IN THE SUPREME COURT OF INDIA

{S.C.R. ORDER XXI RULE 3 (1) (A)}

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2023

WITH A PRAYER FOR INTERIM RELIEF

(Against the final judgment and order dated 28.02.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in R.F.A. No.1646 of 2014 (SP) APPEALED FROM)

IN THE MATTER OF:

Smt. Narasamma and Others ... Petitioners

Versus

Sri. C.S. Raghavan Nair and Others ...Respondents

WITH

I.A. NO. OF 2023

APPLICATION FOR EXEMPTION FROM FILING OFFICIAL TRANSLATION OF THE DOCUMENTS IN THE VERNACULAR

**P A P E R B O O K**

(FOR INDEX PLEASE SEE INSIDE)

**ADVOCATE FOR THE PETITIONER: AWANTIKA MANOHAR**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| INDEX | | | | |
| S. No. | Particulars of Document | Page No. Of part which it belong | | Rem-arks |
| I | Ii | Iii | Iv |  |
| 1. | Office Report on Limitation | “A” | A |  |
| 2. | Listing performa | A1 - A2 | A1 - A2 |  |
| 3 | Cover page of paper book |  | A3 |  |
| 4 | Index of record of Proceedings |  | A4 |  |
| 5 | Limitation report prepared by the Registry |  | A5 |  |
| 6 | Defect List |  | A6 |  |
| 7 | Note sheet |  | Nos. |  |
| 8 | List of Dates | B - |  |  |
| 9 | True copy of the final judgment and order dated 28.02.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in R.F.A. No.1646 of 2014 (SP) (IMPUGNED ORDER) |  |  |  |
| 10 | Special Leave Petition with Affidavit |  |  |  |
| 11 | ANNEXURE P-1:True copy of the agreement to sell dated 01.04.1980 |  |  |  |
| 12 | ANNEXURE P-2: True copy of GPA dated 16.10.1981 executed by K Bettaiah in favour of Respondent No.1 |  |  |  |
| 13 | ANNEXURE P-3: True copy of the lease deed dated 01.04.1988 |  |  |  |
| 14 | ANNEXURE P-4:True copy of the plaint filed in O.S.No.4433/1991 dated 25.07.1991 before the City Civil Judge Bangalore |  |  |  |
| 15 | ANNEXURE P-5:True translated copy of the sale deeds dated 03.06.1992 |  |  |  |
| 16 | ANNEXURE-P-6: True copy of the order dated 11.02.1993 passed by the Court of XV Additional City Civil Judge Bangalore in OS No.4433/1991 |  |  |  |
| 17 | ANNEXURE P-7: True copy of the amended plaint filed in O.S.No.4433/1991 dated 01.08.2012 before the City Civil Judge at Bangalore |  |  |  |
| 18 | ANNEXURE P-8: True copy of the written statement filed by the Defendant Nos.2 and 3 in O.S.No.4433/1991 dated 18.03.2013 |  |  |  |
| 19 | ANNEXURE P-9: True copies of the evidence affidavit and transcript of examination in chief and cross-examination of P.W. 1 and transcript of examination in chief and cross-examination P.W. 2 |  |  |  |
| 20 | ANNEXURE P-10: True copies of the evidence affidavits and transcripts of cross examination of D.W. 1, 2 & 3 |  |  |  |
| 21 | ANNEXURE P-11: True of the judgement dated 01.09.2014 passed by the Court of the VIII Additional City Civil & Sessions Judge (CCH:15) At Bengaluru City in OS No.4433/1991 |  |  |  |
| 22 | ANNEXURE P-12: True copy of the memo appeal filed by the Petitioners before the Hon’ble High Court of Karnataka as R.F.A No.1646/2014 |  |  |  |
| 23 | I.A. NO. OF 2023:  APPLICATION FOR EXEMPTION FROM FILING OFFICIAL TRANSLATION OF THE DOCUMENTS IN THE VERNACULAR |  |  |  |
| 24 | Filing Memo |  |  |  |
| 25 | Vakalatnama |  |  |  |

**SYNOPSIS**

That the present Special Leave Petition impugns the final judgment and order dated 28.02.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in R.F.A. No.1646 of 2014 (SP) whereby the Hon’ble High Court has dismissed the appeal of the Petitioners herein.

That Sri. K. Bettaiah, the husband of the Petitioner No 1 and father of the Petitioner No.2, acquired an immovable property forming part of Sy. No.1 at Kanteeravanagar Main Road, Yeshwantanpura, Bangalore (“**Scheduled Property**”), under the family partition deed dated 13.11.1981. Subsequently, on 01.04.1988, Sri. K. Bettaiah leased the Scheduled Property to the Respondent No.1 (who was the Plaintiff No.1 before the Ld. Trial Court). After the demise of Sri K. Bettaiah on 28.09.1988, the Respondent No.1 stopped paying rent and consequently the Petitioners were constrained to file a suit (bearing no. HRC No. 2760.1992) for eviction of the Respondent No.1. However, in the said eviction suit the Respondent No.1 disclosed that he has an ex-parte decree dated 30.08.1993, in O.S. No. 4433 of 1991 (“**Suit**”), for specific performance of the agreement to sell dated 01.04.1980 (“**Agreement to Sell**”), against the Petitioners. Consequently, the Petitioners challenged the ex-parte decree and the same was set aside by an order dated 27.09.2010 and the Suit was restored for fresh consideration.

It is the case of the Respondent No.1, for the relief of specific performance, that Sri K. Bettaiah, executed the Agreement to Sell in his favour and that subsequently Sri K. Bettaiah also executed a general power of attorney (“GPA”) on 16.10.1981.

