

IN THE COURT OF THE XXII ADDL. CITY CIVIL &
SESSIONS JUDGE AT BANGALORE CITY : (CCH.7)

Dated this the 23rd day of January, 2023.

PRESENT

BALAGOPALAKRISHNA
XXII ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU CITY.

O.S.NO.6645/2016

PARTIES IN I.A.No.4

PLAINTIFFs : Chikkahanumaiah K.V and Another.

-VS-

DEFENDANTS : Shaila S Hegde and Others.

ORDERS ON I.A.NO.4

The defendant No.1 has filed I.A.NO.4 Under Order 7 Rule 11(a), (d) r/w Sec.151 of CPC to reject the plaint as not maintainable under law or on facts. The said application is supported by affidavit of the defendant No.1, wherein she has stated that, the plaintiffs have filed the suit for partition and declaration of sale deed dated 13-05-1970. The present suit is filed by the plaintiffs after lapse of so many years and same is liable to be dismissed. It is also stated that, suit of the plaintiff is also barred under Sec.6 of the Specific Relief Act. Whatever the cause of action stated in the plaint are illusory, hence prayed to allow the application.

2. The said application is opposed by the plaintiffs by filing objections interalia contending that, application

filed by the defendant No.1 is not maintainable either in law or on facts and liable to be dismissed. The suit schedule property is the joint family property of plaintiff and they have definite share in the suit schedule property. The name of the defendant No.1 was entered only to the extent of 11 guntas, wherein also the plaintiffs have right on it. The defendant No.1 playing a fraud on the plaintiffs has received the compensation amount by filing the Caveat petition against the dead person. The defendant No.3 is in collusion with the defendant No.1 has disbursed the amount. Whatever the contention taken by the defendants can be thrashed out in the trial. Therefore, prayed to dismiss the application.

3. Heard the arguments on both sides. The Counsel for defendant No.1 has also filed written arguments in support of his oral arguments.

4. The following points would arise for my consideration:-

1. Whether the defendant No.1 has made out a ground to allow the I.A.NO.4 filed under Order 7 Rule 11(a), (d) r/w Sec.151 of CPC?
2. What Order?

5. On the basis of the evidence available on record, my findings on the above points are as under:-

1. POINT NO.1:- In the Negative;
2. POINT NO.2:- As per the final order
for the following:

REASONS

6. POINT NO.1 :-

Before appreciating the merits of the application, it is just and proper to reproduce Order 7 Rule 11 CPC which deals with the rejection of plaint.

11. Rejection of plaint:- The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;

Out of the said defendant no.1 has invoked (a) & (d), (a) refers to cause of action and (d) refers to barred by any law. The present suit filed by the plaintiffs for partition and separate possession of their half share in the suit schedule property. According to the plaintiffs, the suit schedule property originally belonged to their grand mother

Chikkamuniyamma having purchased under registered sale deed dated 18.02.1952. Subsequently in the suit schedule property her husband sold 0.11 guntas on 13.05.1970 in favour of husband of defendant no.1. According to the plaintiffs, the said sale is not a out and out sale, it is mortgage. Further, after deducting said 11 guntas their remains 02 guntas in the said Survey number. The plaintiffs have also contended that, according to the defendant no.1, though the 0.11 guntas was sold under the alleged sale deed dated 13.05.1970, all the revenue records are still in the name of Chikkamuniyamma and plaintiffs are in joint possession of the same.

7. It is also stated by the plaintiffs that the defendant no.3, who is the Special LAO., BMRCL., came to the suit schedule property and started to excavate the portion of the suit schedule property on some grounds and on what capacity he is doing so, has not been explained to the plaintiffs, so the cause of action arose for the plaintiffs to file the suit. Admittedly, as per the defendant No.1 husband of the Chikkamuniyamma had not sold entire survey number and he has retained 0.02 guntas. Under what capacity, the defendant no.3 started excavating in the suit property has to be clarified in the evidence. Likewise, whether alleged sale deed executed by grand father of plaintiffs is

out and out sale or mortgage has to be considered in the full pledged trial. Therefore, whatever the cause of action shown by the plaintiffs in the plaint has to be accepted.

8. The defendant no.1 in her application has also stated that, suit of the plaintiff is hopelessly barred by time. Under Order 7 Rule 11(d) deals with barred under any law. Limitation does not totally exclude the plaintiff to file the suit, because the limitation point in a case of partition is a mixed question of law and fact and that has to be considered along with the merits of the case and also on the basis of the evidence. **The Hon'ble Supreme Court in a reported ruling reported in (2018) 5 SCC 644, in the matter of Soumithra kumar Sen V/s. Shymalakumar Sen and others, it is pleased to hold that, *while considering the application for rejection of plaint, averments in the plaint must be considered and not what is stated in the written statement.*** The said ruling is aptly applicable to the case on hand, because in this case, the defendant no.1 has taken such a contention that, suit of the plaintiff is barred by time. Therefore, the same cannot be considered at this stage. By considering the averments made in the plaint, it cannot be said that, there is no cause of action for the suit.

9. It is pertinent to note that, even if it is accepted the case of the defendant no.1 in suit Survey number still remains 0.02 guntas, it is a joint family property of the plaintiffs, if the said land is acquired by the defendant no.3, definitely the plaintiffs have every right to claim share in the compensation amount. Whether the plaintiffs are entitled for compensation or not and whether that amount entirely goes to defendant No.1 or not has to be considered on the merits of the case and at this stage. Viewed from any angle, the defendant no.1 failed to establish that, there is no cause of action to the suit of the plaintiffs and suit of the plaintiffs is barred by law. **Accordingly, point under reference is answered in the Negative.**

10. **POINT NO.2:-** For the aforesaid reasons and discussions, I proceed to pass the following :-

ORDER

I.A.No.4 filed by the defendant No.1 under Order 7 Rule 11(a) & (d) of CPC r/w Sec.151 of CPC is hereby rejected.

(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open Court on this the 23rd day of January, 2023).

(BALAGOPALAKRISHNA)
XXII ACC & SJ., BENGALURU.

Orders pronounced in open court vide separate order and the operative portion of the same is as under:-

ORDER

I.A.No.4 filed by the defendant No.1 under Order 7 Rule 11(a) & (d) of CPC r/w Sec.151 of CPC is hereby rejected.

(BALAGOPALAKRISHNA)
XXII ACC & SJ., BENGALURU.