

KABR210001632008



**IN THE COURT OF THE II ADDL. SENIOR CIVIL
JUDGE AND J.M.F.C. AT ANEKAL**

Dated this the 4th day of April, 2024

: PRESENT :

Sri. KRISHNA RAJ K., B.A., LL.B.,
II Addl. Senior Civil Judge & J.M.F.C.,
Anekal.

O.S. No. 541 / 2008

PLAINTIFFS: 1. Sri. H.K.Muralidhara
S/o H.P.Krishnappa,
aged about 32 years,
R/at Haragadde village,
Behind Chennakeshava Temple,
Jigani Hobli, Anekal Taluk,
Bengaluru Urban District.

And Others.

(Represented by Sri. C.V.A., Advocate)

V/s

DEFENDANTS: 1. Sri. Anthonappa
S/o Chinnappa,

aged about 65 years,
R/at Basavanapura village,
Begur Hobli,
Bengaluru South Taluk,

And also at Begihalli village,
Near Vaddarapalya,
Jigani Post, Anekal Taluk,
Bengaluru Urban District.

And Others.

**(Rep. by Sri. C.M., Adv. for D1,
Sri. R.V.V.M., Adv. for D2,
Sri. J.M.K., Adv. for D3 to 8)**

PARTIES ON IA.NO.VI

Applicants/

Defendant No.3 to 8 Smt. Barnadamma & Others

V/s

**Opponents/
Plaintiffs**

Sri. H.K.Muralidhara & Others

-: ORDERS ON I.A. No.VI:-

The I.A.No.VI is filed by the defendants No.3 to 8 under Order VII Rule 11(a) and (d) r/w Sec.151 of CPC for rejection of plaint on the ground that the plaint does not disclose cause of action and the suit is barred by law.

2. In the accompanying affidavit it is submitted that the plaintiffs have filed suit for the relief of declaration with respect to the suit schedule property and also consequential relief of Permanent Injunction. The plaintiffs have sought for declaration that compromise decree passed in OS.No.147/1993 dated 04.03.1993 on the file of Munsiff and JMFC, Anekal is not binding on the plaintiffs. The suit of the plaintiffs is hit by Order XXIII Rule 3A of CPC. The plaintiffs are not class-1 legal heirs under Sec.8 of Hindu Succession Act. The plaintiff No.3 being the wife of late Pillappa cannot question the act of her husband. The suit of the plaintiffs is hopelessly barred by limitation. The said late Pillappa was absolute owner of the suit schedule property. The defendant No.2 and Ramabovi have no right to question the act of late Pillappa. The defendant No.1 being the absolute owner and in lawful possession and enjoyment of the schedule property, he entered into registered partition deed dated 17.12.2014 between his wife and children. The suit schedule property bearing Sy.No.84/7 measuring 10 guntas and Sy.No.83/7 measuring 01 acre 11 guntas was granted by the Special Deputy Commissioner for Abolition of Inams in favour of late

Pillappa S/o Motappa. The defendant No.1 got the suit schedule property by paying entire sale consideration of Rs.1,000/- to the said Pillappa in the year 1977 and on the very same day the defendant No.1 was put in possession of the suit schedule property. After the sale, katha was transferred in the name of defendant No.1. The defendant No.1 has filed suit OS.No.147/1993 against the defendant No.2, late Pillappa and Ramabovi. In the said suit they have compromised and accordingly the compromise decree was drawn on 04.03.1993. Therefore, the present suit of the plaintiffs is hit by Order XXIII Rule 3A of CPC. Hence, the plaintiffs have no locus - standi to question the compromise decree in OS.No.147/1993. Hence, the plaint is liable to be rejected.

3. The above application is resisted by the plaintiffs by filing their objection. In the objection it is contended that the defendant No.1 fraudulently obtained compromise decree in OS.No.147/1993 without knowledge of the plaintiff No.3. The said late Pillappa was in intoxicated state of mind and taking undue advantage of the same, the defendant No.1 has obtained signature and LTM in the compromise

petition. The averments of plaint alone to be taken into consideration, the defense of the defendants cannot be looked into at this stage.

