



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 2<sup>ND</sup> DAY OF JANUARY, 2024**

**BEFORE**

**THE HON'BLE MRS JUSTICE M G UMA**

**WRIT PETITION NO. 37203 OF 2015 (GM-CPC)**

**BETWEEN:**

1. MASTER THEJAS

2. SMT. L.H MANJULA

...PETITIONERS

(BY SRI: MADHUKESHWARA .P.

SRI: SACHIN .B.S., ADVOCATE)

**AND:**

1. C.R. BABU

2. SMT. ESHWARAMMA





3. SMT. JYOTHI

4. MURUGAN,

...RESPONDENTS

(V/O DT. 30/10/23, NOTICE TO R1 TO R3 ARE H/S  
R4 - SERVED)

THIS W.P. IS FILED IS UNDER ARTICLE 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DT.22.7.2015 ON I.A.NO.10 FILED UNDER ORDER 1 RULE 10 R/W SEC.151 OF CPC IN O.S.NO.108 OF 2010 ON THE FILE OF CIVIL JUDGE KADUR AS PER ANNEX-A.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING - B GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioner being the plaintiff in OS.No.108/2010 on the file of Civil Judge and J.M.F.C., Kadur (hereinafter referred to as the 'Trial Court') is impugning the order dated 22.07.2015 allowing IA No.X filed under Order 1 Rule 10 r/w Section 151 of CPC.



2. Heard Sri.Madhukeshwara.P, learned counsel for Sri. Sachin B.S., learned counsel for the petitioners. The respondents have not represented inspite of service of notice.

3. Perused the material in the light of impugned order.

4. Learned counsel for the petitioners submits that the suit is for partition and separate possession and defendant No.4 filed application IA No.X under Order 1 Rule 10 r/w Section 151 of CPC seeking his impleadment and the same came to be allowed by the Trial Court without assigning any reasons. Therefore, he prays for allowing the petition.

5. Admitted facts of the case are that the plaintiff filed the suit for partition and separate possession of the schedule properties. During the pendency of the suit, defendant No.4 filed IA No.X under Order I Rule 10 r/w Section 151 of CPC seeking his impleadment and the same came to be allowed, which is being impugned herein.

6. It is the specific contention of defendant No.4 before the Trial Court that he had entered into an agreement for sale with defendant No.1 on 30.12.2011. Admittedly, the



present suit OS.No.108/2010 was pending consideration as on the date of agreement for sale. It is also admitted that the sale agreement is not a registered agreement. Admittedly, no sale deed was executed by the defendant No.1 in favour of defendant No.4 to treat him as transferee of property during the pendency of suit.

7. From the records that are available, it could be made out that, defendant No.4 has already filed the suit OS.No.1/2015 against defendant No.1 seeking specific performance of contract on the basis of very same agreement for sale. Even if defendant No.4 is to succeed in the said suit OS.No.1/2015, his rights will be subject to the result of the present suit and determination of right of defendant No.1. He can not seek any independent right against plaintiff or against any other defendants. His remedy is only against defendant No.1. Therefore, I am of the opinion that defendant No.4, who is impleaded by virtue of impugned order was neither a necessary party nor property party to be impleaded. No right is created under agreement for sale in respect of schedule property, except the right to seek specific performance of



contract against defendant No.1, which he has already done by filing suit OS.No.1/2015.

8. I have gone through the impugned order passed by the Trial Court. The Trial Court committed an error in forming an opinion that the presence of defendant No.4 is necessary for determination of dispute between the parties and the same cannot be accepted. Hence, I proceed to pass the following.

**ORDER**

- i. Writ petition is ***allowed***.
- ii. Impugned order dated 22.07.2015 passed in OS.No.108/2010 on the file of Civil Judge at Kadur allowing IA No.X filed under Order 1 Rule 10 r/w Section 151 of CPC is set aside. Consequently, IA No.X is dismissed.

**Sd/-  
JUDGE**

BH  
LIST NO.: 1 SL NO.: 33