

KABK210007932013



IN THE COURT OF PRL. CIVIL JUDGE & J.M.F.C, MUDHOL,
AT: MUDHOL.

PRESENT: Sri. Lagama S.Hukkeri.

B.A., LL.B(Spl),

Prl. Civil Judge & JMFC., Mudhol.

Dated this the 12th day of July - 2024

O.S.No.147/2013

Plaintiffs:

Timmanna Khilari @ Hosamani
& others.

(By Sri.ASY, Advocate)

-V/s-

Defendants:

Dundappa Khilari @ Hosmani
& others.

(Deft. No.1 by Sri.AKO, Adv)
(Deft No.2 - Abated)
(Deft.3A to D - by Sri.BRD, Adv)

:: I.A.No.XV ::

Applicants:

- 1) Timmanna S/o.Satteppa Khilari @ Hosamani.
Age: 66 years, Occ: Agriculture,
R/o. Metagudda, Tal: Mudhol & others.

-V/s-

Opponents:

- 1) Dundappa S/o. Jatteppa Khilari @ Hosamani.
Age: 66 years, Occ: Agriculture,
R/o. Metagudda, Tal: Mudhol & others.

ORDER ON IA NO.XV filed U/Or.VII RULE 11 (a), (b)
& (d) R/W Sec. 151 OF CPC

The applicants/plaintiff No.1 has filed this application U/Or. VII Rule 11(a), (b) & (d) R/w. Sec. 151 of C.P.C. praying to reject the counter claim made by the defendants, in the interest of justice and equity.

2. In the affidavit accompanying the application filed by the applicant/plaintiff No.1 contended that, defendants have filed their written statement and counter claim on 08-08-2013 and they have filed additional pleadings by way of written statement to the counter claim contending that there is no cause of action for the counter claim made by the defendants and cause of action shown by them in the plaint cannot be cause of action to the counter claim of the defendants because their suit is for permanent injunction whereas defendants by way of counter claim sought a declaration of title over the properties shown in the written statement, so the counter claim has no cause of action. Further counter claim is for declaration, so counter claim is not properly valued and necessary court fee is not paid as required under the provisions of KCF & SV Act, 1958. The defendants have valued the counter claim U/s. 24(b) of KCF & SV Act, 1958, so they have to make valuation of counter claim on the market value of properties and the court fee has to be paid on $\frac{1}{2}$ of it. Hence counter claim is barred U/Or.VII R 11(b) of

CPC. Further it is contended that declaration sought in respect of alleged partition of 1957 and 1963 and defendants could have sought a declaration of their title within three years from the said date of partition, so counter claim is totally time barred. Further it is contended that if the market value of counter claim of properties is taken into consideration, its market value is more than Rs.1,00,00,000/-. So this court has no pecuniary jurisdiction to entertain and try the counter claim and counter claim shall have to be rejected as required U/Or.VII R.11(a), (b) and (d) of CPC. On these grounds plaintiffs prayed to reject the counter claim made by the defendants.

3. On the other hand the defendants have filed objections denying the contents of para Nos. 2 to 4 of the application. Inter-alia defendant No.1 and 2 have contended that, plaintiffs are claiming their ownership of title, possession and enjoyment over the suit property on the basis of MR No.T36/2012-13 and these defendants were not party to the said mutation entry, which is nothing but a phodi. Hence as per law Phodi mutations entries does not create any right, title interest and ownership over the property and phodi process is only process to correct the extent of lands and at any time be land divided into so many sub divisions as per Sec. 109 of Karnataka Land Revenue Act but not create any right and ownership over lands. Further it is contended that there was a partition took

place between plaintiffs and defendants in the year 1957 in respect of Metgudda village lands and in the year 1963 in respect of jaliberi village. The plaintiffs have suppressing material facts effected mutation entries in the absence of the consent and knowledge of defendants and plaintiffs have no right and can't be changed the extent of land through mutation entries, unless challenge the earlier partition deeds and unless partition mutation entries are not canceled before any competent authority such Waradi mutations will not create any right or title over property and when plaintiffs filed present suit for injunction on the basis of MR No.T36/2012-13 in the year 2013 immediately cause of action arose to the defendants to file counter claim. Hence cause of action includes bundle of facts not only single fact and plaintiffs cannot submit that cause of action does not arose to the defendants through counter claim.

