**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 17TH DAY OF DECEMBER, 2024

**BEFORE
THE HON'BLE MR. JUSTICE C.M. POONACHA**

WRIT PETITION NO.102878 OF 2024 (GM-CPC)

BETWEEN:

SHRI JOTAGOUDA S/O. ANNAGOUDA @ ANNASAB PATIL,
AGE: 51 YEARS,
OCC: AGRICULTURE AND CONTRACTOR,
R/O: KAGAWAD, TQ: KAGAWAD,
DIST: BELAGAVI – 591 223.

…PETITIONER

(BY SRI SHIVRAJ S BALLOLI, ADVOCATE FOR
SRI CHETAN B. PATIL, ADVOCATE)

AND:

1. SMT. SHOBHA W/O. SATAGOUDA PATIL,
   AGE: 48 YEARS,
   OCC: AGRICULTURE AND HOUSEHOLD WORK,
   R/O: KAGAWAD, TQ: KAGAWAD,
   DIST: BELAGAVI – 591 223.

2. SHRI GANESH S/O. SATAGOUDA PATIL,
   AGE: 51 YEARS, OCC: AGRICULTURE,
   R/O: KAGAWAD, TQ: KAGAWAD,
   DIST: BELAGAVI – 591 223.

3. SMT. SHALINI D/O. SATAGOUDA PATIL,
   AGE: 19 YEARS, OCC: STUDENT,
   R/O: KAGAWAD, TQ: KAGAWAD,
   DIST: BELAGAVI – 591 223.

…RESPONDENTS

(BY SRI MANJUNATH S. TORGAL, ADVOCATEFOR R1 TO R3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO, ISSUE A WRIT OF CERTIORARI QUASHING THE IMPUGNED ORDER DATED 11-03-2024

PASSED BY THE LEARNED ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, AT ATHANI ON IA NO. III IN OS NO. 184/2021 VIDE ANNEXURE-A AND ETC.,

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

CORAM: THE HON'BLE MR. JUSTICE C.M. POONACHA

ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE C.M. POONACHA)

The present writ petition is filed challenging the order dated 11.03.2024 passed on I.A.No.3 in O.S.No.184/2021 by the Additional Senior Civil Judge and JMFC, At Athani[1].

2. The relevant facts are that the respondents 1 to 3 instituted a suit in O.S.No.184/2021 for partition and separate possession. The petitioner herein was arrayed as defendant No.1 in the said suit. The petitioner entered appearance in the suit and contested the same. The plaintiffs filed I.A.No.3 under Order VI Rule 17 of the code of Civil Procedure, 1908[2] to amend the plaint. Vide the said amendment, the plaintiff sought to incorporate few items of movable properties and an immovable property as suit

[1] Hereinafter referred to as "the Trial Court"
[2] Hereinafter referred to as "CPC"

properties. The said application was opposed by the defendants 1 and 2. The Trial Court vide its order dated 11.03.2024 allowed the said application. Being aggrieved, the present writ petition is filed.

3. Heard the submissions of learned counsel Sri. Shivaraj Ballolli for the petitioner/defendant No.1 and learned counsel Sri. Manjunath Torgal for respondents 1 to 3. Perused the writ petition papers.

4. It is the vehement contention of the learned counsel for the petitioner that the properties sought to be included are the properties of the firm that is being run by defendant No.1. It is further contended that the earlier suit for partition having been filed in O.S.No.580/2014 and a compromise decree having been passed on 29.06.2019 in the said suit, the question of the plaintiffs prosecuting the present suit and seeking to incorporate further properties pursuant I.A.No.3 ought not to be permitted. It is further contended that the properties sought to be included, being separate properties of the respondent No.1, the Trial Court has erred in allowing I.A.No.3.

5. Per contra, learned counsel for the respondents submits that the application having been filed prior to the commencement of the trial, the Trial Court having considered relevant factual aspects of the matter and having permitted the amendment, the said order of the Trial Court ought not to be interfered with by this Court in the present writ petition.

6. It is relevant to note that the Trial Court while considering I.A.No.3 in O.S.No.184/2021 has recorded the following finding:

> *"6. Point No.1: At the outset, plaintiffs filed instant suit for a relief of partition and separate possession of their share in the suit properties. It is specific case, plaintiffs that, the properties sought to be included have been purchased utilizing joint family income. This Court carefully perused B-Register Extracts. Wherein it appears that, the vehicles sought to be included belong to defendant No.1. This Court also perused copy of details of Jyoti Electrics Kagawad, which shows that, said firm stands in the name of defendant No.1. Whether said vehicles have been purchased utilizing joint family income or not and said business belongs to joint family or*

not is to be decided by taking evidence in this case. Apart from this, plaintiffs claim that, partition in O.S.No.580/2014 has been made only to get the benefit of government schemes. The said fact is to be decided by taking evidence in this case."

(emphasis supplied)

7. It is forthcoming that the plaintiffs had specifically contended that the partition in O.S.No.580/2014 by way of compromise decree has been only to get the benefits of government schemes. Further, it is forthcoming that the suit properties in earlier suit in O.S.No.580/2014 are not the suit properties in the present suit in O.S.No.184/2021. The learned counsel for the plaintiffs contends that the suit in O.S.No.580/2014 is one for partial partition.

8. Although, it is vehement contention of the learned counsel for the petitioner that the properties sought to be incorporated vide I.A.No.3 are self-acquired properties of the defendant No.1, the said aspect of the matter having been considered by the Trial Court, it has been rightly held that the aspect as to whether the properties are joint family properties or self-acquired properties is a subject matter of trial.

9. Although the learned counsel for the petitioner attempts to point out various infirmities in the case of the plaintiffs, it is relevant to note that the application for amendment having been filed before the commencement of trial, there is no demonstrable hardship that is caused to the defendant No.1 as the defendant No.1 would have an opportunity to contest the aspects incorporated vide I.A.No.3 while contesting the suit on merits.

10. In view of the aforementioned, the petitioner has failed to demonstrate that the order passed by the Trial Court is erroneous and warrants interference by this Court in the present writ petition.

11. The Trial Court shall conduct further proceedings in the suit uninfluenced by any of the observations made by this Court in the present writ petition and shall proceed further in accordance with law after affording an opportunity to the petitioner to file his additional written statement after the amendment by the plaintiffs.

12. With these observations, the present writ petition is disposed of.

Sd/-
(C.M. POONACHA)
JUDGE

YAN
List No.: 1 Sl No.: 39