KABG500010262021

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE, GOKAK

Present: Sri. K.M. SHANKAR, B.A.L., LL.B.,
I Addl. Senior Civil Judge, Gokak

Dated, this the 26^{th} day of October, 2023

O.S.No.539/2021

Plaintiff: Nagaratna D/o. Shantappa Attimarad,
(Nagaratna W/o. Shrikant Hallur)
Age: 50 years, Occ: Household,
R/o: Laxmi Extension, Gokak,
Gokak taluk, Belagavi district.

(By Sri.SCG., Advocate)

V/s

Defendants:

1. Siddveerchaanabasappa Shantappa Attimarad, Age: 60 years, Occ: Business,
R/o: Suvarna Book Stall, Gokak,
Gokak taluk, Belagavi district.

2. Veeresh Shantappa Attimarad,
Age: 53 years, Occ: Business,
R/o: Suvarna Medicals, Near HP Gas Office, Anand Talkies Road, Hosapet Galli,
Gokak, Gokak taluk, Belagavi district.

3. Madhushri Mohan Attimarad,
Age: 49 years, Occ: Household,
R/o: 303, 3^{rd} floor, Mahalxmi Apartment,
Bhagya Nagar, 2^{nd} cross, Tilakwdi,
Belagavi taluk and district.

4. Kiran Mohan Attimarad,
Age: 27 years, Occ: Engineer,
R/o: 303, 3^{rd} floor, Mahalxmi Apartment,
Bhagya Nagar, 2^{nd} cross, Tilakwdi,
Belagavi taluk and district.

5. Varun Mohan Attimarad,
Age: 23 years, Occ: Student,
R/o: 303, 3rd floor, Mahalxmi Apartment,
Bhagya Nagar, 2nd cross, Tilakwdi,
Belagavi taluk and district.

6. Subhani Mohammadsab Mulla,
Age: 50 years, Occ: Service,
R/o: Mahalingeshwar Nagar, Gokak,
Gokak taluk, Belagavi district.

(D1 By Sri.VVK., Advocate)
(D2 & 6 By Sri.OBJ., Advocate)
(D3 to 5 By Sri.SBK., Advocate)

IA.No.12 and 13

Applicant	:	Mahaveer
		V/s
Opponent	:	Kallappa

ORDERS ON IA-12 AND 13 DATED 26.05.2023 AND 13.07.2023 FILED UNDER SECTION 151 OF CPC R/W/ SECTION 17 AND 34 OF THE KARNATAKA STAMP ACT AND UNDER ORDER 16 RULE 1 AND 2 R/W/S 151 OF CPC

The 1st defendant has made the IA.No.12 seeking direction to send the original memorandum of partition dated 09.06.1993 to the District Registrar, Belagavi for determination and collection of deficit stamp duty on the grounds that plaintiff has filed the suit for the relief of partition on false and baseless allegations. The 1st defendant has filed detailed written statement. Defendants have interalia taken contentions that there is already a partition as per the memorandum of partition dated 09.06.1993. The said document is important material to prove their defense and it will enable the court to decide the real matter. Though the said memorandum of partition does not require any registration, plaintiff is contending that same is not registered. Without admitting the said contentions, to avoid controversy in this regard, the court would be pleased to send the said original memorandum of partition dated 09.06.1993 to the District Registrar, Belagavi, as the case may be for determination and collection of deficit stamp duty and other charges if any in the interest of justice and equity. If the IA.No.12 is allowed, no loss or hardship would be caused to the other side. If it is not allowed, the 1st defendant will be put to heavy and irreparable loss.

2. In the objections dated 17.06.2023, the IA.No.12 is resisted by plaintiff contending that it is groundless and averments made therein are false. The alleged document is not legally enforceable document and is a false and bogus deed, since the defendants have taken all the properties in their names illegally without providing any share to plaintiff, her mother, father and grandmother Siddawwa. Hence, the rights of

the properties are not transferred under the said document and such rights are yet to be decided by the court and the court has to decide as to whether the said document is a memorandum of partition or partition deed or family settlement deed or forged document or illegal document by way of trial but a this stage the submission of the 1st defendant may not be entertained unless the court comes to conclusion that which type of the document it is. Now, the court has to decide the nature of the document and then send the same to the registration authority. That at this stage, defendants themselves are not sure about the nature of the document and even it is not possible to determine stamp duty.

3. Defendants have kept quite all the while without registration and paying deficit stamp only because the alleged document is illegal, forged and created behind the back of all the family members of plaintiff and defendants. They have hided this false document only because they have swallowed and consumed entire suit properties. This fact came to the day light recently after filing the suit. It shows that the original owner Siddawwa the grandmother of plaintiff and defendants is not the party to it and she never gave consent to the said document.