Further it is contended that plaintiffs have filed bare injunction suit without declaration of title and defendants praying declaratory relief on the basis of earlier partition deeds taken place between plaintiffs and defendants through the counter claim. That defendants have paid correct court fees on the counter claim made by them. If court come to conclusion that it is undervalued, defendants may be directed to pay court fee within time fixed by Hon'ble Court. Hence Or. VII R.11 (b) application is not

maintainable. Further contended that as per law, the question of limitation contains mixed question of law and facts and it requires complete evidence of the parties to prove facts and law of limitation. Hence at this juncture Or.VII R.11(d) is not maintainable. That the plaintiffs have not made out any prima-facie case before this court and not entitled fo relief claimed in the said interim application. Suit itself is not maintainable, hence application is not maintainable in law and liable to be rejected. The present application is filed only with mala-fide intention to harass these defendants. On these grounds prayed to reject the application with heavy cost in the interest of justice and equity.

4. Heard the arguments of both sides and by perusal of pleadings, application and documents on record, following points arise for my consideration:

:: P O I N T S ::

1. Whether the applicants/plaintiffs have made out sufficient grounds to reject the counter claim of defendants 1 & 2?

2. What order?

5. On careful perusal of entire records my findings on the above points are:

Point No. 1: In the **Negative,**

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

: R E A S O N S :

6. POINT NO.1:- I have already narrated the facts stated in the affidavit annexed to the application and the objections filed by the plaintiffs to the above application.

It is the well settled principles of law of that, while considering the application for rejection of plaint, plaint averments alone shall be looked into and not the contentions raised by the defendants in the written statement.

The Hon'ble Supreme Court in its decision in **Civil Appeal No.3500/2018 between Chhotanben and another -Vs- Kirit bhai Jalkrushnabhai Thakkar and others**, has observed that, " for the purposes of deciding an application under clauses (a) and (b) of Rule 11 of Order VII CPC, the averments in the plaint are germane: the pleas taken by the defendants in the written statement would be wholly irrelevant at the stage."

The Hon'ble High Court of Karnataka in **Civil Revision Petition No.100022/2018 between Venkappa @ Venkangouda -Vs- Ramanagouda & others**. At para No.13 held that:

" it is clear that to reject a plaint exercising power U/Or.VII Rule 11(a) of CPC what is require to be seen is only the averments of the plaint and not the defence."

It is well established principle of law that, the plaint shall be rejected only on the basis of plaint averments and not by the contentions raised by the defendant in his written statement.

7. The learned counsel for plaintiffs vehemently argued that there is no cause of action for counter claim made by the defendant No.1 and 2 and cause of action mentioned by plaintiffs in their plaint cannot be cause of action for counter claim. Further argued that the defendant No.1 and 2 have valued counter claim U/s 24[b] of KCF and SV Act, so they have to make valuation of the counter claim on the market value of the properties and the court fee has to be paid on $\frac{1}{2}$ of it. Further argued that defendants have sought declaration of title to suit properties on the basis of alleged partition of 1957 and 1963, so they could have sought declaration of their title within three years from the said date of partition. Further argued that market value of suit properties is more than Rs.1,00,00,000/- and hence this court has no pecuniary jurisdiction to try the counter claim.

8. On the other hand the learned counsel for the defendants argued that, the cause of action for the present counter claim arose, when the plaintiffs have filed present suit for bare injunction with respect to suit properties on the basis of MR No.T36/2012-13 and they have paid correct court fee on the counter claim and if court comes to conclusion that counter claim is undervalued, they will pay court fee within the time fixed by court. Further argued that the question of limitation is a mixed question of law and facts and it requires complete evidence of the parties to prove facts and

law of limitation. Therefore counter claim is well within the time. On these grounds prayed to dismiss the present application.