4. Heard the arguments of learned counsel for the plaintiffs and defendants.

5. The points that would arise for consideration of this Court are as follows;

-: P O I N T S :-

- (1) Whether the defendants No.6 to 8 have made out sufficient grounds to reject the plaint under Order VII Rule 11(a) and (d) r/w Sec.151 of CPC ?
- (2) What order ?

6. My findings on the above points are as under;

Point No.1 : In the Negative

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

-: R E A S O N S :-

7. **Point No.(1):-** The plaintiffs have filed suit for declaration and consequential relief of Permanent Injunction against the defendants. It is the case of

plaintiffs that the plaintiffs and defendant No.2 are the absolute owners and in possession of the suit schedule property bearing Sy.No.83/7 situated at Begihalli village, Jigani Hobli, Anekal Taluk, Bengaluru District measuring 01 acre 11 guntas including 04 guntas of kharab land. After the demise of Pillappa, the plaintiffs and defendant No.2 have inherited the suit schedule property. The suit schedule property was granted in favour of late Pillappa by the Special Deputy Commissioner for Abolition of Inams. On 13.10.1988 the said Pillappa, defendant No.2 and plaintiff No.3 have executed sale agreement in favour of one Ramabovi. The said Ramabovi has failed to perform his part of the contract. Hence, the said sale agreement got cancelled. The said Pillappa and defendant No.2 have never alienated the suit schedule property in favour of defendant No.1. The defendant No.1 taking undue advantage of illiteracy and addiction of alcohol by late Pillappa, he has created compromise decree in OS.No.147/1993 behind the back of plaintiffs. The grandfather of plaintiff No.1 and 2 and the husband of plaintiff No.3 never executed alleged sale deed in favour of defendant No.1. Therefore, the compromise decree

passed in OS.No.147/1993 is illegal and not binding on the plaintiffs. The plaintiffs are the absolute owners and in lawful possession of the suit schedule property.

8. On service of suit summons, the defendants have appeared through their counsel and the defendant No.1 filed his written statement denying the averments of plaint. The defendants contended that the defendant No.1 is the absolute owner of the suit schedule property since more than 35 years. Original owner late Pillappa was in need of money, he approached the defendant No.1 and offered to sell the suit schedule property. The defendant No.1 had purchased the suit schedule property for valuable sale consideration of Rs.1,000/- in the year 1977 and katha was transferred in the name of defendant No.1 in the year 1977. Subsequently, the defendant No.1 has filed suit OS.No.147/1993 before the Munsiff and JMFC, Anekal court. In the said suit the grandfather of plaintiff No.1 and 2 and the husband of plaintiff No.3 Pillappa has appeared and filed compromise petition. The said compromise petition is binding on the plaintiffs. Hence, the suit is not maintainable.

9. In support of the case of plaintiffs, they have produced Genealogical Tree, order passed by the Special Deputy Commissioner, katha extract, copy of the agreement, Mutation extract, plaint, order sheet and compromise petition in OS.No.147/1993 etc., On the other hand, the defendants have produced copy of the order passed by the Special Deputy Commissioner, copy of the order sheet, plaint and compromise decree in OS.No.147/1993, RTC extract and copy of the partition deed etc.,

10. The learned counsel for the plaintiffs argued that the plaintiffs are not parties to the suit OS.No.147/1993. The defendant No.1 on the basis of oral sale has filed suit for declaration and on the same day he has got compromised the suit by taking undue advantage of the intoxicated state of mind of late Pillappa. The plaintiff No.3 is not a party to the said suit however, she is party to the agreement executed in favour of Ramabovi. The plaint discloses cause of action. The defendant No.1 fraudulently obtained compromise decree. The defense taken by the defendants cannot be considered at this stage. The plaint cannot be rejected on the disputed question of