Further, the above said document reveals that it does not bear the signature of Siddawwa. Hence, now the above stated document cannot be called as partition deed, which shows that the entire properties were taken away by the defendants only but none of the properties are allotted to the plaintiff, father and mother of plaintiff and grandmother of plaintiff Siddavva, but only provided life interest maintenance to Siddawwa without her consent. All the joint family members of the family of plaintiff and defendants have not signed the deed. Hence, the question of registration will not arise now after 20 years of the deed. Accordingly, it is prayed for dismissal of the application with cost.

4. The 2nd defendant has made the IA.No.13 seeking issuance of witness summons to the following persons to produce in this case, the documents detailed in the application and give evidence thereon on the grounds that plaintiff has filed the suit for the relief of partition on the false and baseless allegations. The 2nd defendant has filed detailed written statement and has specifically contended at the para 31 of his written statement that it is recently learnt by him that after the death of his parents, plaintiff alone behind the back of

defendants, clandestinely and by playing fraud upon the concerned bank/society authorities has illegally obtained and high handedly withdrawn fixed deposit amounts of Rs.40,00,000/-, which was kept by the father and mother of the 2nd defendant in the said bank/society, without disclosing that the 2nd defendant and other defendants are their legal heirs and legal representatives and that the defendants are having due and respective shares therein. Plaintiff alone has illegally and without any authority retained the aforesaid amounts, by without giving any due share of the defendants, including the share of the 2nd defendant. Plaintiff is under legal obligations to give respective shares of the defendants in the said FD amounts. She is not entitled to claim any share in any of the suit properties and on the contrary she is legally bound to give due and respective shares of the defendants in the aforesaid FD amounts.

5. In this regard the 2nd defendant has produced copies of said fixed deposit receipts separately. He has tried his best to seek the particulars of payments made to plaintiff from the respective societies/ banks, who are custodians of the said documents and particulars by personally asking the officials and

by applying under Right to Information Act, but they have at the behest of plaintiff refused and did not supply the said documents, particulars and details of the amounts paid to plaintiff and also the details of the account wherein the amounts are deposited/ paid to the plaintiff. The said details are important material and the same would also enable the court to decide the matter in issue justly and effectively and for proper and effective adjudication of all the matter in issue. The same are also required for doing cross-examination of plaintiff under the above said facts and circumstances it is just and necessary and expedient to issue witness summons calling upon the officials/ secretary of the said respective societies/bank, as detailed in the accompanying application, for producing the requisite documents in the case and to give evidence thereon to meet the ends of justice. The 2nd defendant is ready to bear the requisite expenses to be incurred in this regard.

6. In the objections dated 17.08.2023, the IA.No.13 is resisted by plaintiff contending that it is groundless and averments made therein are false. Defendants are colluding with each other and filed their respective written statements through the three different advocates but their defense is common, that

all defendants contended that there is earlier partition in their family, and relied on a false and bogus document. It is clear on reading false document that no share is allotted to plaintiff though she is legally entitled to the share in the properties. The suit is filed by her claiming her share in the suit properties. Hence, defendants have no other defenses, on the contrary claim of the plaintiff is legal. Therefore, defendants intend to dragon the case for indefinite period by filing false interim applications with intention to take more adjournments in the case. The case was posted for cross-examination of plaintiff but defendants are not interested to cross-examine the plaintiff as they have no grounds to contest the case. They are now adapted the delay tactics by filing more applications on baseless grounds. They driven out their father and mother from the house. The helpless age old father and mother of plaintiff were living with her till their death. They were not having source of income to meet out their livelihood, then plaintiff started tailoring work and saved money by putting hard work and thereby she kept some money in the bank in the name of her mother as fixed deposit as senior citizens are getting more rate of interest. The 2nd defendant filed false affidavit along with application. The defendants have already produced copies of deposit receipt along with list of documents, wherein it is clearly shown the name of plaintiff as a nominee. Defendants are no way concerned to the deposit amount. Hence, those documents are not necessary for the adjudication of the matter in dispute. Defendants contended in their written statement that there was a partition in the family and plaintiff and her parents are living separately. Hence, even if there are deposits, the question of claiming share in the same does not arise. Accordingly, it is prayed for dismissal of the application with cost.

7. I have heard the arguments of the learned counsel appearing for the parties and perused the material on record. The 1st defendant has relied on the decision reported in 2023 (2) KCCR 2023 (Anil Vs. Babu).

8. Points that arise for consideration of the court are;

1. Whether the IA.No.12 deserves to be allowed?

2. Whether the IA.No.13 deserves to be allowed?

3. What Order?

9. Findings of the court on the above points are as under:

Point No.1: in the affirmative
Point No.2: in the affirmative and
Point No.3: as per final order for the following:

R E A S O N S

10. Point No.1: the plaintiff has resisted the IA.No.12 mainly on the ground that at this stage it cannot be said that the alleged deed is a memorandum of partition or partition deed or family settlement deed or forged document or illegal document and it has to be decided by this court after full pledged evidence, and after deciding the nature of the document it can be sent to the registration authority for determination and collection of stamp duty and penalty.