9. The present suit is filed by the plaintiffs against the defendants for the relief of permanent injunction with respect to suit schedule properties. The defendant No.1 to 3 made counter claim declaring them as owners with respect to their share in the suit schedule properties and permanent injunction. The defendants No.1 to 3 have contended that as per the mutation diary No.565 dated 09-03-1964 partition was took place and according to the same, an area of 04 acre 13 guntas situated towards eastern side out of total area of 12 acres 39 guntas of R.S.No.172/2/B and 172/3 were fallen to the share of father of plaintiff No.1 by name Satyappa Timmappa Hosamani. So also R.S.No.161/3 measuring 05 acres 13 guntas also fallen to his share and plaintiffs are owners and in possession of the same. But recently plaintiffs have falsely contending that they have been allotted land towards western side in R.S.No.172/2/B and 172/3. The defendants No. 1 to 3 further contended that the defendant No.3 is the owner in possession of an area measuring 04 acres 13 guntas out of total area of 12 acres 39 guntas situated towards western side in R.S.No.172/2/B and 172/3 and defendant No.1 and 2 are the owners and in possession of an area measuring 04 acres 13 guntas situated in the middle portion of aforesaid survey numbers. Further defendant No.3 is the owner in

possession of an area measuring 05 acres 13 guntas situated towards western side in R.S.No.161 and defendants No.1 and 2 are the owners in possession of middle portion of the aforesaid survey number measuring 05 acres 26 guntas.

10. The defendant No.1 to 3 further contended that suit property bearing R.S.No.188/2B measuring 30 guntas is also ancestral joint family property of plaintiffs and defendants and also partition was took place with respect to said property and plaintiffs are in possession of 10 guntas towards eastern side as per warsa in the aforesaid survey number and defendant No.1 to 3 are in possession of remaining 20 guntas. But plaintiffs after colluding with revenue officials falsely got entered their names to said property as per mutation entry No.1562.

11. I have carefully gone through the contents of para No.6 to 14 of the counter claim made in the written statement. The defendant No.1 to 3 have specifically contended that the suit schedule properties were ancestral joint family properties of the plaintiffs and defendants and already there was partition between father of the plaintiffs and fathers of the defendant No.1 to 3. But plaintiffs after colluding with revenue officials falsely got entered their names to the survey No.188/2B measuring 13 guntas and recently plaintiffs have falsely contending that they have been allotted western portion in R.S.No.172/2/B and 172/3 and they are in possession of

R.S. No.161/3 measuring 5 acres 36 guntas. Therefore defendants 1 to 3 have sought relief of declaration and permanent injunction with respect to the property mentioned in the para No.8 to 10 of written statement.

12. The defendant No.1 to 3 in para No.12 of written statement pleaded that, the cause of action for counter claim is arose on the date as mentioned in the para No.7 of the plaint. The plaintiffs in para No.7 of the plaint mentioned that cause of action for this suit arose in the 2nd and 3rd week of May 2013, when defendants started causing obstruction to their peaceful possession and enjoyment over the suit properties.

13. By considering rival contentions I have care fully gone through the counter claim averments and also the documents produced by the defendant No.1 to 3. The bundle of facts pleaded coupled with documents shows that cause of action to the present counter claim arose in 2nd and 3rd week of May 2013 and same is within the period of limitation.

14. The defendant No.1 to 3 have made counter claim for declaring them as owners and in possession of properties mentioned in para No.8 to 10 and permanent injunction. The defendants have paid court fee of Rs.50/-. The defendant No.1 to 3 have made suit valuation U/s. 24(b) and 26(c) of the Karnataka

Court Fees & Suits Valuation Act. The defendants have sought relief of declaration as owners in possession of properties mentioned in para No.8 to 10 of the written statement. Admittedly the said properties are the agriculture landed properties. Therefore, defendant No.1 to 3 have paid proper court fee on their claim as per Sec.7(2) R/w. 24(b) and U/s. 26(c) of the Karnataka Court Fees & Suit Valuation Act.

Therefore, I am of the opinion that the plaintiffs have failed to show that counter claim of the defendants has no cause of action, court fee paid is not proper and same is barred by limitation. Hence I answer point No.1 in **Negative**.

15. POINT NO.2:- For the foregoing discussion on point No.1, I proceed to pass the following:

:: ORDER ::

The interim application No.XV filed by applicants/plaintiffs under Order VII Rule 11(a),(b) & (d) R/w. Sec. 151 of CPC is hereby rejected.

No order as to costs.

(Dictated to the stenographer directly on the computer typed by him, corrected and then pronounced by me in the open court this the day of 12th day of July - 2024)

(Lagama S Hukkeri.)
Prl. Civil Judge & J.M.F.C.,
Mudhol