IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 16TH DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.38542 OF 2018(GM-CPC)
C/W
WRIT PETITION NO.38543 OF 2018(GM-CPC)

IN W.P.NO.38542/2018:

BETWEEN:

SRI HANUMANTHARAO MYLARAPPA EDAGI,
S/O MYLARAPPA EDAGI,
AGED ABOUT 62 YEARS,
R/AT NO.296,19TH "D" MAIN,
1ST "N" BLOCK,RAJAJINAGAR,
BENGALURU-560010.
(BENEFIT OF SENIOR CITIZEN NOT CLAIMED)

...PETITIONER

(BY SRI. RAJAGOPAL M R, ADVOCATE)

AND:

1. SRI NEELAKANTA NAIDU,
   S/O GANGAMA NAIDU,
   AGED ABOUT 78 YEARS,
   R/A NO.381,4TH "D" MAIN ROAD,
   II STAGE,WEST OF CHORD ROAD,
   BENGALURU-560086

2. SRI H S MANIKYARAJ,
   S/O H P SUBBAIAH,
   AGED ABOUT 70 YEARS,
   R/A NO.4TH CROSS,
   SHANKARMUTT ROAD,
   K R PURAM,
   HASSAN-573 164

... RESPONDENTS

(BY SRI. ANOOP HARNAHALLI, ADVOCATE FOR
SRI. S S SRINIVASARAO, ADVOCATE FOR R2;
NOTICE TO R1 IS HELD SUFFICIENT
V.C.O DATED 16.12.2020)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH AND CORRECT THE ORDER DATED 25.06.2018 PASSED BY THE LEARNED SENIRO CIVIL JUDGE, NELAMANGALA, ON I.A.NO.3 IN O.S.NO.515/2012 AS PER ANNEXURE-G AND ETC.,

IN W.P.NO.38543/2018:

BETWEEN:

SRI HANUMANTHARAO MYLARAPPA EDAGI,
S/O MYLARAPPA EDAGI,
AGED ABOUT 62 YEARS,
R/A NO.296, 19TH D MAIN,
IST N BLOCK, RAJAJINAGAR,
BENGALURU-560010.
(BENEFIT OF SENIOR CITIZEN NOT CLAIMED)

...PETITIONER

(BY SRI. RAJUGOPAL M R, ADVOCATE)

AND:

1. SRI NEELAKANTA NAIDU,
   S/O GANGAMA NAIDU,
   AGED ABOUT 78 YEARS,
   R/A NO.381, 4TH D MAIN ROAD,
   II STAGE, WEST OF CHORD ROAD,
   BENGALURU-560086.

2. SRI T P RANGANATHA GUPTHA,
   S/O LATE T PUTTAIAH SETTY,
   AGED ABOUT 77 YEARS,
   R/A MATHRUSHREE NILAYA,
   PANDURANGA TEMPLE STREET,
   ARASIKERE , HASSAN DISTRICT-573163.

...RESPONDENTS

(BY SRI. ANOOP HARNAHALLI, ADVOCATE FOR
SRI. YESHU MISHRA, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH AND CORRECT THE ORDER DATED 25.06.2018 PASSED BY THE LEARNED SENIOR CIVIL JUDGE AND JMFC, NELAMANGALA, ON I.A.NO.4 IN O.S.NO.516/2012 AS PER ANNEXURE-G AND ETC.,

THESE PETITIONS COMING ON FOR *ORDERS* THIS DAY THROUGH VIDEO CONFERENCE, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioner whose impleadment in the subject suits for specific performance is rejected is at the door steps of Writ Court for assailing the orders evenly dated 25.06.2018 made by learned Senior Civil Judge, Nelamangala.

2. After service of notice, the respondent – plaintiffs having entered appearance through their learned counsel resist the writ petitions making submission in justification of the impugned orders and the reasons on which they are structured.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court declines to grant indulgence in the matter inasmuch as, petitioner claims to be an agreement holder and that an agreement *per se* does not create any interest in the subject property vide Section 54 of the Transfer of Property Act, 1882 as consistently held by the Apex Court.

4. The vehement contention of learned counsel for the petitioner that, to be a proper & necessary party, a person need not have interest in the property and that if he has some litigable right concerning the said property, he can seek his impleadment appears to be too farfetched an

argument; such a contention is not supported by the two decisions relied upon by the counsel for the petitioners namely **ROBIN RAMJIBHAI PATEL Vs. ANDIBAI RAMA, 2016 SCC Online SC 1538** and **LIFE INSURANCE CORPORATION OF INDIA Vs. SANJEEV BUILDERS PRIVATE LTD., (2018) 11 SCC 722**; in fact, the second decision at para 13 lays down the propositions applicable for treating the request for impleadment and that petitioner's case falls within one of the propositions which excludes the claim for impleadment.

5. The heavy reliance placed by petitioner's counsel upon 2016 SCC Online SC 1538 does not yield any milk inasmuch as, it was a case of impleadment of not a mere holder of an agreement to sell but an accomplished sale itself; it is a settled position of law that a case is an authority for the proposition that it actually lays down in a given fact matrix and not for all that which logically follows from what is laid down.

6. The contention of the petitioner that if he is impleaded as a defendant to this suit, he can make a counter claim and thereby avoid multiplicity of proceedings

is hardly a justification to permit impleadment at a highly belated stage and that too against the will of *dominant litis*;

7. Lastly, petitioner is neither a necessary nor proper party to the adjudication of the suit in question by any stretch of imagination; the contention that, no prejudice would be caused to any party to the suit is no justification for seeking entry to the suit fray; strangers unjustifiably gaining entry to the array of parties not only elongates the proceedings but creates avoidable complications to the existing parties.

In the above circumstances, these writ petitions being thoroughly devoid of merits, are liable to be dismissed and accordingly they are, reserving liberty to the petitioner to take appropriate legal proceedings in accordance with law if he so chooses; all contentions of the parties in this regard are kept open.

Since both the suits are more than eight year old, learned judge of the Court below is requested to try & dispose of the same within an outer limit of one year.

No costs.

Sd/-
JUDGE

Bsv