BIRUR  
KADUR TQ.

...PETITIONERS

(BY SRI. DEVI PRASAD SHETTY, ADV.,)

Digitally signed  
by RUPA V  
Location: HIGH  
COURT OF  
KARNATAKA



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**AND:**

1. SMT. NAGARATHNA @  
NAGARATHNAMMA  
W/O LATE K.R. LOKESHAPPA  
AGED 58 YEARS  
R/O B-124, 2ND CROSS  
2ND MAIN, 3RD STAGE  
KALYAN NAGAR, BYPASS ROAD  
CHIKKAMAGALURU 577102.
2. K.R. NIJALINGAPPA  
S/O LATE K. RUDRAPPA  
AGED 66 YEARS  
DOOR NO.356, NEETHI MARGA  
SIDDARTHA NAGAR  
MYSURU CITY.
3. DR. K. SHANTHA KUMAR  
S/O LATE K. RUDRAPPA  
AGED 60 YEARS  
R/O NO.224, 22ND CROSS  
15TH MAIN, D BLOCK  
J.P NAGAR, MYSURU CITY.
4. K.R. KALAPPA  
S/O LATE RUDRAPPA  
AGED 74 YEARS.
5. SMT. GOURAMMA  
W/O K.R. KALAPPA  
AGED 62 YEARS.
6. K.R. GANGADARAPPA  
S/O LATE K. RUDRAPPA  
AGED 66 YEARS.

R4 TO R6 ARE ALL  
R/AT. A.D. COLONY  
NEW AJJAMPURA ROAD



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5<sup>TH</sup> CROSS, BIRUR TOWN  
KADUR TALUK.

[AMENDED AS PER COURT DTD:24.11.2021]

...RESPONDENTS

(BY SRI. B.N. PRAKASH, ADV., FOR R1 TO R3  
SRI. THARESHA K.N. ADV., FOR  
SRI. H.T. VASANTH KUMAR, ADV., FOR R4 & R5  
R6 SERVED)

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THIS W.P. IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DTD 16.07.2021 PRODUCED AT ANNEX-E PASSED BY HON'BLE SENIOR CIVIL JUDGE AT KADUR IN OS NO.36/2021 AND CONSEQUENTLY ALLOW THE IA NO.7 AND 8 FILED BY THE PETITIONERS IN OS NO.36/2016 BEFORE THE LEARNED SENIOR CIVIL JUDGE AT KADUR. NOT PRESSED AGAINST IA NO.6 VIDE ORDER DATED 15.11.2021 & ETC.

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

**CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL**

**ORAL ORDER**

This writ petition is filed challenging the order dated 16.07.2021 passed in O.S.No.36/2016 by the Senior Civil Judge, Kadur (for short, 'the Trial Court').

2. Sri.Devi Prasad Shetty, learned counsel appearing for the petitioners submits that the respondent



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Nos.1 to 3 herein have filed a suit for declaration. In the said suit, the defendants have filed a written statement by specifically contending that the suit schedule properties are the joint family properties and thereafter, they have filed 3 applications i.e. I.A.Nos.6 to 8 seeking for temporary injunction, for amendment of the written statement and for impleading the other co-owners as parties to the suit. It is submitted that the properties being the joint family properties, the plaintiffs have to prove the Will alleged to have been executed by one Smt.Halamma and in view of the said fact, the Trial Court ought to have considered the application for temporary injunction as well as the application for amendment of the written statement, wherein the defendants have sought to add certain other family properties and also sought to implead the co-owners of the aforesaid properties which are the suit schedule properties as well as the properties referred in the amended written statement. However, the



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Trial Court erroneously rejected the said applications. Hence, he seeks to allow the petition.

3. *Per contra*, Sri.B.N.Prakasah, learned counsel appearing for the respondent Nos.1 to 3 and Sri.Tharesha K.N., learned counsel appearing on behalf of Sri.H.T.Vasanth Kumar, learned counsel for the respondent Nos.4 and 5 support the impugned order of the Trial Court and seek to dismiss the petition.

4. It is required to be noticed that the suit filed by the respondent Nos.1 to 3 herein, is for the relief of declaration that the plaintiffs are the joint owners of the suit schedule properties having undivided 1/3<sup>rd</sup> share by virtue of the registered Will dated 17.12.2012 and for the relief of permanent injunction against the defendants. The primary contention of the plaintiffs in the said suit is that the plaintiffs' mother had executed a registered Will dated 17.12.2012 and by virtue of the said Will, they became the owner as they are the 3 children of Smt.Halamma and



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sought division of the properties claiming their 1/3<sup>rd</sup> share. In the said suit, the defendants specifically contended that the suit schedule properties are the joint family properties and the said Halamma had no right to execute the alleged Will and the same is not binding on the defendants. It is required to be noticed that the relief sought in the suit is for declaration of ownership based on the Will, the plaintiffs are claiming 1/3<sup>rd</sup> share based on such Will. Therefore, the contention of the defendants that some of the properties are left out from the purview of the suit, cannot be entertained, as the suit is not for relief of partition. It is required to be noticed that the defendants have not filed any counter claim seeking relief of partition, hence, the proposed amendment to the written statement is unnecessary and the defendants cannot compel the plaintiffs to seek a relief of partition by including some other properties.



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5. Insofar as the application for impleadment is concerned, the Trial Court has rightly come to the conclusion that the suit is for the relief of declaration of ownership based on the Will stated to have been executed by Halamma in favour of the plaintiffs. It is required to be noticed that the proposed defendants are neither necessary nor proper parties to decide the *lis* pending before the Trial Court. The plaintiffs being *dominus litis*, the defendant cannot compel the plaintiffs to array some parties stating that they are the co-owners of the property. If the plaintiffs fail to array the necessary party in the suit, the suit is bound to fail on such grounds. Hence, the Trial Court has rightly rejected the application of the defendants for impleadment and the same does not call for any interference.

6. Insofar as the rejection of the defendants' application for temporary injunction is concerned, the petitioners have the remedy of appeal to challenge the



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said order. The relief sought in the said application is with regard to the property which is not the subject matter of the suit, the property against which the relief of injunction is sought is the property which the defendant is seeking to add in the written statement and already a finding is recorded that adding other properties to the suit would not arise. Hence, the trial Court has rightly rejected the application of the defendants filed for temporary injunction and the same also does not call for any interference.

7. Accordingly, I proceed to pass the following:

**ORDER**

The writ petition is devoid of merits and the same is hereby ***rejected***.

**Sd/-**  
**(VIJAYKUMAR A. PATIL)**  
**JUDGE**

RV  
List No.: 1 Sl No.: 28