

KABG410002342011



**IN THE COURT OF THE I ADDITIONAL CIVIL JUDGE AND
J.M.F.C., CHIKODI.**

Present: Ashok R H
I Addl. Civil Judge & J.M.F.C.,
Chikodi.

Dated this the 22nd day of February, 2023

FDP.No.06/2011

Petitioners: 1) Shivaputra Mahalingappa Ligade,
since deceased by his Lrs.

1A) Kamala Shivaputra Ligade
R/o. Vani tailors, Nehru Market.
Dharawad, Dist: Dharwad and others.

(By Shri. L.V, Borannavar, Advocate)

//Vs//

Respondents :1) Mahalingappa Chinappa Ligade,
(Dead) and others.

(By Shri. P.S. Sadarjoshi,
Advocate for R.18)

I.A.No.13

Applicant/Respondent No.16::

1. Basappa S/o Rudrappa Panshetti and others

Vs//

Opponents/Or.Petitioner:

1. Shivaputra Mahalingappa Ligade,
since deceased by his Lrs. and others

ORDER ON IA.No.13

The respondents No.16 to 18 have filed IA.No.13 under Order VI Rule 17 R/w section 97 and 151 of CPC seeking an order to add the other properties as mentioned in the schedule given in the application.

2. In the affidavit to IA.No.13, the respondent no.16 has stated that originally the plaintiff had filed a suit for partition and separate possession in respect of the Ligade family and inspite of the fact that the original propositus had executed a due agreement of sale in favour of the applicants, they were not added as parties in the original proceedings. The applicants herein came to know regarding the litigation only after the receipt of the notice of the present petition. It is stated that after verification, it is found by the applicants that the family of the petitioner and the respondents also hold land in erstwhile RS.No.49 and 46 of Nangaon village. In this regard, the specific objections are also filed. But the petitioners are not inclined to add those properties in this final decree proceedings. The suit for partial partition is not maintainable as per the Hindu law. Thus, adding of the schedule properties in this petition is very much essential. It is further stated that if the partition is to be effected, it is to

effected in respect of joint family properties and the petitioner cannot seek and choose properties in respect of which he seeks to file the suit. For final and effective adjudication of the matter and to effect a partition once for all, the adding of schedule properties is necessary. If the application is allowed, no harm or prejudice will be caused to the other side. On these grounds, it is prayed to allow the application.

3. The petitioners have filed objections contending that the allegations made in the affidavit to the application are false. It is contended that the applicants herein have made reference of the properties mentioned in the objections and in their affidavit in lieu of examination -in-chief. But in the year 1967, when the propositus namely Shivaputra had filed a suit, he has not produced any documents related to the properties mentioned in IA.No.13. The applicants herein also have not produced any documents to show that the said properties belong to the petitioner herein. The instant application is filed with an intention to drag the proceedings. They have not shown sufficient reasons. The suit in OS.No.48/2012 and OS.No.45/2012 filed by the respondent no.18 are dismissed. The respondents no.16 to 18 have not preferred any appeal against the said judgment and decree. Hence with an intention to protract the proceedings, the instant application is filed. The respondents no.16 to 18 have

also been unsuccessful in the proceedings before the Hon'ble High court of Karnataka. The respondents no.16 to 18 have filing repeated applications to harass the petitioner herein. On these grounds, the petitioner has sought for rejection of IA.No.13 with costs of Rs.10,000/-.

4. Heard both the learned counsels. The points that would arise for consideration of this Court are as under:

POINTS

- 1 Whether the respondents no.16 to 18 have made out grounds to allow the IA.No.13?
- 2 What order?

5. The answers of this court to the above points are as under:

Point No.1 : In the negative

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

REASONS

6. **Point No.1:** The learned counsel for the respondents no.16 to 18 has argued that in a suit for partition all the family properties are to be included and that the suit for partial partition is not maintainable. The erstwhile landed properties bearing RS.No.49 and 46 of Nandgaon village which are subdivided, belong to the family of the petitioner and the other

respondents herein. The said properties are not added in the original suit. Hence it is argued that in the light of Hindu Law, the said properties are to be added in this proceedings which is continuation of the original suit, by allowing the application.

7. In support of his arguments, the learned counsel for the respondents no.16 to 18 has relied on **LAWS (SC) 2008 12 120 S.Satnam Singh V/s Surender Kaur** wherein it is held that, when there are other properties which could be a subject matter of a partition, the court would be entitled to pass a decree in relation thereto. Reliance is also placed on **2011 (4) KCCR 2461 (DB) G.M. Mahendra V/s G.M. Mohan and another** wherein it is held that when the suit has been filed with respect to the only property which has been alienated, the suit is not for general partition. Reliance is placed on **ILR 1998 KAR 681 Sri Tukaram V/s Sri Sambhaji and others** wherein the Hon'ble High court of Karnataka has held that the suit filed by the plaintiff is not maintainable as the suit for partial partition cannot be maintained without seeking leave of the court as contemplated under the provisions of Order 2 Rule 2 of CPC.

