

KABC010247392014



**IN THE COURT OF XV ADDITIONAL CITY CIVIL & SESSIONS :
JUDGE AT BENGALURU (CCH.NO.3)**

Dated this 15th day of February 2024

OS No. 8960/2014

**Present :- Sri. Laxman Ramu Kurane, B.Com., L.L.M
XV Additional City Civil & Sessions
Judge, Bengaluru.**

Plaintiff :- Smt. Rekha

V/s

Defendant/s :- Smt. Mrs. Anasuya & Others

**ORDER ON COMPROMISE PETITION FILED UNDER ORDER
23 RULE 3 A R/W SECTION 151 OF CPC, IA NO.2/23 FILED
BY DEFENDANTS NO. 1 TO 3 UNDER ORDER 39 RULE 1 & 2
R/W 151 OF CPC & IA NO.3/23 FILED BY PLAINTIFF UNDER
ORDER 1 RULE 10(2) R/W SECTION 151 OF CPC**

Heard advocate for plaintiff and advocate for defendants on the above applications, perused affidavits filed along with the above applications and records of the file.

2. The following points that arise for my consideration are as follows:-

1. Whether the application filed by plaintiff and defendants No.4 & 5(a) under order 23 Rule 3A read with Section 151 of CPC is deserved to be allowed ?
2. Whether the IA No.2/23 filed by Defendants No.1 to 3 is deserves to be allowed ?
3. Whether the IA No. 3/23 filed by plaintiff No.3/23 under order 1 Rule 10(2) r/w Section 151 of CPC is deserves to be allowed ?
4. What order ?

3. My findings on the above points are as under for the following reasons :-

- Point No.1** :- In the Affirmative
Point No.2 :- In the Affirmative
Point No.3 :- In the Negative
Point No.4 :- See for the following :

REASONS

4. **Points No.1** :- This suit is filed by plaintiff against the defendants for relief of Partition of suit schedule 'A' & 'B' properties into four equal shares. It is the case of plaintiff that originally suit schedule 'A' & 'B' properties were owned and possessed by her grandfather Late. Sri. H. Narayanappa. The said Sri. H. Narayanappa died intestate who was succeeded by his wife Smt. Muniyamma and his only son Sri. H.N. Ashwatha Narayana. The said Sri. H.N. Ashwatha Narayan predeceased his mother Smt. Muniyamma and she succeeded to suit schedule 'A' & 'B' properties. The said Smt. Muniyamma also died intestate. After the death of

Smt. Muniyamma suit schedule 'A' & 'B' properties were owned and possessed by the plaintiff and defendants No.1 to 3 as joint owners. The plaintiff after the death of her father made several requests and demands with the defendants No.1 to 3 for partition of suit schedule 'A' & 'B' properties and to allot her share but, the defendants No.1 to 3 have not given her share to her in the suit schedule 'A' & 'B' properties. The plaintiff visited suit schedule 'A' property and she found some strangers defendants No. 4 & 5 are in possession of the suit schedule 'A' property and stated that they have acquired the right of ownership under two separate Sale Deeds. The plaintiff stated that the major portion of suit schedule 'A' property leaving 4 guntas of land, was sold by the defendants No.1 to 3 in favour of Defendants No.4 and 5 under two separate Sale Deeds dated 16.02.1995 without her knowledge and consent.

5. The defendants No.1 to 3 filed written statement and made counter claim. Defendant No.4 & 5(a) filed compromise petition stating that they have compromised the matter in terms of compromise petition. The defendants No.4 and 5(a) have paid Rs. 50 Lakhs to the plaintiff, as per para No.4 of compromise petition, the plaintiff has executed Deed of confirmation confirming the Sale Deed dated 16.02.1995 executed in favour of the defendants No.4 & 5 (a). The defendants No.1 to 3 filed objections to the compromise petition and stated that the plaintiff and defendants No.4 & 5(a) have filed compromise petition behind their back to get orders on compromise petition. The defendants No.1 to 3 stated that the plaintiff prays for her 1/4 th share in the suit schedule properties and these defendants have denied the same. The defendants No.1 to 3 stated that in the suit for partition, the entire joint family properties should be available for equitable distribution and partition and all the parties interested should be impleaded. The defendants No.1 to 3 stated that items

