

**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 23rd day of March, 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 $\frac{1}{2}$ share over the suit property. After the

death of Nagarathnamma, the defendants No.3 to 5 being the legal heirs of Nagarathnamma, 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 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 plaintiff 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 Affirmative

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

REASONS

8. **Point No.1:-** As stated above, the applicants/defendants No.5 & 7 have filed the present application to reject the plaint and the same is not maintainable in the eye of law. The applicants/defendants No.15 & 17 contended that the original owner by name Begihalli Yellappa alienated the suit property in favour of M.Yellappa S/o Muniyappa through the sale deed dated 10.02.1961 to meet out his family and legal necessity. At the time of execution of the sale deed dated 10.02.1961, Begihalli Yellappa was the absolute owner and in possession of the suit property. Accordingly, Begihalli Yellappa being the owner of the suit property, his having every right to alienate the suit property to meet out his family and legal necessity. They further contended that the plaintiffs and defendants No.1 to 4 not at all born at the time of execution of the sale deed dated 10.02.1961. Therefore, the sale deed dated 10.02.1961 was executed by Begihalli Yellappa prior to the birth of plaintiffs. The age mentioned in the cause title of the plaint itself reveals that they were not born at the time of execution of the sale deed dated 10.02.1961. Now, the plaintiffs by colluding with defendants No.1 to 4 filed the present suit with an intention to harass the defendants No.5 to 8.

9. On the other hand, the plaintiffs contended that they being the legal heirs of Begihalli Yellappa, they are having legitimate share over the suit property and there is no partition between them in respect of suit property and seeking rejection of the application.

10. It is important to note that here in this suit, it is admitted fact that suit property is granted in favour of Begihalli Yellappa in the year 1959. Thereafter, the name of Begihalli Yellappa has been mutated to the revenue records of the suit property. Accordingly, Begihalli Yellappa was in actual possession and enjoyment of the suit property. During the life time of Begihalli Yellappa, he himself executed the sale deed dated 10.02.1961 by alienating the suit property in favour of one M.Yellappa s/o Muniyappa. It is important to note that the plaintiffs contended that they are in possession of the suit property as joint owners and they are having legitimate share over the suit property. But, during the life time of Begihalli Yellappa, he himself alienated the suit property in favour of M.Yellappa s/o Muniyappa through the sale deed dated 10.02.1961. Therefore, on the basis of the sale deed dated 10.02.1961, M.Yellappa s/o Muniyappa became the absolute owner and entered his name to the revenue records of the suit property. Thereafter, M.Yellappa s/o

Muniyappa alienated the suit property through the different sale deeds in favour of defendant No.5 and Gift Deed dated 11.08.2005 in favour of defendant No.6. Thereafter, the defendant No.6 alienated the portion of the suit property in favour of defendant No.7 through the sale deed dated 10.01.2005. Again, the defendant No.5 alienated the portion of the suit property in favour of defendant No.8 through the sale deed dated 11.01.2005. In the plaint itself, the plaintiffs themselves pleaded about the sale deed dated 10.02.1961 in favour of M.Yellappa s/o Muniyappa. Further, till today, the plaintiffs have not challenged the entries in favour of defendants No.5 to 8 in respect of suit property. The plaintiffs filed the present suit in the year 2012 after lapse of more than 50 years from the date of sale deed dated 10.02.1961.

11. It is important to note original owner Begihalli Yellappa himself alienated the suit property in favour of M.Yellappa s/o Muniyappa through the sale deed dated 10.02.1961 to meet out his family and legal necessity. When the original owner Begihalli Yellappa himself alienated the suit property, he lost his rights over the suit property. When the original owner Begihalli Yellappa himself lost his rights over the suit property, the question of succession by the

plaintiffs does not arise. Further, if really the plaintiffs are having any rights over the suit property, they have to challenge the sale deed dated 10.02.1961 immediately after attaining the age of majority. But, the plaintiffs filed the present suit after lapse of 50 years from the date of sale deed dated 10.02.1961. The plaint averments itself reveal that the plaintiffs are not challenged the entries in the name of defendants and they have not challenged the sale deeds in favour of defendants No.5 to 8 except filing this suit.

12. It is important to note that the plaint averments reveal that they mentioned the cause of action 15.05.2012. But, the plaintiffs are well aware about the sale deed dated 10.02.1961 executed by Begihalli Yellappa in favour of M.Yellappa s/o Muniyappa, defendants No.5 to 8 in respect of suit properties. Therefore, the plaintiffs have slept over their rights and filed the present suit after lapse of more than 50 years. It is important to note that on perusal of the cause title of the plaint, the plaintiffs themselves have not born on the date of execution of the sale deed dated 10.02.1961. Further, the plaintiffs have not challenged the sale deed dated 10.02.1961 immediately after attaining the age of majority. Therefore, the suit of the plaintiffs is clearly barred by law of limitation and the suit of the plaintiffs is

clearly barred by Hindu Succession Act. Further, during the life time of husband of defendant No.1, he has not challenged the sale deed dated 10.02.1961 and he also not challenged the entries in the name of M.Yellappa s/o Muniyappa. These facts clearly go to show that son of Begihalli Yellappa by name Muniyappa is well aware about the sale deed dated 10.02.1961 in favour of M.Yellappa. Therefore, the plaint averments itself reveal that Begihalli Yellappa alienated the suit property in favour of M.Yellappa s/o Muniyappa through the sale deed dated 10.02.1961 to meet out his family and legal necessity. When Begihalli Yellappa himself alienated the suit property in favour of M.Yellappa s/o Muniyappa through the sale deed dated 10.02.1961, the question of succession by the plaintiffs does not arise. Therefore, the plaint averments itself reveal that the suit of the plaintiffs is not maintainable as per the terms of provisions U/o.7 Rule 11(d). Therefore, the applicants/defendants No.5 & 7 have made out sufficient grounds to allow the present application and to reject the plaint. Accordingly, Point No.1 is answered in the Affirmative.

13. **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.3 U/o.7 Rule 11(d) read with section 151 of CPC., filed by the applicants/defendants No.5 & 7 is allowed and plaint 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 26th day of March, 2016).

(T. Govindaiah)
Senior Civil Judge,
Anekal.

ORDER PRONOUNCED IN THE OPEN COURT
VIDE SEPARATE ORDER

I.A No.3 U/o.7 Rule 11(d) read with section 151 of CPC., filed by the applicants/defendants No.5 & 7 is allowed and plaint is rejected.

No orders as to cost.

Judge

Senior

Civil

Anekal