11. The recitals of the so called document reveal that it is a partition deed. Therefore, question of deciding the nature of the document as contended by the plaintiff does not arise. Admittedly, it is an unregistered document and sufficient stamp duty is not paid. Even it can be gathered from the document as it was made on the stamp paper of Rs.10/-, which is insufficient and therefore the document needs to be impounded and duty and penalty has to be collected and accordingly the document needs

to be sent to the District Registrar, Belagavi for determination and collection of deficit stamp duty as per the provisions of the Karnataka Stamp Act. In this regard, reliance can be made on the decision relied by the 1st defendant, reported in 2023 (2) KCCR 1256, in the case of Anil Vs. Babu. In the circumstances, the objections raised by the plaintiff on the IA.No.12 do not hold water and cannot be accepted and the point No.1 is answered in the affirmative.

12. Point No.2: the IA.No.13 is resisted by the plaintiff on the ground that defendants driven out their parents from the house and they were living with the plaintiff till their death having no source of income to meet out their livelihood. Then plaintiff started tailoring work and saved money by putting her hard work and kept some money in the fixed deposit of the bank in the name of her mother as senior citizens were getting more rate of interest. Defendants have already produced copies of deposit receipts along with list of documents, wherein it is clearly shown the name of plaintiff as a nominee, and they are no way concerned to the said deposit amount. Hence, the said documents are not necessary for adjudication of the matter in dispute.

13. As could be seen from the material on record, plaintiff is claiming share in the suit properties alleging that they are ancestral joint family properties and there is no partition in the family of plaintiff and defendants and the alleged partition set out by the defendants is denied by the plaintiff. That apart, at the paragraph 31 of the written statement the 2nd defendant has specifically contended that plaintiff alone behind the back of defendants and by playing a fraud upon the concerned bank/society authorities has illegally obtained and high handedly withdrawn fixed deposit amounts of Rs.40,00,000/-, which was kept by the father and mother of the 2nd defendant in the said bank/society, without disclosing that the 2nd defendant and other defendants are their legal heirs and legal representatives and that defendants are having due and respective shares therein. Plaintiff alone has illegally and without any authority retained the aforesaid amount without giving share of defendants even though she is under the legal obligations to do so.

14. In view of the said circumstances, in order to substantiate the said defense by the 2nd defendant, the documents relating to the said deposits are very much required. Plaintiff has not denied that the documents sought to be

summoned pertain to the said deposits and persons sought to be summoned pertain to the Co-Operative Societies, wherein such deposits were made. It is contended by the 2nd defendant that inspite of making effort to get the documents pertaining to the said deposits, concerned persons have refuse to issue the same. No doubt, no material is forthcoming to show the same but normally in the Co-Operative societies and banks details and documents pertaining to a particular account holder will not be given to third person. In such circumstances, the documents and persons sought to be summoned need to be summoned in order to adjudicate the suit completely and effectively and render just decision in the matter.

15. The contention of the plaintiff raised in her objections that the so called fixed deposits were made out of her own earnings needs to be decided after full pledged evidence, and the 2nd defendant being the son of Sonutai, who is mother of plaintiff, defendants 1 and 2 and deceased Mohan, who is the husband and father of the defendants 3 to 5 is also entitled for share in the property left out by his mother. It is contended by the plaintiff that defendants are not yet commenced their evidence. Hence, at this stage question of summoning of documents and witnesses

does not arise. But, in view of the defense taken by the 2nd defendant in relation to the said deposit amount of Rs.40,00,000/-, a situation may arise to confront those documents in the cross-examination of PW1. Therefore, the said contention cannot be accepted fully. However, witnesses can be summoned after completion of evidence of plaintiff. In view of the above discussion and reasons, the objections raised by the plaintiff do not hold water and cannot be accepted and the IA.No.13 deserves to be allowed and accordingly the point No.2 is answered in the affirmative.

16. Point No.3: in view of the findings arrived on the point No.1 and 2, I proceed to pass the following:

O R D E R

The IA-12 and 13 filed Under Section 151 of CPC, R/W/ Section 17 and 34 of the Karnataka Stamp Act, and Under Order 16 Rule 1 and 2 R/W Section 151 of CPC, are hereby allowed.

There shall be no order as to cost.

The partition deed dated 09.06.1993 is impounded. Office to send the same to the District Registrar, Belagavi for determination and collection of deficit stamp duty in accordance with law and return the document with a report in this regard.

Further, office to issue witness summons to the persons mentioned at the IA.No.13 to produce their respective documents as shown in the IA, and depose evidence on their respective documents as and when the court directs to do so.

(Dictated to the stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 26th day of October, 2022)

Sd/-
(K.M.SHANKAR)
I Addl. Senior Civil Judge, Gokak