Before adverting to errors in the order of Ld. Courts below, it is pertinent to mention the following admitted facts in the trial:

1. That the Respondent No.1 had only furnished a photocopy of the Agreement to Sell.The Respondent No.1 had not deposed and/orhad nottendered any evidence to establish the existence and execution of the said agreement.
2. That the Respondent No.1, on 25.07.1991 had filed the Suit for specific performance and then had subsequently sold the Scheduled Property to the Respondent No. 2 to 4, during the pendency of the Suit and in the sale deeds with Respondent No. 2 to 4, the Respondent No.1 had declared itself as the owner of the Scheduled Property, despite the fact the Suit was pending.
3. The Respondent No.1 had not even produced the original GPA but had relied upon its certified copy. It is also apposite to mention that the GPA, even being a subsequent document, do not refer to the Agreement to Sell and/or payment of any consideration.
4. It is admitted by the Respondents admitted that Sri K. Bettaih had become the owner of the Scheduled Property on 13.11.1981, i.e. subsequent to the purported execution of the Agreement to Sell and GPA.
5. It is the Petitioners who have established the execution of the lease deed dated 01.04.1988 by Sri. K. Bettaiah, through deposition of the attesting witnesses of the lease deed.
6. The Respondent No.1 who had opted to seek specific performance of the Agreement to Sell for the Scheduled Property, after filing the suit, proceeded with selling Schedule Property, which he had claimed in its Suit for specific performance.

It is respectfully submitted that the Hon’ble High Court and the Ld. Trial Court are in error and Impugned Order also liable to be set aside because:

1. The plea of the Respondent No.1for the specific performance of a purported agreement to sell, was untenable as it was based on a photocopy of the said agreement, which was never proved by the Respondent No.1 in terms of Section 65 of the Evidence Act 1872.
2. It submitted that it is a trite law that in order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document. Thus, the relief of specific performance could not have been granted to the Respondent No.1, as he had failed to establish the execution and existence of the Agreement to Sell while relying upon its photocopy. In this regard reliance is placedon the judgment, ***J Yashoda v. K Shobha Rani (2007) 5 SCC 730***, wherein this Hon’ble Court has held that “*Section 65 deals with the proof of the contents of the documents tendered in evidence. In order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document*”.
3. It is also submitted that in the instant case the Ld. Trial Court while marking the Agreement to Sell as Ex.P.1 has recorded that the same is marked subject to objections.However, while passing its judgment failed to give any ruling as to whether the alleged agreement is admissible evidence or not. It is submitted it is trite law a photocopy of the document does not become either a primary evidence or a secondary evidence, unless it is proved, as contemplated under the Evidence Act. Reliance is placed upon***H. Siddiqui v. A. Ramalingam, (2011) 4 SCC 240 “****12…..The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence does not amount to its proof****.*** *Therefore, the documentary evidence is required to be proved in accordance with law. The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon.”*
4. In light of the aforementioned principles, it is crucial to highlight that Respondent No. 1 had not deposed before the Ld. Trial Court, to prove the existence and execution of the agreement of sale. The only testimony presented was from Respondent No. 3 (on behalf of Plaintiff No. 2 to 4), who when cross-examined, admitted to having no knowledge of the execution of the Agreement to Sell or GPA.
5. As such, it is abundantly clear that the Ld. Courts made a grave error in admitting and relying on the contents of the Agreement to Sell and GPA, which were not established by Respondent No. 1. In this regard reliance is placed upon the judgment of this Hon’ble Court, in ***Vidhyadhar v. Manikrao, (1999) 3 SCC 573***, where it is held that, ‘*17. Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct.…*”
6. It is submitted that the Hon’ble High Court failed to consider that the Respondent No.1 proceeded to sale the Scheduled Property, during the pendency of litigation, and in contravention of section 52 of the

Transfer of Property Act 1882, to the Respondent No. 2 to 4. The Ld. Courts failed to appreciate that the Respondent No.1 had illegally transferred the property which was directly and specifically in question of the Suit filed by the Respondent No. 1 and for which he was seeking relief of specific performance of agreement to sell and making multiple rights over the property.

