

Case called out. Parties and counsels absent. Proceed to pass the following:-

ORDERS ON IA No.30, 31, 31-A & 32

The learned counsel for L.Rs of plaintiff No.1(a) and defendant No.7 have filed I.A. No.30 under Order XXIII Rule 3 CPC seeking permission to enter in to compromise stating that, at the intervention of elders, well wishers, relatives and friends they got their dispute settled amicably instead of continuing the title dispute in the court and for that defendant No.7 admits that site No.212, Katha No.172, measuring 52 x 40 feet purchased by him under sale deed dated 31/03/1995 is a portion of larger extent 0.19 guntas of Sy.No. 105/2 of Rachenahalli village, Kasba Hobli, Bengaluru North Taluk covered in suit schedule -I property and he has no objections in annulling the said sale deed executed by defendant No.4 through his attorney/defendant No.5 and to decree the suit as prayed for by the original plaintiff, as plaintiffs have paid sum of Rs.38,50,000/- by way of DD dated 22/09/2020.

2. Per contra, the defendant No.8 filed objection statement stating that, defendant No.7 who is residing in USA and the plaintiffs have settled their dispute which has no bearing against defendant No.8, as

such suit against defendant No.7 may be dismissed.

But it is contended in the objections filed by the defendant No.4 that, application filed by the plaintiffs and defendant No.7 for compromise of the portion of the property is not maintainable either in law or on facts and liable to be rejected. Further contend that plaintiffs filed the suit for declaration of title and for the relief of declaring the transactions effected by the 5th defendant as GPA holder of 4th defendant as null and void in respect of site No.210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220. Accordingly the 4th defendant has filed written statement with specific defense contending that the title of the plaintiffs over the schedule properties have been denied and seriously disputed stating that he is in possession of the schedule properties. Further contend that, after framing issues now the case is posted for further cross of P.W. 1 by the 4th defendant, but the defendant No.7 who intend to go for compromise in respect of site No.212 has not set up any counter claim seeking declaration of title over the said property, as such with an intention to knock of the portion of the property belongs to defendant they have filed the compromise petition. Further the 4th defendant has not

admitted the sale of site No.212 executed in favour of 7th defendant nor party to the compromise petition. On these grounds prayed for rejecting the application.

3. The learned counsel for plaintiff No.1(a) has filed I.A. No.31 under Order III rule 2 of Code of Civil Procedure seeking permission to contest the suit for himself and on behalf of remaining L.Rs of plaintiff stating that his sons have given power of attorney to contest the above case as they unable to appear before the court on every date of hearing.

4. Similarly, the learned counsel for defendant No.7 Sri. N. Shanker Rangareji has filed I.A. No.31-A and 32 under Order III rule 2 of Code of Civil Procedure along with GPA and Vakalath seeking permission to P.A. holder Smt. A.K. Shanthakumari D/o late Parappa.N. Gadag to appear, represent and to admit the compromise petition on behalf of defendant No.7 stating that now the plaintiffs and defendant No.7 decided to settle the dispute amicably, but defendant No.7 is residing in USA and due to Covid-19 he is unable to come Bengaluru and to appear personally, accordingly he has executed GPA dated 25/08/2020 by appointing his own sister Smt. A.K. Shanthakumari as attorney holder

to do all the acts referred supra. On these grounds prayed for allowing the application.

5. Records reveal that defendant No.2, 3, 6, 7 and 9 submitted no objections. Further though the contesting defendant No.4 filed objections to I.A. No.30, but he did not file objections to these applications.

6. Heard and perused the material on record.

7. The points that arise for my consideration are:

1. Whether I.A. No.30 filed under Order XXIII Rule 3 CPC by the learned counsel for L.Rs of plaintiff and defendant No.7 deserves to be allowed?

2. Whether I.A. No.31, 31-A and 32 filed by the learned counsel for L.Rs of plaintiff and counsel for defendant No.7 are fit to be allowed?

8. My answers to the above points are in the negative for the following:

REASONS

9. **Point No.1 and 2:-** I take these points together for my discussion, as the facts overlap and for the sake of convenience.

10. It is worth to note that initially the original plaintiff late Smt. Parvathamma filed the above numbered suit against the defendants for the relief of permanent injunction in the year 2007 itself.

11. Records reveal that, on receipt of suit summons the defendants appeared and contesting defendants filed written statement long back. During the pendency of the suit the original plaintiff reported to be dead and L.Rs of plaintiff were brought on record.

