IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO. 14181 OF 2020 (GM-CPC)

BETWEEN:

1 . SMT PRAMEELA GURURAJ
W/O LATE K GURURAJ,
AGED ABOUT 68 YEARS,
R/AT NO.6, 4TH CROSS,
VENKATARANGAPURAM,
PALACE GUTAHALI,
BANGALORE-560003.

2 . MR G GOVIND
S/O LATE K GURURAJ,
AGED ABOUT 50 YEARS,
R/AT NO.6, 4TH CROSS
VENKATARANGAPURAM,
PALACE GUTTAHALLI,
BANGALORE-560003.

3 . SMT JAYANTHI SHIVAPRASAD
W/O LATE SHIVAPRASAD,
D/O LATE K GURUAJ,
AGED ABOUT 54 YEARS,
R/AT NO.43, 2ND FLOOR,
MAGADI MAIN ROAD,
NEXT TO ANJAN THEATRE,
BANGALORE-560023.

4 . SMT REKHA KRISHNAPRASAD
W/O KRISHNAPRASAD,
D/O LATE K GURURAJ,
AGED ABOUT 52 YEARS,
R/AT NO.16, AMURUTHAVARSHINI,
BANNIMANTAPPA LAYOUT, BANNIMANTAPPA,
MYSORE-570015.

...PETITIONERS

(BY SRI. PRASANNA KUMAR C S, ADVOCATE)

AND:

1 . MR B K KRISHNA
S/O LATE G KENCHAPPA
AGED ABOUT 73 YEARS
R/AT NO.3, 1ST FLOOR,
CENTRAL STREET
KUMARAPARK WEST
BANGALORE-560020

2 . MR K RANGANATH
S/O LATE G KENCHAPPA
AGED ABOUT 68 YEARS,
R/AT NO.9, 4TH MAIN ROAD,
SRIKANTESHWARA NAGAR
NANDINI LAYOUT
MAHALAKSHMIPURAM
BANGALORE-560096

3 . SMT B K RAJESHWARI
D/O LATE G KENCHAPPA
W/O SIDDAPPAA
AGED ABOUT 75 YEARS,
R/AT NO.566, 4TH CROSS,
MAHALAKSHMI LAYOUT,
BANGALORE-560086

...RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORER ISSUED BY LEARNED TRIAL JUDGE REJECTING THEIR APPLICATION FILED UNDER SECTION 11 OF CPC IN O.S.166/2018 ON THE FILE OF THE ADDL. SENIOR CIVIL JUDGE & JMFC, AT RAMANAGARAM BY ITS ORDER DATED 29.01.2020 VIDE ANNEXURE-A, IN THE INTERST OF JUSTICE AND EQUITY.

THIS WRIT PETITION COMING ON FOR **PRELIMINARY HEARING** THIS DAY THROUGH VIDEO CONFERENCE, THE COURT MADE THE FOLLOWING:

ORDER

Petitioners being the defendants in a partition suit in O.S.No.166/2018 are at the door steps of the Writ Court for assailing the order dated 29.1.2020, a copy whereof is at Annexure-A, whereby the learned Addl. Sr. Civil Judge, Ramanagaram, has decided the issue as to res judicata as a preliminary issue at the instance of the petitioners themselves.

2. Having heard the learned counsel for the petitioners and having perused the Petition Papers, this court declines to grant indulgence in the matter inasmuch as the petitioners have got a deferred remedy to lay a challenge to make the impugned order as one of the grounds for laying a challenge to the judgment & decree if & when made adverse to their interest as provided u/o LXIII Rule 1A r/w Section 105 of the amended Code.

3. The vehement contention of the learned counsel for the petitioners that issues as to res judicata could not have treated as preliminary issue is difficult to countenance when it is they who had pressed the court to treat decide it and therefore, such a contention does not avail for

consideration at the hands of this court, in their favour; in a sense they are now estopped from contending to the contrary.

4. The contention that the petitioners by mistake on their part had drove the court below to treat the said issue as a preliminary issue and that the court ought not to have favoured their request is too feeble a ground for invoking writ jurisdiction, when petitioners have a deferred remedy as mentioned above.

In the above circumstances, Writ Petition is disposed off, all contentions of the parties having been kept open as mentioned above.

Sd/-
JUDGE

cbc