1. It is also noteworthy mention that the Hon’ble High Court *(@para 92 and 93 of the Impugned Order*) had erroneously held that subsequent sale deed executed in favour of the Respondent Nos.2 to 5 was based on the ex-parte decree and thus the subsequent sale is valid. This finding the Court is erroneous for being contrary to the fact that the sale deeds were executed on 03.06.1992, i.e. during the pendency of the suit for specific performance and the suit for specific performance, came to be decreed on 11.2.1993, that to ex-parte. Thus the finding of the Hon’ble High Court (@para 92 and 93 of the Impugned Order) that subsequent sale would not be nullified is flawed and liable to be interfered with.
2. The Hon’ble High Court failed to appreciate that once the Respondent No.1 had filed the Suit seeking specific performance, it had conceded that his title over the property was defective and incomplete, thus the Respondent No.1 could not had proceeded with selling the Scheduled Property to the Respondent No. 2 to 4, declaring himself as the owner. Thus, the transfer to the Respondent No. 2 to 4, during the pendency of the Suit can be construed as illegal and void. Reliance is also placed upon ***Mohd. Raza v. Geeta, 2021 SCC OnLine SC 858*** wherein the following is observed by this Hon’ble Court:“*16. It is to be noted at this stage that defendant No. 2 cannot be said to be the owner as her suit for specific performance is yet to be decided by the learned Trial Court. Unless and until there is a decree passed in her favour and the decree for specific performance is passed and/or the sale deed is executed pursuant to such a decree, she cannot be said to be the owner of the suit property. Till the suit for specific performance is decided, the plaintiff - respondent herein continues to be the owner ….”*
3. That the Ld. Courts have failed to consider that, in terms of sections 201 and 202 of the Contract Act, the agency formed in favour of the Respondent, if the GPA presumed genuine, stood terminated on the death of Sri K. Bettaiah as per section 202 of the Contract Act. The GPA, if presumed genuine, does not create any interest in favour of the Respondent No.1 had categorically stated that it has been granted as Sri K. Bettaiah was unable to do the acts as stated in GPA.
4. Also, given the fact GPA does not make reference to the Agreement to Sell and/or does not provide for any clause for the transfer of an interest in favour the Respondent No.1, the finding of the Ld. Courts that the interest is created in favour of the Respondent No. 1 is erroneous and perverse. It is further pertinent to mention that the findings of the Hon’ble High Court are contrary to the judgment of the coordinate bench of the Hon’ble High Court in ***M.S. Ananthamurthy v. J. Manjula, 2019 SCC OnLineKar 3490*** wherein it is held by the Hon’ble High Court that ***“****merely because a Power of Attorney holder is said to have been put in possession of the subject property or merely because the Power of Attorney holder is said to have parted with some money in favour of the executant of the General Power of Attorney, by that itself, it cannot be inferred that the Power of Attorney has got any interest in the subject property.”*
5. It is submitted that the Ld. Courts due to the erroneous application of the judgment of ***Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (2012) 1 SCC 656*** has wrongly held that even if the execution agreement to is not proved, the decree of specific performance can be granted for the GPA. In this regard, the Petitioners would like to submit the following:
6. It is worth noting that the Suit was specifically filed for the performance of the Agreement to Sell, and the Respondent had not prayed for the performance of the GPA. Therefore, it is incorrect to assume that even if the Agreement to Sell is not established, the relief of specific performance of the GPA can be granted.
7. It is submitted that the Ld. Courts overlooked the fact that the GPA does not contain any provision for the transfer of title to the Respondent. Without such a provision, it is impossible to enforce specific performance for the transfer of title. The lower courts erroneously relied on the obiter dicta of ***Suraj Lamp & Industries*** case, whereas this Hon’ble High Court has held that an agreement to sell or GPA cannot transfer any interest.
8. It is further submitted that Ld. Courts have failed to appreciate and to give its finding on the lease deed of Scheduled Property, dated 01.04.1988, between the Sri K. Bettaiah and the Respondent No.1,, execution of which is proved by the Petitioners vide the testimony of its attesting witnesses.
9. It is also submitted that the finding of the Ld. Courts below that the interest in the GPA is created in the favour of the Respondent and thus it does not stand terminated on the death of Sri. K. Bettaiah is vitiated and prejudiced as no issue was framed by the Ld. Trial Court in this regard and thus the Petitioners never got the viable opportunity to tender evidence and contend the same. Reliance is placed upon ***Makhan Lal Bangal v. Manas Bhunia, (2001) 2 SCC 652*** wherein it is held that“ *An omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission.***”**

Hence, the impugned judgment passed by the Hon’ble High Court requires to be allowed as it is in disregard of the legal principles and the law set out in a catena of decisions of this Hon’ble Court.