12. Further the plaintiffs also got amended the plaint as well as main relief in prayer column of the plaint seeking the relief of declaration to declare that plaintiff is the absolute owner of the suit schedule property having purchased it under a sale deed dated 05/03/2007 from one Smt. Puttamma and also to declare that all the sale transactions effected by the 5th defendant as power of attorney holder of 4th defendant in favour of third parties are null and void.

13. It is also evident that this court also framed issues and additional issues in the year 2012 and 2018 respectively. Further the parties have already adduced evidence on preliminary issue No.8. Thereafter the P.A holder of plaintiff by name T. Kariyappa has already filed affidavit in lieu of oral evidence in the year 2014 and got marked the documents at Ex.P.1 to 47 and also fully cross-examined by the counsel for defendant No.1 and partly cross-examined by learned counsel for defendant No.8. Further on 07/01/2019 the plaintiff No.1(a)/P.W.1 has

filed another affidavit in lieu of further evidence in the month of January 2019 and got marked the documents at Ex.P.49 and 50 and also cross-examined by the counsel for defendants at considerable length till 18/11/2019 and 04/02/2020, but when the case was posted for further cross-examination by the counsel for defendant No.7 at this stage the L.Rs of plaintiff and learned counsel for defendant No.7 have come up with these applications seeking permission to enter in to compromise petition in respect of site No.212 sold by 5th defendant as alleged GPA holder of 4th defendant for the reasons assigned in the accompanying affidavits referred supra, which has been seriously disputed by the contesting defendant No.4 stating that he has disputed the title and possession over the property and at this stage it cannot be permitted.

14. So on careful perusal of entire material on record, now it is clear that plaintiffs have filed the above numbered suit for the relief of declaration to declare that original plaintiff is the absolute owner of the property in dispute and also sought the relief of declaration to declare that all the sale transactions executed by the 4th defendant through defendant No.5 GPA holder are null and void.

15. Further it is evident that major part of the cross-examination of P.W. 1 is over except contesting defendant No.4. So as per Order XXIII Rule 3 of CPC though there is no bar to enter into compromise wholly or in part by any lawful agreement or compromise signed by the parties to the satisfaction of the court, but in the case on hand when there is serious dispute about the title as well as possession of the plaintiff as well as her L.Rs over the schedule property and presence of the necessary parties, then without holding full fledged trial if the L.Rs of plaintiff and defendant No.7 are permitted to enter into compromise as sought for under I.A. No.30 pertains to site No.212 for the alleged amount, then it will cause serious prejudice to the rights of the contesting defendants.

16. With regard to I.A. No.31, 31-A and 32 is concern though the learned counsel for plaintiff No.1(a) and defendant No.7 have filed these applications, but it is settled that, in view of the provisions of Order III Rule 1 and 2 CPC it is for the remaining L.Rs of plaintiff and defendant No.7 personally to seek permission of the court to appoint power of attorney holders so as to prosecute the suit or enter in to compromise petition on their behalf and not the plaintiff No.1(a)/PA holder or counsel for defendant No.7 as has been

sought by the counsel for plaintiff No.1(a) and defendant No.7 in the present suit.

17. This is a case of the year 2007 and there is a direction of the Hon'ble High Court to dispose of the oldest matters within the stipulated period. For these reasons any amounts of arguments advanced by the learned counsel for L.Rs of plaintiff and defendant No.7 do not have weight and cannot be accepted. On the other hand the arguments advanced by the learned counsel for defendant No.4 holds good. This being the fact the present applications filed by the counsel for plaintiff No.1(a)/alleged P.A. holder of plaintiff No.1(b) to (d) and counsel for defendant No.7 personally are liable to be dismissed without cost. Consequently proposed compromise is not accepted. Hence, I answer points raised for consideration are in the negative and proceed to pass the following :

ORDER

I.A. No.30 filed under Order XXIII Rule of 3 CPC by the counsel for plaintiff No.1(a) and counsel for defendant No.7 is hereby dismissed.

Similarly, I.A. No.31, 31-A and 32 filed under Order III Rule 2 CPC by the counsel for plaintiff No.1(a) and counsel for defendant No.7 are hereby dismissed.

No order as to cost.

For further cross-examination of P.W. 1 if any call on 28/05/2021.

(C.D. KAROSHI)
V ADDL.CITY CIVIL& SESSIONS JUDGE
BANGALORE

