

IN THE COURT OF PRL.CIVIL JUDGE & JMFC ATHANI

**Present : Oonkar Murthy K.M.
B.Sc., LL.B.,**

Prl.Civil Judge & JMFC Athani

O.S.NO.1117/2013

Dated this the 16th day of October 2015

- Plaintiffs.....
1. Smt.Chandraww W/o Annappa Vaddagi,
Age: 42 years, Occu:Household work,
R/o Khemalapur, Tq:Raibag, Dist:Belagaum.
 2. Smt. Rajawwa W/o Basappa Langoti,
Age: 36 years, Occu:Household work,
R/o Shiragur, Tq:Raibag, Dist:Belagaum
Now resident of Sankonatti, Tq:Athani,
Dist:Belagaum.

-Vs-

- Defendants....
1. Shri Murigeppa Malakappa Dharigoud,
Age: 77 years, Occu:Agriculture,
R/o Sankonatti, Tq:Athani, Dist:Belagaum.
 2. Smt. Bourawwa W/o Murigeppa Dharigoud,
Age: 60 years, Occu:Household work,
R/o Sankonatti, Tq:Athani, Dist:Belagaum.
 3. Shri Malakappa Murigeppa Dharigoud,
Age: 45 years, Occu:Agriculture,
R/o Sankonatti, Tq:Athani, Dist:Belagaum.
 4. Shri Sahadev Murigeppa Dharigoud,
Age: 39 years, Occu:Agriculture,
R/o Sankonatti, Tq:Athani, Dist:Belagaum.
 5. Shri Laxman Ramappa Mugalakhod,
Age: 34 years, Occu:Agriculture,

R/o Sankonatti, Tq:Athani, Dist:Belagaum.

PARTIES IN I.A.NO.III

Applicant/defendant No.5...1. Shri Laxman Ramappa Mugalakhod.

(By Shri B.A.Dharigoud, Advocate)

-Vs-

Opponents/Plaintiffs..1. Smt. Chandrawwa Annappa Waddagi
and others.

(By Shri T.L.Patil, Advocate)

ORDER ON I.A.NO. III

The defendant No.5 has filed I.A.No.III under Order VII rule 11(d) of CPC for rejection of plaint stating that the suit is not maintainable in view of filing of O.S.No.38/2009 and O.S.1981/2011 filed by the present plaintiffs.

2. In the affidavit it is stated that the plaintiff and defendants No.3 and 4 are the children of defendants No.1 and 2. The present plaintiffs have filed suit in O.S.No.38/2009 and O.S.1981/2011 with respect to present suit schedule property bearing R.S.No.1311/1A measuring 05 acres 05 guntas for partition and separate possession. The present suit is also filed by the plaintiffs with respect to same property and same parties for partition and separate possession which is not maintainable. The plaintiffs with an intention to harass the defendant No.5 are filing the suits one after the other. Therefore, present suit is not maintainable. Hence, has prayed to reject the plaint.

3. On the contrary, the plaintiffs have filed objections denying entire allegations of the application. But the plaintiffs admit the relationship that they along defendants No.3 and 4 are the children of defendants No.1 and 2. Further it is stated that the plaintiffs are the rustic villagers. O.S.No.38/2009 is filed by them seeking partition and separate possession of the present ancestral joint family property and also has claimed that the decree passed in O.S.No.511/2007 is not binding upon them. The said suit is filed against their father, brothers and present defendant No.5. O.S.No.1981/2011 is filed by the plaintiffs seeking partition and separate possession against the present property and another property situated at Mendigeri village of Jath taluk of Maharashtra state. When there is no partition has been effect with respect to suit property and final decree has not been drawn, the present suit filed by the plaintiffs is tenable under law. There is no bar for the joint family members to file suit seeking partition and separate possession. Hence, has prayed to dismiss I.A.No.III with exemplary costs.

4. Heard arguments of both counsels and perused the materials on record.

5. Now the points that arise for my consideration are as follows:

1. Whether the suit of the plaintiffs is barred under Order II rule 2 of CPC?
2. What order?

6. My answer to the above points is as under:

Point No.1 : In the **AFFIRMATIVE**

Point No.2 : As per the final order for the following :

REASONS

7. **Point No.1** : The present suit is filed by the plaintiffs against their father (defendant No.1), mother (defendant No.2), two brothers (defendants No.3 and 4) and purchaser (defendant No.5) with respect to suit schedule property bearing R.S.No.1311/1A measuring 05 acres 05 guntas situated at Sankonatti village seeking partition and separate possession of their 1/5th share. It is also sought to be declared that the sale deed with respect to 01 acre 38 guntas of land in favour of defendant No.5 in the suit survey number is null and void and not binding on the plaintiffs.

8. The contention of the defendants is that the present plaintiffs along with their mother, i.e. present defendant No.2 Bourawwa have filed suit in O.S.No.38/2009 seeking same relief of partition and separate possession. He has produced the certified copy of order sheet, plaint and I.A.No.I in O.S.No.38/2009 which clearly discloses that the present plaintiffs along with their mother have filed the suit O.S.No.38/2009 for partition and separate possession. They have also sought for the relief that the decree in O.S.No.511/2007 is not binding upon them.