**LIST OF DATES AND EVENTS**

|  |  |  |
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| **DATES** | **EVENTS** | |
| 01.04.1980 | The Respondent No.1 contends that father of the Petitioner No.2 and husband of the Petitioner No.1, namely K. Bettaiah, alleged to have executed an Agreement of Sale in respect of an immovable property forming part of Sy. No.1 of Kanteeravanagar Main Road, Yeshwantanpura, Bangalore (“Scheduled Property”),in favour of Respondent No.1 herein for a sum of Rs 75,000/- and alleged to have received a sum of Rs 13,000/- as an advance there under. A true copy of the agreement to sell dated 01.04.1980 is annexed herewith and marked as **ANNEXURE-P/1 (Pgs. To )** | |
| 16.10.1981 | The Respondent No. 1 also contends that Sri K.Bettaiah had also executed the General Power of Attorney infavour of the Respondent No.1 herein in respect of the Schedule Property. A true copy of GPA dated 16.10.1981 executed by K Bettaiah in favour of Respondent No.1 is annexed herewith and marked as **ANNEXURE-P/2 (Pgs. To )** | |
| 13.11.1981. | Sri. K. Bettaiah, acquired the Scheduled Property, under the family partition deed dated 13.11.1981. | |
| 01.04.1988 | On 01.04.1988, Sri. K. Bettaiah leased the Scheduled Property to the Respondent No.1. A true copy of the lease deed dated 01.04.1988 is attached herewith and marked as **ANNEXURE- P/3 (Pgs. To ).** | |
| 28.09.1988 | Sri.K.Bettaiah passed away intestate | |
| 25.07.1991 | The Respondent No.1 herein has filed a suit against the Petitioners before the City Civil Court Bangalore in O.S.No.4433/1991 for specific performance of the Agreement of Sale dated 01.04.1980 on the basis of the photocopy of the agreement. A true copy of the plaint filed in O.S.No.4433/1991dated 25.07.1991 before the City Civil Judge Bangalore is attached herein as **ANNEXURE- P/4 (Pgs. To ).** | |
| 1992 | The Respondent No.1 herein during the pendency of the suit in O.S. No. 4433/1991 (“**Suit”)** alleged to have conveyed the ScheduledProperty in favour of the Respondent No. 2 to 4 vide 4 sale deeds. A true copy of the sale deedsare attached herein as **ANNEXURE- P/5(Pgs. To ).** | |
| 11.02.1993 | The Ld. Trial Court has decreed the Suit filed by the Respondent No.1 herein against the Petitioners ex-parte. A true copy of the order dated 11.02.1993 passed by the Court of XV Additional City Civil Judge Bangalore in OS No.4433/1991 is annexed herein as **ANNEXURE- P/6 (Pgs. To ).** | |
| 16.12.1992 | The Petitioners preferred a suit bearing no. HRC No. 2760/1992 before the Court of Small Civil Judge, Bnagalore, seeking eviction of the Respondent No.1 for non-payment of rent under the lease deed dated 01.04.1988. In the objection filed by the Respondent No.1, the Respondent No.1 for the first time disclosed the ex-parte decree for specific performance which he had been obtained in the Suit. Owing to the same the Petitionerswithdrew the eviction suit with liberty to pursue the requisite legal remedy. | |
| 24.08.1994 | The Petitioners herein after coming to know about the ex-parte decree dated 11.02.1993 have filed a Misc. Petition before the Ld. Trial Court to set aside the same. | |
| 27.07.2010 | The Ld. Trial Court has allowed the said Misc. Petition and set aside the ex-parte Judgment and decree dated 11.2.1993 and restored the Suit back. | |
| 18.10.2010 | After the restoration of the Suit before the Trial Court, the Respondent No.2 to 4 herein have filed an application to implead them in the suit as additional plaintiffs. | |
| 18.01.2012 | The Ld. Trial Court mechanically allowed the said impleading application filed by the Respondent No.2 to 4 herein and permitted them to come on record as Plaintiff No.2 to 4 therein. | |
| 01.08.2012 | The Respondent No. 1 filed an amended plaint in the Suit, before the Ld. Trial Court. A true copy of the amended plaint filed in O.S.No.4433/1991dated 01.08.2012 before the City Civil Judge at Bangalore is attached herein as **ANNEXURE- P/7(Pgs. To ).** | |
| 18.03.2013 | The Defendant 2 and 3 filed its written statement in the Suit before the Ld. Trial Court. A true copy of the written statement filed by the Defendant Nos.2 and 3 in O.S.No.4433/1991dated 18.03.2013 is attached herein as **ANNEXURE- P/8(Pgs. To ).** | |
| 23.02.2013 | The Respondent No.3 herein deposed before the Ld. Trial Court and gave evidence as P.W.1 and thereafter the Respondents have also examined one N. Manjunath as P.W.2 as their witness. However, it is apposite to mention that the Respondent No.1, who had filed the Suit for the relief of specific performanceand was claiming right over the Scheduled Property did not depose before the Ld. Trial Court. True copies of the evidence affidavit and transcript of examination in chief and cross-examination of P.W. 1 and transcript of examination in chief and cross-examination P.W. 2are attached herewith and marked as **ANNEXURE- P/9(Pgs. To )** | |
| 2013-2014 | That on behalf of the Petitioners, the Defendant No. 7, who is the son of Sri K. Bettaiah, deposed before the Ld. Trial Court as D.W.-1. Also, to establish the execution of the lease deed dated 01.04.1988, the attesting witnesses of the said lease deed also deposed before the Ld. Trial Court as DW- 2 & 3. A true copies of the evidence affidavits and transcripts of cross examination of D.W. 1, 2 & 3 are attached herewith and marked as **ANNEXURE- P/10(Pgs. To )** | |
| 01.09.2014 | The Ld. Trial Court after hearing the arguments of both the parties has decreed the suit filed by the Respondent No.1 herein for specific performance of the agreement dated 1.4.1980 and directed the Petitioners to execute the sale deed in favour of all the Respondents without understanding the scope of the suit and material evidence on record. A true of the judgement dated 01.09.2014 passed by the Court of the VIII Additional City Civil & Sessions Judge (CCH:15) At Bengaluru City in OS No.4433/1991 is attached herewith and marked as **ANNEXURE- P/11 (Pgs. To )** | |
| 2014 | Being aggrieved by the judgement dated 01.09.2014 of the Ld. Trial Court, the Petitioners preferred its first appeal before the Hon’ble High Court of Karnataka, against the said judgement of the Ld. Trial Court. A true copy of the memo appeal filed by the Petitioners before the Hon’ble High Court of Karnataka as R.F.A No.1646/2014, is attached herewith and marked as **ANNEXURE- P/12 (Pgs. To )** | |
| 28.02.2023 | | That the Hon’ble High Court vide its final judgment and order dated 28.02.2023dismissed the appeal filed by the Petitioners.**(IMPUGNED JUDGMENT)** |
| 03.07.2023 | | Hence, the Special Leave Petition. |

IN THE SUPREME COURT OF INDIA

{S.C.R. ORDER XXI RULE 3 (1) (A)}

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2023

(Under Article 136 of the Constitution of India)

WITH A PRAYER FOR INTERIM RELIEF

(Against the final judgment and order dated 28.02.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in R.F.A. No.1646 of 2014 (SP) Appealed From)