8. Per contra, the learned counsel for the petitioners has argued that the respondents no.16 to 18 have been filing applications after applications with a sole intention to drag on the matter. It is also contended that the suit filed by the

respondents no.16 to 18 before the Hon'ble Senior Civil judge, Mudhol in OS.No.45/2012 and O.S 48/2012 have been dismissed on merits and no appeal has been preferred against the judgment. Further the respondents no.16 to 18 have also been unsuccessful before the Hon'ble High Court of karnataka.

9. These being the rival contentions, it is seen that this petition is filed seeking to draw final decree based on the preliminary decree passed in OS.No.84/1967 which is filed seeking the relief of partition in house and agricultural properties. The respondents no.16 to 18 herein were not parties to OS.No.84/1967. They were added in this petition that they have got entered their names in the record of rights pertaining to the suit properties falsely. The RA.NO.258/1969 is dismissed. The respondents no.16 to 18 herein have contended that the Mahalingappa Ligade had executed agreement of sale in favour of these respondents and sale deed was executed on 30.05.1967 and that the respondents no.16 to 18 were deliberately not made as parties in the original suit. The respondent no.18 has contended that the sale deed has been executed in respect of R.S.No.48 of Nandgaon village in favour of the respondent no.17 in the family partition. The said Mahalingappa has executed sale deed in respect of land bearing RS.No.45 in favour of Satyeppa and Satappa Banappa Dhanagar @ Goudannavar on 13.04.1978. Subsequently said Satyeppa has sold land measuring 08 acres 02 guntas in favour

of Rukamawwa Vithappa Koligud. As per the partition in her family, the said land was allotted to the respondent no.18. Further a gift deed has been executed in favour of his brother.

10. As already observed by this court in orders passed on IA.No.11, the respondents no.7 and 18 had filed WP.No.85628/2013 C/w 85629/2013 before the Hon'ble High Court of Karnataka. The Hon'ble High Court of Karnataka had disposed off the said petitions with a direction to the court according to which, in case the petitioners in the said writ petitions file an application for allotment of shares purchased by their vendor, this court has to decide the said application by a speaking order. Admittedly no such application has been filed by the respondents no.16 to 18.

11. Now that the respondents no.16 to 18 have sought to implead the other family properties belonging to the petitioners i.e., the land bearing RS.No.49 and 46 of Nandgaon village which are said to be held by the family of the petitioners and other respondents. It is contended in the affidavit to the IA.No.13 that the petitioners are not entitled to the properties in the final decree proceedings. It is also contended that the suit for partial partition is not maintainable. But the elementary question that arises is the very local standi of the respondents no.16 to 18. whether or not the shares are to be allotted to the applicants herein i.e, respondents no.16 to 18 in the property

purchased by their vendor is yet to be decided by this court. It is noticed that based on the objections filed by the respondents herein this court has proceeded to record evidence of the petitioners as well as respondents. The witnesses have been examined. In the meantime, the commissioner was also appointed and the court commissioner report is filed. These being the circumstances, the respondents no.16 to 18 whose rights are not yet determined, cannot seek impleadment or addition of other properties allegedly belonging to the family of the petitioners and the respondents. Once the right of the respondents no.16 to 18 are determined and if this court holds that they are entitled for allotment of shares purchased by their vendors, the plea of the respondents no.16 to 18 could be considered. The judgments relied upon by the learned counsel for the respondents no.16 to 18 are not helpful to the respondents at this stage in view of the above observation. It is seen that the respondents no.16 to 18 are trying hard to establish their right to claim the same. But the same has to be made within the frame work of law and complying the direction issued by the Hon'ble High Court of Karnataka. It is noticed that the respondents no.16 to 18 have not yet complied the order passed by the Hon'ble High Court of Karnataka in WP.No.85628/2013 C/w 85629/2013. Hence it is fit to direct the respondents no.16 to 18 comply the same. With these observations and reasons IA.No.13 is liable to be rejected. Hence this court has answered Point No.1 in the Negative.

12. **Point No.2:** In view of answer to Point No.1, this court proceeds to pass the following:

ORDER

IA.No.13 filed by the respondents No.16 to 18 have filed IA.No.13 under Order VI Rule 17 R/w section 97 and 151 of CPC is hereby rejected. No order as to costs.

(Dictated to the Stenographer, transcribed and typed by her, corrected and then pronounced by me in the Open Court on this 22nd day of February, 2023)

Sd/-

(Ashok R.H)

I Addl. Civil Judge & JMFC., Chikodi.