fact. On the other hand, the learned counsel for the defendants argued that the grandfather of plaintiffs No.1 and 2 and the husband of plaintiff No.3 late Pillappa has appeared before the court in OS.No.147/1993 and filed compromise petition, accordingly the defendant No.1 become the absolute owner of the suit schedule property. The plaintiffs have no locus - standi to question the compromise decree on the ground of alleged fraud. The suit is hit by Order XXIII Rule 3A of CPC. In support of the above arguments, the learned counsel for the defendants relied on the decision of Hon'ble Apex Court in **R.Rajanna V/s S.R.Venkataswamy and others** reported in AIR 2015 SC 706 and decision of Hon'ble High Court of Karnataka in **Smt. Lakshamma and others V/s T.H.Ramegowda and others** reported in ILR 2015 Kar. 4024.

11. In the light of arguments advanced by both side, I have perused the entire materials on record. The plaintiffs have filed suit for declaration of title and also to declare that the compromise decree passed in OS.No.147/1993 was filed by the defendant No.1 herein by name Anthonappa against 1. Ramabovi, 2.

Pillappa and 3. Krishnappa. The said Krishnappa is arrayed as defendant No.2 in the present suit. The plaintiffs No.1 and 2 are the grandchildren of late Pillappa. The plaintiff No.3 is the wife of late Pillappa. On perusal of the order sheet, it is evident that the suit OS.No.147/1993 was filed on 04.03.1993 and on the very same day without issuing suit summons to the defendants, the defendants have appeared and filed compromise petition, accordingly the suit was compromised and compromise decree was drawn within one day. It is the case of plaintiffs that late Pillappa along with plaintiff No.3 and defendant No.2 have executed sale agreement in favour of Ramabovi. On the strength of said sale agreement, Ramabovi is made as defendant No.1 in OS.No.147/1993. The plaintiff No.3 herein is also one of the party to the agreement. Under such circumstances, she should have been made as party to the suit OS.No.147/1993. Admittedly, plaintiff No.3 is not party to the said suit.

12. The plaintiffs have specifically pleaded that the defendant No.1 by taking undue advantage intoxicated state of mind of late Pillappa got obtained the compromise decree in OS.No.147/1993. The said

disputed question of fact is to be adjudicated only after full pledged trial. At this pretrial stage, the above contention cannot be adjudicated.

13. As far as bar of suit under Order XXIII Rule 3A of CPC is concerned, the learned counsel for the defendants relied on the decision of Hon'ble Apex Court in **R.Rajanna's** case referred supra and also the decision of Hon'ble High Court of Karnataka in **Smt. Lakshamma and others's** case. There is no dispute regarding the proposition laid down in the above decisions. If the party to the suit want to challenge the compromise decree on the ground of fraud, he has to approach the same court from which compromise decree was obtained by filing application under Sec.151 of CPC. Separate suit to set-aside compromise decree is not maintainable. However, in the case on hand, the plaintiffs are not parties to the suit OS.No.147/1993. The plaintiff No.3 is one of the party to the sale agreement of late Ramabovi. Under such circumstances, she ought to have been made as party to the suit in OS.No.147/1993. Since the plaintiffs are not parties to the said suit, bar under Order XXIII Rule 3A of CPC is not applicable to the

case on hand. Therefore, the decision relied by the learned counsel for the defendants are not applicable to the case on hand. Disputed question of fact require to be adjudicated after full pledged trial. The defendants No.3 to 8 have failed to make sufficient grounds to reject the plaint under Order VII Rule 11 of CPC. Accordingly, Point No.1 is answered in the ***Negative.***

14. **Point No.(2):** In view of the above findings, this court proceed to pass the following :-

:- O R D E R :-

The I.A.No.VI filed by the defendants No.3 to 8 under Order VII Rule 11(a) and (d) r/w Sec.151 of CPC is hereby rejected.

(Dictated to the stenographer, transcribed by her, corrected and then pronounced by me in the open court, on this, **the 4th day of April, 2024**)

(KRISHNA RAJ K.,)
II Addl. Senior Civil Judge & J.M.F.C.,
Anekal.