POSITION OF THE PARTIES

BEFORE HIGH COURT BEFORE THIS COURT

RFA No. 1646/2014

IN THE MATTER OF:-

1. Smt.Narasamma,

W/O Lae K. Bettaiah,

Aged About 83 Years,

No.38, 3rd Cross, Muneshwara Temple Road,

Goraguntapalya, Yeshwanthpura,

Bangalore -560022

Karnataka Appellant No.1 Petitioner No.1

1. Sri. Devaraj, S/O Late K.Bettaiah,

Aged About 59 Years,

No.38, 3rd Cross, Muneshwara Temple Road,

Goraguntapalya, Yeshwanthpura,

Bangalore -560022

Karnataka Appellant No.2 Petitioner No.2

1. Smt. Papamma, Since Dead By Her Lrs.,

3(A) Sri.B.Channaiah,

H/O Late Smt Narasamma @ Papamma,

Aged About 67 Years,

No.38, 3rd Cross, Muneshwara Temple Road,

Goraguntapalya, Yeshwanthpura,

Bangalore -560022

Karnataka Appellant No.3A Petitioner No.3

3(B) Sri.B.C.Basavaraju,

S/O B.Channaiah,

Aged About 41 Years,

No.38, 3rd Cross, Muneshwara Temple Road,

Goraguntapalya, Yeshwanthpura,

Bangalore -560022

Karnataka Appellant No.3B Petitioner No.4

3(C) Sri.B.C.Raviprakash,

S/O B.Channaiah,

Aged About 39 Years,

No.38, 3rd Cross, Muneshwara Temple Road,

Goraguntapalya, Yeshwanthpura,

Bangalore -560022

Karnataka Appellant No.3C Petitioner No.5

3(D) Sri.B.C.Manjunath,

S/O B.Channaiah,

Aged About 37 Years,

No.38, 3rd Cross, Muneshwara Temple Road,

Goraguntapalya, Yeshwanthpura,

Bangalore -560022

Karnataka Appellant No.3D Petitioner No.6

1. Sri. Puttaraj,

S/O Late K.Bettaiah, Since Dead By Lrs.,

4(A) Smt.Susheela,

W/O Late Puttaraju,

Aged About 50 Years,

No.3/K, 4th Cross, Muneshwara Temple Road,

Goruguntepalya, Yeshwanthpura,

Bangalore -560 022

Karnataka Appellant No.4A Petitioner No.7

4(B) Sri Kiran Kumar,

S/O Late Puttaraju,

Aged About 30 Years,

No.3/K, 4th Cross, Muneshwara Temple Road,

Goruguntepalya, Yeshwanthpura,

Bangalore -560 022

Karnataka Appellant No.4B Petitioner No.8

4(C) Sri Harish,

S/O Late Puttaraju,

Aged About 28 Years,

No.3/K, 4th Cross, Muneshwara Temple Road,

Goruguntepalya, Yeshwanthpura,

Bangalore -560 022

Karnataka Appellant No.4C Petitioner No.9

1. Smt. Gowramma,

D/O Late K.Bettaiah

Aged About 47 Years,

No.38, 3rd Cross, Muneshwara Temple Road,

Goraguntapalya, Yeshwanthpura,

Bangalore -560022

Karnataka Appellant No.5 Petitioner No.10

1. Smt. Lakshamma,

D/O Late K.Bettaiah,

Aged About 55 Years,

No.38, 3rd Cross, Muneshwara Temple Road,

Goraguntapalya, Yeshwanthpura,

Bangalore -560022

Karnataka Appellant No.6 Petitioner No.11

1. Sri. Venkatesh,.

S/O Late K.Bettaiah,

Aged About 50 Years,

No.38, 3rd Cross, Muneshwara Temple Road,

Goraguntapalya, Yeshwanthpura,

Bangalore -560022

Karnataka Appellant No.7 Petitioner No.12

1. Smt, Kamalamma

D/O Late K.Bettaiah.

Aged About 49 Years

No.38, 3rd Cross, Muneshwara Temple Road,

Goraguntapalya, Yeshwanthpura,

Bangalore -560022

Karnataka Appellant No.8 Petitioner No.13

Versus

1. Sri.C.S.Ragavan Nair,

S/O C.Shankara Nair,

Aged About 79 Years,

Proprietor, Mahalakshmi

Wood Industries,

Kanteerava Nagar Main Road,

Gorguntepalya, Yeshwanthpura,

Bangalore-560 022

Karnataka Respondent No.1 Respondent No.1

1. Smt. B.Vijaya,

W/O Late N.Narasimha,

Aged About 51 Years,

No.30, 1st A Cross, Parimala Nagar,

Nandini Layout, Bangalore - 560 096

Karnataka Respondent No.2 Respondent No.2

1. Sri.N.Ragavendra,

S/O Late N.Narasimha,

Aged About 34 Years,

No.30, 1st A Cross, Parimala Nagar,

Nandini Layout, Bangalore - 560 096

Karnataka Respondent No.3 Respondent No.3

1. Sri.N.Murali

No.30, 1st A Cross, Parimala Nagar,

Nandini Layout, Bangalore - 560 096

Karnataka Respondent No.4 Respondent No.4

ALL THE ABOVE RESPONDENTS ARE CONTESTING RESPONDENTS

TO,

THE HON’BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUDGES OF THE HON’BLE SUPEREME COURT OF INDIA

THIS HUMBLE PETITION OF THE PETITIONERS ABOVENAMED

**MOST RESPECTFULLY SHOWETH:**

1. That the instant petition seeking special leave to appeal is being filed by the Petitioner above named against the final judgment and order dated 28.02.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in R.F.A. No.1646 of 2014 (SP) whereby the Hon’ble High Court has dismissed the appeal of the Petitioner herein.

1A. No LPA, Special Appeal & Writ Petition/Writ Appeal lies against the Impugned order.

1. **QUESTIONS OF LAW:**

The following questions of law of general public importance arise in the facts of the instant case which merits an authoritative determination from this Hon’ble Court:

* 1. Whether the Hon’ble High Court failed to appreciate that plea for specific performance of a purported agreement to sell, was untenable as it was based on a photocopy of the said agreement, which was never proved by the Respondent No.1 in terms of the Evidence Act 1872 ?
  2. Whether the Hon’ble High Court overlooked the settled law, that for a party to produce secondary evidence the party must prove the existence and execution of the original document. ?
  3. Whether the Hon’ble High Court failed to appreciate that the relief of specific performance could not have been granted to the Respondent No.1, as he hadfailed to establish the execution and existence of the Agreement to Sell ?
  4. Whether the Hon’ble High Court failed to appreciate that once the Respondent No.1 had filed the Suit seeking specific performance, it had conceded that his title over the property was defective and incomplete, thus the Respondent No.1 could not had proceeded with selling the Scheduled Property to the Respondent No. 2 to 4, declaring himself as the owner ?
  5. Whether the Hon’ble High Court failed to consider that the Respondent No.1 proceeded to sale the Scheduled Property, during the pendency of litigation, and in contravention of section 52 of the Transfer of Property Act 1882, to the Respondent No. 2 to 4. and that the Respondent No.1 had illegally transferred the property which was directly and specifically in question of the Suit filed by the Respondent No. 1?
  6. Whether the Hon’ble High Court to appreciate that Respondent No.1 who had opted to seek specific performance of the agreement to sell for the Scheduled Property, after filing the suit, proceeded with sellingSchedule Property, which he had claimed in its Suit for specific performance ?
  7. Whether the Ld. Courts failed to appreciate that the presumption should be raised against the case of the Respondent No.1, as he had failed to depose before the Ld. Trial Court, in terms of the judgment ***Vidhyadhar v. Manikrao, (1999) 3 SCC 573***?
  8. Whether the Hon’ble High Court erred in holding that even if the agreement to sell is not proved the relief of specific performance can be granted on the GPA?
  9. Whether the Hon’ble High Court failed to note that no relief of the specific performance of the GPA can be granted, as the suit was preferred for the specific performance of the agreement to sell and there was no prayer for the specific performance of the GPA?
  10. Whether the Ld. Courts erred in holding that the interest is created in favour of the Respondent No.1, even though the GPA does not provide for any clause for the transfer of an interest in favour the Respondent No.1 and/or payment of any consideration?
  11. Whether the Ld. Trial Court failed to appreciate that the law laid down by this Hon’ble Court in ***(2011) 4 SCC 240***and ***(2007) 5 SCC 730?***

