

IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC AT ANEKAL

Present: Sri. T.Govindaiah, B.Com., LL.B.,
Senior Civil Judge, Anekal

O.S. No.159/2010

Dated this the 02nd day of April, 2016

Plaintiff/s : Sri. Santhosh Kumar and another

V/s

Defendant/s : Sri. Jayaram and others

ORDERS ON I.A No.3

The applicants/defendants No.2 to 5 have filed the present application U/o.7 Rule 11(a) read with section 151 of CPC., for rejection of the plaint.

2. In support of the application, the applicants/defendant No.2 has sworn an affidavit wherein he states that suit property is the self acquired property of Kariyappa who is the grand father of plaintiffs and defendants No.3 to 5. Kariyappa and his wife Smt.Deveeramma died intestate leaving behind the defendantNo.1 and his only daughter by name Nagarathamma who I the mother of the defendants No.3 to 5. Nagarathamma being the class-I heir of Kariyappa, he is entitled 1/2 share over the suit property. After the

death of Nagarathamma, the defendants No.3 to 5 being the legal heirs of Nagarathamma, they have succeeded her half share over the suit property. The defendant No.1 filed suit in O.S. No.393/98 in respect of suit property. The said suit after trial partly decreed. The suit property was determined by the Civil Judge, Bangalore Rural District. 1st defendant has filed R.A. No.2/2005 assailing the judgment and decree in O.S. No.393/98. The said RA also dismissed and confirming the order in O.S. No.393/98. Accordingly, the judgment and decree in O.S. No.393/98 is attained the finality. Now, the present plaintiffs filed this suit by colluding with 1st defendant. The plaintiffs have no any right, title much less over the suit property. There is no cause of action to this suit. Therefore, the suit of the plaintiff is not maintainable in the eye of law. Hence, they pray for reject the plaint as there is no cause of this suit.

3. On the other hand, opponents/plaintiffs have filed their objection to the present application. In the objection, they contended that suit property granted in favour of Kariyappa on behalf of the joint family. In the Grant Certificate, it is clearly mentioned that the legal heirs of Kariyappa are having equal right over the suit property. After the death of Kariyappa, the plaintiffs and defendants No.1 have

succeeded the suit property. The mother of the defendants No.3 to 5 being the married daughters, she became the member of her husband's house. The mother of the defendants No.3 to 5 is no way concerned to the family of plaintiff. But, the defendants No.3 to 5 by colluding with defendants created the documents only with an intention to grab the property. The suit in O.S. No.393/1998 in respect of suit property was partly decreed. The said decree in O.S. No.393/1998 obtained by colluding with each other, the plaintiffs are not the parties to the said proceedings. Therefore, after the death of Kariyappa, the plaintiffs being the grand daughter of Kariyappa, they are entitled legitimate share over the suit property. Accordingly, the plaintiffs filed the present suit for seeking partition and their legitimate share over the suit property and declaration declaring that the will executed by Smt.Deveeramma in favour of defendants No.2 to 5 is not binding on right of plaintiffs over the suit property. Since beginning the plaintiffs are in joint possession of the suit property. But, on the basis of the created documents, the defendants No.2 to 5 tried to interfere with the possession of the plaintiffs over the suit property and he is also denying the rights of the plaintiffs over the suit property. After knowing the interference by the defendants No.2 to 5,

the plaintiffs enquired revenue authority came to know about the illegal documents. Immediately, after know the real facts, the plaintiffs filed the present suit for seeking their legitimate share over the suit property. Therefore, the suit of the plaintiffs is not maintainable in the eye of law. Therefore, it is necessary to determine the legal rights of the plaintiffs over the suit property. Hence, they pray for reject the application.

4. Heard arguments on both sides.

5. The following points that would arise for the consideration of this court are;

1. Whether the applicants/defendants No.2 to 5 have made out sufficient grounds to allow the present application and to reject the plaint?
2. What order?

6. Perused the contention of both the parties and materials placed before the court.

7. My findings on the above points are as follows;

Point No.1 : In the Negative

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

REASONS

8. **Point No.1:-** As stated above, the applicants/defendants No.2 to 5 have filed the present application U/o.7 Rule 11(a) read with section 151 of CPC., for rejection of plaint. The applicants/defendants No.2 to 5 contended that there is no cause of action to the plaintiffs suit. Hence, they pray for reject the plaint. But, on the other hand, the opponents/defendants contended that they being the grand daughters of Kariyappa, they are entitled legitimate share over the suit properties.

9. It is important to note that admittedly suit property is the self acquired property of Kariya @ Kariyappa. In this case, there is no dispute regarding the plaintiffs and defendants. Admittedly, the plaintiffs are the grand daughters of Kariyappa. In the same manner, the defendants No.3 to 5 are also the grand daughters of Kariyappa. Admittedly, Kariyappa had two children by name Jayaram and Nagarathamma. The plaintiffs are the children of Jayaram and defendants No.3 to 5 are the children of Nagarathamma. The opponents/defendants contended that there is no cause of action to this suit. But, in para No.10 of the plaint, the plaintiffs mentioned the cause of action stating that when the plaintiffs came to know the alleged Will obtained by the defendants No.3 to 5. In this suit, the

plaintiffs contended that the defendants No.2 to 5 have created the Will by colluding with Deviramma. Admittedly, Kariyappa died intestate. After the death of Kariyappa, his legal heirs are having legitimate share over the suit property. However, it is settled principles of law that cause of action is the mixed question of law and facts. Under such circumstances, the same is to be considered after recording evidence on both sides. Therefore, the rights of the parties is to be considered after recording the evidence. Therefore, it is necessary to adjudicate the actual controversy between the parties through the full pledged trial. Under such circumstances, it is necessary to record the evidence on both sides to adjudicate the actual dispute between the parties. Therefore, the suit of the plaintiffs cannot be nipping at the budding stage. Therefore, the contentions of the opponents/defendants will be considered through full pledged trial. Under such circumstances, it is necessary to frame the issue regarding the cause of action and the same is to be considered through full pledged trial. Under such circumstances, on perusal of the plaint averments, there is a cause of action to the plaintiffs suit. Therefore, the court has to consider the entire plaint as whole through find out whether it disclose a cause of action and if it does, then the

plaint cannot be rejected by the court. Admittedly, the plaintiffs filed the present suit for seeking the relief of partition and separate possession over the suit property. Admittedly, Kariyapa is the grand father of the plaintiffs and the suit property is the self acquired property of Kariyappa. Under such circumstances, the contention of both the parties is to be considered after recording the evidence. Therefore, the applicants/defendants No.2 to 5 have not made out sufficient grounds to allow the present application and to reject the plaint. Accordingly, Point No.1 is answered in the Negative.

10. **Point No.2:** - In view of the above discussions and conclusion to Point No.1, this court proceeds to pass the following;

ORDERS

I.A No.2 U/o.7 Rule 11(a) read with section 151 of CPC., filed by the applicants/defendants No.2 to 5 is rejected.

No orders as to cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected by me and pronounced in the open court on this the 02nd day of April, 2016).

(T. Govindaiah)
Senior Civil Judge,
Anekal.