No.1 & 2 of the suit schedule 'A' properties are worth more than 20 crores and the 'B' schedule property is worth about 8 crores and the plaintiff and defendants No.4 & 5(a) have falsely and fraudulently stated that, the amount paid to the plaintiff for settlement is Rs. 50 Lakhs, whatever the amount paid to the plaintiff by the said defendants can be adjusted at the time of equitable partition. The plaintiff stated that in the written statement the defendants No.1 to 3 stated that Smt. Muniyamma being the absolute owner of the suit schedule properties 'A' & 'B' executed WILL dated 13.05.1994 bequeathing the suit schedule 'A' & 'B' properties to defendant No.1 and therefore, on the death of Smt. Muniyamma the defendant No.1 became the absolute owner of the suit schedule 'A' & 'B' properties and the defendant No.1 sold one of the properties bequeathed to her under the said WILL dated 13.05.1994. The defendants No.1 to 3 stated that the 1st defendant became the absolute owner of suit schedule 'A' & 'B' properties and the property bearing No. 1029, Dharmaraya Temple Street, Nagarathpet. The plaintiff further stated that defendant No.1 being the absolute owner of the suit schedule property, sold the same to defendants No. 4 & 5(a). Therefore, the plaintiff has compromised the matter with purchasers defendants No.4 & 5(a) in the suit schedule properties in respect of suit schedule 'A' property. She further stated that the defendants No.1 to 3 have no right to question the compromise petition entered between the plaintiff and defendants No.4 & 5(a). The Defendants No.1 to 3 stated that they have put signatures to the Sale Deeds of defendants No. 4 & 5(a). The plaintiff stated that the defendants stated that the plaintiff behind their back without their knowledge has compromised the matter to deprive their rights over the suit schedule properties. The defendants No.1 to 3 stated that the plaintiff has released her rights in respect of suit schedule 'A' property by getting compromise with defendants No.4 & 5(a). If the defendants No.1 to 3 proved that

they are entitled for share in the suit schedule 'A' property they will also entitle to get share in the suit schedule properties by defendants No. 4 & 5(a). Therefore, the defendants No.1 to 3 have not to question the compromise petition entered between the plaintiff and defendants No.4 & 5(a). Hence, I hold point No.1 in the Affirmative.

6. Points No.2 :- Defendants No.1 to 3 filed this application for restraining defendants No.4 & 5(a) from alienating the suit schedule properties. The defendants No.1 to 3 stated that if defendants No.4 & 5(a) alienates the suit schedule properties the purpose of filing this suit and their claim made in the suit schedule properties will be deprived off. The defendants No.4 & 5(a) also submitted that they have purchased the suit schedule properties from defendant No.1 who is the absolute owner of the suit schedule property and they cannot be restrained by any order of this injunction. This suit is filed by plaintiff against defendants for relief of partition and separate possession of suit schedule properties. Defendants No.1 to 3 claimed their counter claim over the suit schedule properties will be deprived off, if the defendants No.4 & 5(a) have alienated the suit schedule properties during the pendency of this suit. Therefore, in order to protect the property in dispute, it is necessary to issue temporary injunction as prayed in IA No. 2/23 filed by defendants No.1 to 3. Hence, I hold point No. 2 in the affirmative.

7. Points No.3 :- The plaintiff has filed this application to delete the names of defendants No.4 & 5(a). The defendants No. 1 to 3 claimed their right over the suit schedule property stating that they will have right over the properties and they have share in the suit schedule properties. In suit for partition all the legal heirs including purchasers of the property in dispute are necessary to draw a effective final decree. If schedule 'A' property is deleted from the suit,

it will lead to partial partition which cannot be permissible under any law. The defendants No. 4 & 5(a) are also necessary for parties to draw a final decree in this case. Therefore, it is not proper to delete the names of defendants No.4 & 5(a) in the suit. Hence, I hold point No.3 in the Negative.

8. Point No.4 :- In view of the above discussion on point No.1 to 3, I proceed to pass following :-

ORDER

Compromise Petition filed by plaintiff under order 23 Rule 3A r/w Section 151 of CPC is allowed.

IA No. 2/23 filed by defendants No. 1 to 3 under order 39 Rule 1 & 2 r/w Section 151 of CPC is allowed.

The defendants No.4 & 5(a) their men, servants, agents or anyone claiming through or under them are temporarily restrained from alienating the Items No.1 & 2 of the suit schedule 'A' property till disposal of this suit.

IA No. 3/23 filed by plaintiff under order 1 Rule 10(2) r/w Section 151 of CPC is dismissed.

(Dictated to the Stenographer, transcribed and typed by her, corrected and then pronounced by me in the open court on this the 15th day of February 2024)

**(Laxman Ramu Kurane)
XV Addl.City Civil & Sessions
Judge, Bengaluru.**