1. **DECLARATION IN TERMS OF RULE 3 (2) :**

The Petitioners states that no other Petition seeking special leave to appeal has been filed by the Petitioners against the impugned order/judgment.

1. **DECLARATION IN TERMS OF RULE 5 :**

The Petitioners states that the annexures being Annexures P/1 to P/12 produced along with the present Special Leave Petition are true and correct copies of their respective originals and formed a part of the record of the Court(s) below against whose Order/ Judgment the leave to appeal is sought in the present Petition.

1. **GROUNDS:**

The instant petition seeking special leave to appeal is being filed on, among others, the following grounds which may be considered as being without prejudice to each other:

1. Because the Hon’ble High Court has failed to appreciate the fact and the law.
2. Because the plea of the Respondent No.1 for the specific performance of a purported agreement to sell, was untenable as it was based on a photocopy of the said agreement, which was never proved by the Respondent No.1 in terms of Section 65 of the Evidence Act 1872.
3. Because it is a trite law that in order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document. Thus, the relief of specific performance could not have been granted to the Respondent No.1, as he had failed to establish the execution and existence of the Agreement to Sell while relying upon its photocopy. In this regard reliance is placed on the judgment***J Yashoda v. K Shobha Rani (2007) 5 SCC 730***, wherein this Hon’ble Court has held that:

“*9. The rule which is the most universal, namely, that the best evidence the nature of the case will admit shall be produced, decides this objection. That rule only means that, so long as the higher or superior evidence is within your possession or may be reached by you, you shall give no inferior proof in relation to it. Section 65 deals with the proof of the contents of the documents tendered in evidence. In order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document. Under Section 64, documents are to be provided (sic proved) by primary evidence. Section 65, however permits secondary evidence to be given of the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in the said section must be fulfilled before secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in the section……*”.

1. Because in the instant case the Ld. Trial Court while marking the Agreement to Sell as Ex.P.1 has recorded that the same is marked subject to objections. However, while passing its judgment failed to give any ruling as to whether the alleged agreement is admissible evidence or not.
2. Because it is trite law a photocopy of the document does not become either a primary evidence or a secondary evidence, unless it is proved, as contemplated under the Evidence Act. Reliance is placed upon ***H. Siddiqui v. A. Ramalingam, (2011) 4 SCC 240,*** wherein this Hon’ble Court has held that:

*The provisions of Section 65 of the 1872 Act provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. In a case where the original documents are not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non-production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon. (Vide Roman Catholic Mission v. State of Madras [AIR 1966 SC 1457] , State of Rajasthan v. Khemraj [(2000) 9 SCC 241 : AIR 2000 SC 1759] , LIC v. Ram Pal Singh Bisen [(2010) 4 SCC 491 : (2010) 1 SCC (L&S) 1072 : (2010) 2 SCC (Civ) 191] and M. Chandra v. M. Thangamuthu [(2010) 9 SCC 712 : (2010) 3 SCC (Civ) 907] .)*

1. Because in light of the aforementioned principles, it is crucial to highlight that Respondent No. 1 had not deposed before the Ld. Trial Court, to prove the existence and execution of the agreement of sale. The only testimony presented was from Respondent No. 3 (on behalf of Plaintiff No. 2 to 4), who, when cross-examined, admitted to having no knowledge of the execution of the Agreement to Sell or GPA.
2. Because the Hon’ble High Court failed to consider that the Respondent No.1 proceeded to sale the Scheduled Property, during the pendency of litigation, and in contravention of section 52 of the Transfer of Property Act 1882, to the Respondent No. 2 to 4. The Ld. Courts failed to appreciate that the Respondent No.1 had illegally transferred the property which was directly and specifically in question of the Suit filed by the Respondent No. 1 and for which he was seeking relief of specific performance of agreement to sell and making multiple rights over the property.
3. Because the Hon’ble High Court failed to appreciate that once the Respondent No.1 had filed the Suit seeking specific performance, it had conceded that his title over the property was defective and incomplete, thus the Respondent No.1 could not had proceeded with selling the Scheduled Property to the Respondent No. 2 to 4, declaring himself as the owner. Thus, the transfer to the Respondent No. 2 to 4, during the pendency of the Suit can be construed as illegal and void. Reliance is also placed upon ***Mohd. Raza v. Geeta, 2021 SCC OnLine SC 858*** wherein the following is observed by this Hon’ble Court:

“*16. It is to be noted at this stage that defendant No. 2 cannot be said to be the owner as her suit for specific performance is yet to be decided by the learned Trial Court. Unless and until there is a decree passed in her favour and the decree for specific performance is passed and/or the sale deed is executed pursuant to such a decree, she cannot be said to be the owner of the suit property. Till the suit for specific performance is decided, the plaintiff - respondent herein continues to be the owner and defendant No. 1 - appellant herein continues to be the tenant….”*

