

ORDERS ON I.A. No.5

The learned counsel for defendant No.1 to 5 has filed an application under Section 151 of CPC for considering Issue No.3 and 4 as a preliminary issue and to pass necessary order so as to avoid multiplicity of proceedings and the precious time of the court on the ground that the plaintiff has filed the suit for partition and separate possession by contending that she is one of the children of late Krishnappa @ Chikka Krishnappa who has alleged to have purchased the the property in the name of his wife Smt. Lakshmamma under the sale deed dated 07/04/1958. Upon the death of Krishnappa @ Chikka Krishnappa and Smt. Lakshmamma the plaintiff being the daughter of late Krishnappa born through his 2nd wife Smt. Ashwathamma is entitled for 1/5th share. The defendants have filed their written statement contending that plaint 'A' schedule property was absolutely belong to Smt. Lakshmamma w/o Krishnappa @ Chikka Krishnappa under the sale deed dated 07/04/1958 and on careful perusal of the sale deed it manifest the property covered under the sale deed is the absolute property of Smt. Lakshmamma and no where mentioned the same was purchased by her husband. The property covered under the sale deed is the Sthridhan property of Lakshmamma as contemplated under Section 14 of the Hindu Succession Act and the same cannot be considered as a joint family property. Therefore the plaintiff ought to value the suit for the relief under Section 38 of the Karnataka court fee and Suit valuation Act and ought to pay the court fee under the said provision instead of the plaintiff has valued under Section 24(d) of the said Act which is incorrect and sought for allowing the application.

2. On receipt of the application the learned counsel for the plaintiff filed objections contending that the application is devoid of merits and it is further contended that the contentions raised in the written statement is to deprive the legal and legitimate right of the plaintiff over the suit property. The plaintiff has valued the suit property and paid the court fee as per Section 35(2) of the Karnataka Court Fee and Suits Valuation Act and sought for dismissing the application.

3. Heard the arguments.

4. Considering the rival arguments and the material on record, admittedly the plaintiff has filed the suit for partition claiming that one Sri. Krishnappa @ Chikka Krishnappa is the propositor of the plaintiff and defendant No.1 to 8 and he had two wives and during his life time he had purchased the property in his first wife's name through a sale deed dated 07/04/1958 and after the death of said Krishnappa @ Chikka Krishnappa and his wives the plaintiff is entitled for 1/5th share. No doubt, the defendants have taken up the defense that the suit schedule property was exclusively belongs to the 1st wife of Krishnappa @ Chikka Krishnappa and the plaintiff is the daughter through the 2nd wife and not entitled for the share. But the same requires to be considered during the course of trial. Now the issue pertaining to maintainability of the suit and the court fee cannot be considered in isolation and ought to be considered along with other issues framed by the court. Apart from that, the plaintiff has already adduced the evidence and now the matter is set down for further chief of P.W. 1. Keeping the said aspect and the issue No.3 and 4 ought to be considered along with other issues, the application filed by defendant No.1 to 5 to treat the Issue No.3 and 4 as a preliminary issue does not arise for consideration.

Accordingly the application is dismissed.

For further chief of P.W. 1 by 28/09/2022.

V ACC &SJ, Bengaluru.