IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.31873 OF 2019 (GM-CPC)
c/w
WRIT PETITION NO.31872 OF 2019 (GM-CPC)

IN W.P.NO.31873 OF 2019

BETWEEN:

1 . SRI. B.K.SURYANARAYANA,
S/O. LATE M. KEMPANNA,
AGED ABOUT 57 YEARS,
OCC: BUSINESS,
R/AT NO. 101, A BLOCK,
SREEJA TANISHQ APARTMENT,
2ND CROSS,
CHOWDESHWARI TEMPLE STREET,
BYRASANDRA,
C.V. RAMANNAGARA POST,
BENGLAURU – 560 093.

2 . SRI. B.K. REVATHI KUMAR,
S/O. LATE M. KEMPANNA,
AGED ABOUT 54 YEARS,
OCC: BUSINEESS,
RESIDING AT SY. NO. 6/4,
LAKEVIEW HOMES,
CHOWDESHWARI TMEPLE STREET,
BYRASANDRA,
C.V. RAMANNAGARA POST,
BENGLAURU – 560 093.

3 . SRI. B.K. UMASHANKAR,
S/O. LATE. M. KEMPANNA,
AGED ABOUT 46 YEARS,
OCC: BUSINEESS,

RESIDING AT PHASE NO. 1, B BLOCK,
SREEJA TANISHQ APARTMENT,
2ND CROSS,

CHOWDESHWARI TMEPLE STREET,
BYRASANDRA,
C.V. RAMANNAGARA POST,
BENGLAURU – 560 093.

4 . SRI. VENKATESHMURTHY,
S/O. LATE ANNAYAPPA,
AGED ABOUT 52 YEARS,
OCC: PRIVATE WORK,
R/AT NO. 87, BEEDI ROAD,
NEAR GOVT. SCHOOL,
BYRASANDRA,
C.V. RAMANNAGARA POST,
BENGLAURU – 560 093.

…PETITIONERS

(BY SRI. M.RAJASHEKAR, ADVOCATE)

AND:

SRI. B. E. BYANNA
S/O. LATE EMRELLAPPA,
AGED ABOUT 61 YEARS,
R/AT NO. 14/1,
1ST CROSS, BYRASANDRA,
C.V. RAMANNAGARA POST,
BENGLAURU – 560 093.

…RESPONDENT

(BY SRI. H.R. ANANTHA KRISHNA MURTHY, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DTD.16.07.2019 PASSED BY THE HON'BLE COURT OF THE XXXIX ADDITIONAL CITY CIVIL & SESSIONS JUDGE, AT BENGALURU (CCH-40) IN O.S.NO.2131/2018, REJECTING THE APPLICATION I.A.NO.2, FILED BY THE PETITIONERS PRAYING FOR FRAMING ADDITIONAL ISSUES AT ANNX-F AND ETC.

IN. W.P.NO.31872 OF 2019:

BETWEEN:

1 . SRI. B.K.SURYANARAYANA,
S/O. LATE M. KEMPANNA,
AGED ABOUT 57 YEARS,
OCC: BUSINESS,
R/AT NO. 101, A BLOCK,

SREEJA TANISHQ APARTMENT,
2ND CROSS,
CHOWDESHWARI TEMPLE STREET,
BYRASANDRA,
C.V. RAMANNAGARA POST,
BENGLAURU – 560 093.

2 . SRI. B.K. REVATHI KUMAR,
S/O. LATE M. KEMPANNA,
AGED ABOUT 54 YEARS,
OCC: BUSINEESS,
RESIDING AT SY. NO. 6/4,
LAKEVIEW HOMES,
CHOWDESHWARI TMEPLE STREET,
BYRASANDRA,
C.V. RAMANNAGARA POST,
BENGLAURU – 560 093.

3 . SRI. B.K. UMASHANKAR,
S/O. LATE. M. KEMPANNA,
AGED ABOUT 46 YEARS,
OCC: BUSINEESS,
RESIDING AT PHASE NO. 1, B BLOCK,
SREEJA TANISHQ APARTMENT,
2ND CROSS,
CHOWDESHWARI TMEPLE STREET,
BYRASANDRA,
C.V. RAMANNAGARA POST,
BENGLAURU – 560 093.

…PETITIONERS

(BY SRI. M.RAJASHEKAR, ADVOCATE)

AND:

SMT. NAGAMANI. R
W/O B E BYANNA,
AGED ABOUT 51 YEARS,
R/AT NO.61/1.
IST CROSS,
BYRASANDRA,
C V RAMAN NAGAR POST,
BENGALURU-560093

…RESPONDENT

(BY SRI. H.R. ANANTHA KRISHNA MURTHY, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DTD.16.07.2019 PASSED BY THE HON'BLE COURT OF THE XXXIX ADDL. CITY CIVIL & SESSIONS JUDGE, AT BENGALURU (CCH-40) IN O.S.N.2129/2018, REJECTING THE APPLICATION I.A.NO.2, FILED BY THE PETITIONERS PRAYING FOR FRAMING ADDITIONAL ISSUES AT ANNX-F.

THESE WRIT PETITIONS COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioners being the defendants in two similar Civil Suits in O.S.No.2129/2018 & O.S.No.2131/2018 for injunctive relief i.e. are at the door steps of the Writ Court for assailing the orders made by the learned trial Judge whereby their application filed under Order XIV Rule 5 r/w Section 151 of CPC, 1908 has refused to frame additional issues as sought for.

2. After service of notice, respondent-plaintiffs having entered appearance through their counsel, resist the writ petition making submission in justification of the impugned order and the reasons on which it is structured.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter because:

(a) going by the pleadings taken up by the petitioners herein, there is some scope for framing the subject issue which otherwise would not have caused any prejudice to the respondents herein especially when the burden in respect of said issue was placed on the petitioners themselves as volunteered by their counsel;

(b) it is true that ordinarily in an injunctive suit the issues now sought to be framed as additional may not figure in the light of a Co-Ordinate Judge's decision in RFA No.1452/2018, disposed off on 08.01.2020; the proposition canvassed by the learned counsel for the respondents placing reliance on para 15 & para 16 of the same appears to be to broad and therefore, may not be readily invoked for denying relief to the petitioners; and,

(c) the issues of the kind which the petitioners desire to have added to the existing ones would throw some light on the matter being debated before the trial Court and in framing such issues Court should be ordinarily be bit liberal, since no prejudice would be caused to the other side, thereby.

In the above circumstances, these writ petitions succeed; impugned orders are set at naught; petitioners' subject application having been favoured, learned Judge of the Court below is requested to frame the additional issues as sought for and specifically place the burden in respect of them on petitioners themselves.

No costs.

Sd/-
JUDGE

DS