1. Because clearlythe Ld. Courts made a grave error in admitting and relying on the contents of the Agreement to Sell and GPA, which were not established by Respondent No. 1. In this regard reliance is placed upon the judgement of this Hon’ble Court, in ***Vidhyadhar v. Manikrao, (1999) 3 SCC 573***, where it is held that, ‘*17. Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct.…*”
2. Because, PW-1 who deposed to establish the Agreement to Sell, was not even born in the purported date of the execution of the said agreements. However, the Ld. Trial Court by accepting the evidence of P.W.1 held plaintiff has proved the execution of agreement of sale by Bettaiah in favour of C.S. Raghavan Nair. The said finding one recorded by the Ld.Trial Court is contrary to the evidence on record, is unjust, improper and which is liable to be set aside.
3. Because the Ld. Courts have failed to consider that, in terms of sections 201 and 202 of the Contract Act, the agency formed in favour of the Respondent, if the GPA presumed genuine, stood terminated on the death of Sri K. Bettaiah as per section 202 of the Contract Act. The GPA, if presumed genuine, does not create any interest in favour of the Respondent No.1 had categorically stated that it has been granted as Sri K. Bettaiah was unable to do the acts as stated in GPA.
4. Because ofthe fact GPA does not make reference to the Agreement to Sell and/or does not provide for any clause for the transfer of an interest in favour the Respondent No.1, the finding of the Ld. Courts that the interest is created in favour of the Respondent No. 1 is erroneous and perverse.
5. Because the findings of the Hon’ble High Court is contrary to judgment of the coordinate bench of the Hon’ble High Court in ***M.S. Ananthamurthy v. J. Manjula, 2019 SCC OnLineKar 3490*** wherein it is held by the Hon’ble High Court that ***“****merely because a Power of Attorney holder is said to have been put in possession of the subject property or merely because the Power of Attorney holder is said to have parted with some money in favour of the executant of the General Power of Attorney,by that itself, it cannot be interred that the Power of Attorney has got any interest in the subject property.”*
6. Becausethe Ld. Courts due to the erroneous application of the judgment of Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (2012) 1 SCC 656 has wrongly held that even if the execution agreement to is not proved, the decree of specific performance can be granted for the GPA.
7. Because the Suit was specifically filed for the performance of the Agreement to Sell, and the Respondents did not prayed for the performance of the GPA. Therefore, it is incorrect to assume that even if the Agreement to Sell is not established, the relief of specific performance can be granted under the GPA.
8. Because the Ld. Courts overlooked the fact that the GPA does not contain any provision for the transfer of title to the Respondent. Without such a provision, it is impossible to enforce specific performance for the transfer of title. The lower courts erroneously relied on the obiter dicta of ***Suraj Lamp & Industries*** case, whereas this Hon’ble High Court has held that an agreement to sell or GPA cannot transfer any interest.
9. Because the Ld. Courts have failed to appreciate and to give its finding on the lease deed, dated 01.04.1988, which the Petitioners who have proved the execution of the lease deed, dated 01.04.1988, for the Scheduled Property, between the Sri K. Bettaiah and the Respondent No.1, by the testimony of the attesting witnesses of the said lease deed.
10. Because the finding of the Ld. Courts below that the interest in the GPA in the favour of the Respondent and thus it does not stand terminated on death of Sri. K. Bettaiah is vitiated and prejudiced as no issue was framed by the Ld. Trial Court in this regard and thus the Petitioners never got the viable opportunity to tender evidence and contend the same. Reliance is placed upon ***MakhanLalBangal v. ManasBhunia, (2001) 2 SCC 652*** wherein it is held that “*An omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission.*”
11. **GROUNDS FOR INTERIM RELIEF :**

(1) That the instant petition seeking special leave to appeal is being filed by the Petitioner above named against the final judgment and order dated 28.02.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in R.F.A. No.1646 of 2014 (SP) whereby the Hon’ble High Court has dismissed the appeal of the Petitioners herein.

(2) That the Petitioner has a good prima facie case in law and has every hope to succeed in the instant Special Leave Petition.

(3) That the balance of convenience is also in the favour of the Petitioner and the Petitioner will suffer grave hardship if the interim relief as prayed for is not granted.

(4) That the Petitioner will suffer great irreparable harm if the Impugned Order is not stayed during the pendency of the instant Special Leave Petition.

(6) That therefore it is in the interests of justice that theImpugned order dated 28.02.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in R.F.A. No.1646 of 2014 (SP) may be stayed during the pendency of the instant Special Leave Petition.

1. **MAIN PRAYER :**

In the facts and circumstances mentioned above an in light of the grounds mentioned above, it is most respectfully prayed that this Hon’ble Court may kindly be pleased to:

1. Grant special leave to appeal against the final judgment and order dated 28.02.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in R.F.A. No.1646 of 2014 (SP); and
2. Pass any other orders as this Hon’ble Court may deem fit in the facts and circumstances of the instant case.
3. **PRAYER FOR INTERIM RELIEF :**

In the facts and circumstances mentioned above an in light of the grounds mentioned above, it is most respectfully prayed that this Hon’ble Court may kindly be pleased to:

1. Stay the operation and effect of the final judgment and order dated 28.02.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in R.F.A. No.1646 of 2014 (SP); and
2. Pass any other orders as this Hon’ble Court may deem fit in the facts and circumstances of the instant case.

**AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY**

**DRAWN &FILED BY:**

**AWANTIKA MANOHAR**

**ADVOCATE FOR THE PETITIONER**

**DRAWN ON: .06.2023**

**FILED ON: 03.07.2023**

**NEW DELHI**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2023

IN THE MATTER OF:

Smt. Narasamma and Others ... Petitioners

Versus

Sri. C.S. Raghavan Nair and Others ...Respondents

**CERTIFICATE**

“Certified that the Special Leave Petition is confined only to the court whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon’ble Court. This certificate is given to the basis of the instructions given by the Petitioner/person authorized by the Petitioner whose Affidavit is filed in support of the Special Leave Petition.”

