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Sri Manmatha vs Sri Ramaiah

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Court : Karnataka

Decided On : Jul-07-2025

Judge : Vijaykumar a. Patil

Appeal No. : WP/6949/2020

Appellant : Sri Manmatha

Respondent : Sri Ramaiah

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JULY, 2025 BEFORE THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL WRIT PETITION NO.6949/2020 (GM-CPC) BETWEEN: SRI. MANMATHA S/O RAMAIAH AGED ABOUT 59 YEARS R/AT. PUTTAMMANAPALYA DASARAHALLI POST, KASABA HOBLI

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Court of karnataka (BY SRI. NAGARAJA S, ADV.) AND:

1. SRI. RAMAIAH S/O NARASAPPA AGED ABOUT 84 YEARS.

2. SMT. KEMPAKKA W/O RAMAIAH AGED ABOUT 72 YEARS.

3. SRI. MAHADEVAIAH S/O RAMAIAH AGED ABOUT 59 YEARS.

4. SRI. RAJANNA S/O RAMAIAH AGED ABOUT 58 YEARS. ALL ARE R/AT : PUTTAMMANAPALYA VILLAGE KASABA HOBLI, -2- KORATAGERE TALUK TUMKUR DISTRICT 572129

5. SMT. LAKSHMAMMA W/O LATE ANJANAPPA AGED ABOUT 47 YEARS R/AT. BANDEPALYA, KOLALA HOBLI KORATAGERE TALUK TUMKUR DISTRICT 572129.

6. SMT. NAGARATHNA W/O NARASIMHAMURTHY AGED ABOUT 41 YEARS R/AT NO.230, 9TH CROSS 3RD MAIN, AGRAHARA LAYOUT NEAR POOJAMMA TEMPLE YELAHANKA, BANGALORE 560064. RESPONDENTS (BY SRI. C. PATTABI RAMAN, ADV., FOR R1, R2, R5 AND R6 SRI. T.N. ARAKESWARA, ADV., FOR R3 R4 SERVED AND UNREPRESENTED) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227

OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION BY QUASHING THE ORDER DTD 16.01.2020 PASSED BY THE CIVIL JUDGE AT KORATAGERE, IN FDP NO.12/2019 VIDE ANNX- E. CONSEQUENTLY DISMISS THE APPLICATION FILED UNDER

ORDER I RULE 10(2) OF CPC & ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER: -3- CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This petition is filed seeking the following reliefs: "(a) Issue a Writ of Certiorari or any other appropriate Writ, Order or Direction by quashing the order dated 16.01.2020 passed by the Civil Judge at Koratagere, in F.D.P.No.12/2019 vide Annexure-E.

(b) consequently dismiss the application filed under

order I Rule 10(2) of CPC."

2. Sri.Nagaraja S., learned counsel for the petitioner submits that the petitioner has filed a suit for partition and separate possession against Sri.Ramaiah and others. The said suit came to be decreed on 19.02.2000. Thereafter, Final Decree Proceedings (FDP) are initiated and in the said proceedings, respondent Nos.5 & 6 have filed an application for

impleading, contending that they are the children of Smt.Kempakka, the second wife of Ramaiah. The trial Court, without considering the objections filed by the petitioner and also without taking note of the fact that they are not the co-parceners of the family, proceeded to allow the application. It is submitted that the petitioner has specifically denied that the

-4- respondent Nos.5 & 6/applicants are not co-parceners at the time of filing of the suit, hence, they denied the relationship. However, the trial Court has incorrectly recorded the finding that there is no denial of relationship and proceeded to allow the application. Hence, he seeks to set aside the impugned

order by allowing the petition.

3. Per contra, Sri.C.Pattabi Raman, learned counsel for

respondent Nos.1, 2, 5 & 6 supports the impugned order of the trial Court and submits that respondent Nos.5 & 6 have specifically averred in the affidavit that they are the children of Smt.Kempakka, who is second wife of respondent No.1, and the petitioner herein has not denied the said fact in the objections. Hence, the trial Court considered the same and recorded the finding that to avoid further litigation, arrayed the respondent Nos.5 & 6 as parties in the FDP. It is submitted

that knowing fully well that respondent Nos.5 & 6 are the children of respondent No.1, the petitioner has not arrayed them in the said suit which has been rightly considered by the trial Court and allowed the application, hence, the same does not call for any interference in the present petition.

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4. I have heard the learned counsel for petitioner, learned counsel for respondent Nos.1, 2, 5 & 6 and perused the material available on record. I have given my anxious consideration to the submissions advanced by both the sides.

5. The petitioner has filed O.S.No.125/1996 against

the respondent Nos.1 to 4 seeking the relief of partition and separate possession. The said suit came to be decreed, holding that the petitioner and respondent No.1 are entitled to partition and separate possession of their 1/4th share each in the suit schedule properties. The petitioner initiated final decree proceedings in FDP No.12/2019. During the pendency of the said proceedings, respondent Nos.5 & 6 have filed an application under Order I Rule 10 of CPC seeking to implead them as respondents in the said proceedings. The affidavit

accompanying the said application indicates that the respondent Nos.5 & 6 claimed that they are the children of Smt.Kempakka, the second wife of Ramaiah. It is averred that without arraying them as parties in O.S.No.125/1996, the suit was decreed. Hence, they are the necessary parties being the co-parceners of the family. The said application was opposed by

-6- the petitioner stating that the respondent Nos.5 & 6/applicants are not the co-parceners at the time of filing of the suit in O.S.No.125/1996.

6. The contention of the respondents that there is no

denial of relationship of respondent Nos.5 & 6 with regard to the fact that they are the children of Smt.Kempakka, the second wife of Ramaiah. However, the objections on record indicate that the petitioners have clearly denied they are not co-parceners at the time of filing of the suit. Be that as it may, the affidavit

accompanying the application filed by respondent Nos.5 & 6 does not provide any material particulars to prove that Smt.Kempakka is the second wife of Ramaiah and their date of marriage and the respondent Nos.5 & 6 are the children

of Smt.Kempakka and respondent No.1-Ramaiah. In the absence of any material particulars, entertaining the application on bare statement in the affidavit, in my considered view is the incorrect approach of the trial Court. Ultimately, if the respondent Nos.5 & 6 are able to prove that they are the children of respondent No.1, it is open for them to proceed against respondent No.1 by filing independent suit and no -7- prejudice would be caused to them. Hence, I proceed to pass the following:

ORDER

i. Writ petition is allowed. ii. The order dated 16.01.2020 passed on the application filed by respondent Nos.5 & 6 under

Order I Rule 10(2) of CPC in FDP No.12/2019

by the Civil Judge & JMFC, Koratagere, is hereby set aside. Consequently, the said application is rejected. iii. No order to costs. Sd/- (VIJAYKUMAR A. PATIL) JUDGE BSR List No.: 1 Sl No.: 43

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