9. The defendant No.5 has also produced the certified copy of

the order sheet, plaint and I.A.No.I in O.S.No.1981/2011 which clearly discloses that same plaintiffs along with their mother have filed suit in O.S.No.1981/2011 for partition and separate possession with respect to suit schedule 1311/1A measuring 05 acres 05 guntas along with other property bearing R.S.No.80/2 measuring 1 hectare 88 heirs situated at Mendigeri village of Jath taluk Maharashtra state seeking partition and separate possession of their legitimate share.

10. The order sheet in O.S.No.38/2009 and O.S.1981/2011 also discloses that the court has passed an order of temporary injunction restraining the defendants from alienating or creating any encumbrance over the suit schedule property. It is not in dispute that both O.S.NO.38/2009 and 1981/2011 are still pending.

11. The only contention of the plaintiffs is that since there was no partition effected with respect to present suit schedule property and final decree has not been drawn the plaintiffs are entitled to file a suit for partition and separate possession of the joint family property.

12. Order II rules 1 and 2 reads as follows:

1. Frame of suit.- Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.
2. Suit to include the whole claim.-

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court.

(2) Relinquishment of part of claim.- Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs.-A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.- For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Illustration.

A lets a house to B at a yearly rent of Rs.1,200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 and 1907.

13. In the above said statutory provision of law, under rule 1 it is

mandate that every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them. Also rule 2 of order II clearly specifies that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action but plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court. It is clearly specified that if the plaintiff omits to sue in respect of or intentionally relinquishes any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. It is also clearly specified that a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted. Under such circumstances it is crystal clear that if plaintiffs are entitled for more than one relief, it should be sought in one suit only. The plaintiff cannot resort for filing suits one after other only for the reason that the suit property is the joint family property and no partition has been affected by final decree.

14. The object of rule 1 and 2 of order II is to prevent multiplicity of suits. The cardinal principle is that a person shall not be vexed twice on same cause of action. The term cause of action means the cause of action for which a suit was brought. The cause of action is the one which gives rise to an action which gives occasion for and forms the foundation of the suit. If the cause enables a person to seek for larger and wider relief than that

which he limits his claim, he cannot afterwards seek to recover by any independent proceedings.

15. The present suit is filed for partition and separate possession with respect to R.S.No.1311/1A measuring 05 acres 05 guntas of Sankonatti village. Also sought to declare that the sale deed with respect to 01 acre 38 guntas of suit land in favour of defendant No.5 in the suit survey number is null and void and not binding on the plaintiffs. The previous suits O.S.No.38/2009 and O.S. 1981/2011 are also filed by the plaintiffs seeking the relief of partition and separate possession along with additional relief stating that the compromise entered in O.S.No.511/2009 is not binding on them. In O.S.No.1981/2011 another property bearing Sy.No.80/2 measuring 01 acre 88 heirs situated at Mendigeri village of Jath Taluk of Maharashtra State is included as suit property. No such separate cause of action to maintain subsequent suits is made out. Therefore, the contention of the plaintiffs that present subsequent suit is maintainable cannot be appreciated. Under such circumstances the plaintiffs have filed O.S.No.38/2009 and have invoked the cause of action with respect to partition of the joint family properties. If at all any relief is to be sought, the same is to be sought in the same suit and not by subsequent independent suits which leads to multiplicity of proceedings defeating the proposition of final adjudication of the matter. It is not in dispute that both O.S.NO.38/2009 and 1981/2011 are still pending. Under such circumstances, the present suit of the plaintiff is barred under Order II rule 2 of CPC. Hence, I hold point No.1 in the **AFFIRMATIVE**.

16. **Point No.2** : The plaintiff has relied on the decisions reported in

1)ILR 2005 KAR 3177 in the case of Babu Rao Vs Eranna and Others

2)AIR 1958 Assam 67(V 45 C 19) in the case of Tara Kishore DasVs Beharu Barman and Others.

In the above precedents the ratio laid down is that a fresh suit for partition is maintainable as long as the right to obtain partition subsists notwithstanding the dismissal of previous suit for partition. In the case on hand two previous suits are admittedly still pending and in both suits an order temporary injunction from alienating the suit schedule property is ordered. Under such circumstances the decisions relied upon by the plaintiff are not helpful for their contention. In view of discussions made at much length while answering point No.1 in the affirmative, I proceed to pass the following:

ORDER

I.A.No.III filed under order VII rule 11(d) of CPC is hereby allowed.

Consequently the plaint is hereby rejected as the same is barred under order II rule 2 of CPC.

The plaintiffs shall pay compensatory cost of rupees 1000/- to defendant no.5.

(Dictated to the Stenographer, transcribed and computerized by him, corrected and then pronounced by me in the open court on this the 16th day of October 2015)

**(OONKAR MURTHY K.M.)
Prl.Civil Judge & JMFC. Athani....**