**FILED BY:**

**(AWANTIKA MANOHAR)**

**NEW DELHI: ADVOCATE FOR THE PETITIONERS**

**FILED ON: 03.07.2023**

**PROFORMA FOR FIRST LISTING**

**SECTION –**

**The case pertains to (Please tick/check the correct box):**

|  |  |  |  |
| --- | --- | --- | --- |
| |  | | --- | |  | | Central Act: (Title) | |
| |  | | --- | |  | | Section: **\_** | |
| |  | | --- | |  | | Central Rule: (Title)  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | |
| |  | | --- | |  | | Rule No(s):  **\_N/A** | |
| |  | | --- | |  | | State Act: (Title) **N/A** | |
| |  | | --- | |  | | Section:  **N/A** | |
| |  | | --- | |  | | State Rule: (Title) **\_ N/A** | |
| |  | | --- | |  | | Rule No(s): **\_N/A** | |
| |  | | --- | |  | | Impugned Interim Order: (Date) **\_\_N/A\_\_\_\_ \_** | |
| |  | | --- | |  | | Impugned Final Order/Decree: (Date) **28.02.2023** | |
| |  | | --- | |  | | High Court: (Name) **High Court of Karnataka at Bengaluru** | |
| |  | | --- | |  | | Names of Judges: **Hon’ble Mr. Justice N S Sanjay Gowda** | |
| |  | | --- | |  | | Tribunal/Authority: (Name) **\_N/A** | |
|  |  | |
| 1. | |  |  |  |  | | --- | --- | --- | --- | | Nature of matter: | |  | | --- | | √ | | Civil | | |  |  |  | | --- | --- | --- | | |  | | --- | |  | | Criminal | |
| 2. | (a) Petitioner/Appellant No.1:Sri R Srinivas | |
|  | (b) e-mail ID: **\_ \_\_\_\_\_\_\_\_\_\_\_ N/A** | |
|  | (c) Mobile Phone Number: **\_ N/A** | |
| 3. | (a) Respondent No.1**:**Sri Rajanna AND OTHERS | |
|  | (b) e-mail ID: **\_N/A** | |
|  | (c) Mobile Phone Number: **\_N/A** | |
| 4. | (a) Main category classification:  **18** | |
|  | (b) Sub classification:  **1807** | |
| 5. | Not to be listed before: **\_N/A** | |
| 6. | (a) Similar disposed of matter with citation,  if any, & case details: **\_ No similar disposed off matter**  (b) Similar pending matter with case details: **NO SIMILAR MATTER PENDING** | |
| 7. | **Criminal Matter: N/A** | |
|  | (a) Whether accused/convict has surrendered: | |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | | |  | | --- | |  | | Yes | |  | | --- | |  | | No | |
|  | (b) FIR No. **\_N/A**  Date: **\_N/A** | |
|  | (c) Police Station: **\_N/A** | |
|  | (d) Sentence Awarded: **\_N/A** | |
|  | (e) period of sentence undergone including period of Detention/Custody undergone  **N/A** | |
| 8. | **Land Acquisition Matter:** | |
|  | (a) Date of Section 4 notification: **\_N/A** | |
|  | (b) Date of Section 6 notification: **\_N/A** | |
|  | (c) Date of Section 17 notification: **\_N/A** | |
| 9. | **Tax Matter:** State the tax effect: **\_N/A** | |
| 10. | Special Category (first Petitioner/Appellant Only): **N/A** | |
| |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | | |  | | --- | |  | | Senior Citizen > 65 years | | | |  | | --- | |  | | SC/ST | |  | | --- | |  | | Woman/Child | |  | | --- | |  | | Disabled | |  | | --- | |  | | Legal | |  | Aid case | |  | | --- | |  | | In custody | | | | | | | | | | | |
| 11. | Vehicle Number (in case of Motor Accident Claim Matters): **N/A** | |
|  |  | |

FILED BY

DATE: 03.07.2023 (AWANTIKA MANOHAR)

AOR FOR PETITIONERS

AOR CODE NO.2866

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. OF 2023

IN

SPECIAL LEAVE PETITION (C) NO. OF 2023

**IN THE MATTER OF:**

Smt. Narasamma and Others ... Petitioners

Versus

Sri. C.S. Raghavan Nair and Others ...Respondents

**APPLICATION FOR EXEMPTION FROM FILING OFFICIAL TRANSLATION OF THE DOCUMENTS IN THE VERNACULAR**

To,

The Hon'ble Chief Justice of India and his companion Justices of the Hon’ble Supreme Court of India.

The humble application of the Petitioners above named

MOST RESPECTFULLY SHOWETH:

1. That the instant petition seeking special leave to appeal is being filed by the Petitioner above named against the final judgment and order dated 28.02.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in R.F.A. No.1646 of 2014 (SP).
2. That the facts of the case and the grounds arising there from have been stated in the accompanying petition and are not being reproduced here for the sake of brevity. The Petitioner craves leave to rely on the said facts and grounds, and they may be considered part and parcel of the instant application.
3. That it is respectfully submitted that since the matter is of an urgent nature and the appointment of an official translator and the translation of the vernacular document from the vernacular to the English will take considerable time and it will delay the hearing of the matter.
4. That the Petitioners states that he has got the translation of the Annexure Nos. P/ which is correct to the best of his knowledge.
5. That it is in the interest of justice that the English translation of the documents, which are originally in vernacular as supplied by the Petitioner may be accepted for the purpose of hearing of the instant Petition.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

1. Exempt the Petitioner from filing the official translation of the documents in the vernacular being Annexure Nos. P/ filed with the instant Application; and
2. Pass any further Orders this Hon'ble Court may deem fit in and proper under the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS THE PETITIONERS SHALL BE EVER GRATEFUL.**

**FILED BY:**

**AWANTIKA MANOHAR**

**ADVOCATE FOR THE PETITIONERS**

**FILED ON: 03.07.2023**

**NEW DELHI**