

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 13<sup>TH</sup> DAY OF FEBRUARY, 2019

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR. JUSTICE B. M. SHYAM PRASAD

REGULAR FIRST APPEAL NO.831 OF 2013 (SP)

BETWEEN:

1. SMT. BHAGYA  
DAUGHTER OF SRI HANUMEGOWDA,  
AGED ABOUT 43 YEARS.
2. SMT. B. GOWRI  
DAUGHTER OF SRI B. BORAIHAH,  
AGED ABOUT 32 YEARS.
3. SMT. BHAGYA  
WIFE OF SRI RAMACHANDRA,  
AGED ABOUT 37 YEARS,

ALL ARE RESIDENT OF BASAVANAPURA  
(VIJAYANAGAR 4<sup>TH</sup> STAGE)  
YELAWALA HOBLI, MYSURU TALUK,  
MYSURU.

... APPELLANTS

(BY SRI R. D. PANCHAM, ADVOCATE)

AND:

1. SMT. JAYALAKSHMI  
WIFE OF SRI C. KRISHNA,  
AGED ABOUT 50 YEARS.
2. SRI C. KRISHNA  
FATHER'S NAME NOT KNOWN,  
AGED ABOUT 55 YEARS.
3. MISS ASHASHREE  
DAUGHTER OF C. KRISHNA,  
AGED ABOUT 28 YEARS.

RESPONDENT NOS.1 TO 3 ARE  
RESIDING AT # LL-2, 2<sup>ND</sup> MAIN,  
5<sup>TH</sup> CROSS, VIVEKANANDA CIRCLE,  
(NEAR SAMPTHAMATHRIKA GAS AGENCY)  
MYSURU CITY-570 022.

4. SRI M. B. CHANDRU  
SON OF LATE M. K. BETTEGOWDA,  
AGED ABOUT 33 YEARS,  
RESIDING AT MAJIGEPURA VILLAGE,  
BELAGOLA HOBLI,  
SRIRANGAPATNA TALUK,  
MANDYA DISTRICT.
5. B. KUMAR  
SON OF S. BORAPPA,  
AGED ABOUT 50 YEARS,  
RESIDING AT # 1175, 8<sup>TH</sup> MAIN,  
3<sup>RD</sup> STAGE, GOKULAM,  
MYSURU-570 002.

... RESPONDENTS

(BY SRI T. P. VIVEKANANDA, ADVOCATE FOR R-1 TO R-4;  
SRI NAGAI AH, ADVOCATE FOR R-5)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 10.12.2012 PASSED IN O.S.NO.227 OF 2007 ON THE FILE OF II ADDITIONAL SENIOR CIVIL JUDGE, MYSURU, PARTLY DECREERING THE SUIT FILED FOR SPECIFIC PERFORMANCE OF AGREEMENT.

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THIS REGULAR FIRST APPEAL COMING ON FOR ORDERS THIS DAY, RAVI MALIMATH, J., DELIVERED THE FOLLOWING:

**JUDGMENT**

Memo for withdrawal of the appeal is filed on 31-1-2019 signed by the three appellants. The memo filed by the new counsel does not have a 'No Objection Certificate' from the earlier counsel. On questioning, he places reliance on the Judgment of this Court passed in MFA No.6526 of 2013 on 2-12-2016 (KARNATAKA POWER TRANSMISSION CORPORATION LIMITED., vs. M.RAJASHEKAR AND OTHERS) and submits that it is not

necessary to obtain a No Objection Certificate to file a vakalath. We are unable to accept the submission. Reliance placed by the counsel on para-8 of the Judgment is misconceived. The Division Bench held therein that 'No Objection Certificate' is not required only in a situation where the Advocate is discharged by his client in a manner known to law, only then a new counsel can enter vakalath without a 'No Objection Certificate'. When the earlier counsel still holds a valid vakalath, the question of a new Advocate entering the case cannot be accepted. Therefore, the counsel has misread the aforesaid Judgment.

2. Under these circumstances, we hold that, until and unless a 'No Objection Certificate' is obtained from the existing Advocate who still holds the vakalath, no new counsel can enter appearance on record.

3. It is presently submitted that the earlier counsel has since furnished his 'No Objection Certificate' to

the new counsel. Therefore the new vakalath of the appellants' is accepted. Consequently, the memo for withdrawal of the appeal is accepted. The appeal is dismissed as withdrawn.

Sd/-  
JUDGE

Sd/-  
JUDGE

rsk/-