

IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,
AT DEVANAHALLI

PRESENT

Sri. B. DILEEP KUMAR, B.Com., LL.B.
Senior Civil Judge & J.M.F.C.
Devanahalli.

Dated this the 19th Day of February, 2020

O.S.No.73/2015

1. Smt. Ramakka and Others : **Plaintiffs**

(Pltfs. - By Sri.
S.H., Advocate)

V/s.

1. Sri. Venkatarayappa and Others : **Defendants**

(D1 - By Sri.
B.R.S., Advocate)
(D2 to 5,10- ----)
(D6, 7 - By Sri.
N.K.S.,Advocate)
(D8 - Exparte)
(D9 - By Sri.
K.D.P., Advocate)

~~~~~

**ORDERS ON I.A.No.2**

The defendant No.7 has filed application Under Order VII Rule 11(a) (b) & (d) r/w. Section 151 of C.P.C. seeking rejection of the plaint. On the other hand, the plaintiffs have filed objections to the IA.

2. It is contended by the defendant No.7 that the plaintiffs have filed the suit for partition and separate possession of their 1/4<sup>th</sup> share each to the plaintiffs and other consequential reliefs. It is contended by the defendant No.7 that his grandfather was bonafide purchaser of the item No.2 of the suit schedule property and the sale transaction occurred about 3 decades back. During lifetime of his grandfather he was in peaceful possession and enjoyment of the same, further the revenue records were mutated in his name and he was paying taxes to the concerned authority. Further the defendant No.7 got the land converted for residential purpose and constructed 3 floor building where he is residing with his family. All these facts are within the knowledge of the plaintiff and defendant No.1. Hence the suit of the plaintiff is barred by limitation and liable to be rejected. Further the defendant No.7 contended that the relief claimed is under valued and proper court fees is not paid. Thus, on these grounds the defendant No.7 seeks for rejection of the plaint.

3. On the other hand, the plaintiffs have filed objections contending that the application filed by the defendant is not maintainable either in law or on facts. It is further contended that plaintiff No.1 to 3 are daughters of Late Gangappa and Muniyamma and the suit schedule properties are joint family properties, the khatha of suit properties are in name of 1<sup>st</sup> defendant who is their brother and the defendant No.6 & 7 are

purchasers. It is contended that there is no division among the plaintiffs and defendant No.1 and they belong to Hindu undivided joint family and the defendant No.1 has no exclusive right to sell away the suit property. It is contended that the defendant No.7 filed application on imaginary grounds and only to drag on the proceedings. The reasons given by the defendant No.7 is totally untenable and unsustainable in law and not acceptable. Hence pray for dismissal of the IA.

4. Heard the arguments and perused the records.

5. The following points arise for my consideration:-

1. Whether the plaint is liable to be rejected under the Provision of Order VII Rule 11(a) (b) and (d) of C.P.C.?

2. What Order?

6. The Court has answered the above points as follows:-

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

Point No.2 : **As per final Order  
for the following:**

### **REASONS**

7. **Point No.1**:- The plaintiffs have filed the suit the plaintiffs have filed the suit for partition and separate possession

of their 1/4<sup>th</sup> share each to the plaintiffs and other consequential reliefs. In response to the suit summons the defendants have appeared and filed their written statement. That apart the defendant No.7 has filed the present application.

8. The Counsel for the defendant No.7 has argued that his grandfather was bonafide purchaser of the item No.2 of the suit schedule property and the sale transaction occurred about 3 decades back. During lifetime of his grandfather he was in peaceful possession and enjoyment of the same, further the revenue records were mutated in his name and he was paying taxes to the concerned authority. Further the defendant No.7 got the land converted for residential purpose and constructed 3 floor building where he is residing with his family. All these facts are within the knowledge of the plaintiff and defendant No.1. Hence the suit of the plaintiff is barred by limitation, there is no cause of action to file the above suit and liable to be rejected. Further the defendant No.7 argued that the relief claimed is under valued and proper court fees is not paid. Thus, on these grounds the defendant No.7 seeks for rejection of the plaint.

9. The counsel for the plaintiff argued that the application filed by the defendant is not maintainable either in law or on facts. It is further argued that plaintiff No.1 to 3 are daughters of Late Gangappa and Muniyamma and the suit schedule properties are joint family properties, the khatha of suit

properties are in name of 1<sup>st</sup> defendant who is their brother and the defendant No.6 & 7 are purchasers. IT is argued that there is no division among the plaintiffs and defendant No.1 and they belong to Hindu undivided joint family and the defendant No.1 has no exclusive right to sell away the suit property. It is contended that the defendant No.7 filed application on imaginary grounds and only to drag on the proceedings. The reasons given by the defendant No.7 is totally untenable and unsustainable in law and not acceptable. Thus the plaintiff seeks for dismissal of the application.

10. It is well settled law that plaint cannot be rejected on the basis of allegations made by the defendants in the written statement. To find the cause of action for rejection of the plaint, the court is expected to look into the plaint averments only.

11. After meaningful reading of the plaint and after going through the documents, the plaintiffs have filed suit plaintiffs have filed the suit for partition and separate possession of their 1/4<sup>th</sup> share each to the plaintiffs and other consequential reliefs. The plaintiffs contended in the plaint that one Gangappa was propositus of the joint Hindu family consisting of himself and his children governed by Hindu Mithakshara school of Hindu Law. The said Gangappa had a son and 3 daughters i.e., Ramakka the 1<sup>st</sup> plaintiff herein, Sri.Venkatarayappa the 1<sup>st</sup> defendant herein, Smt.Narayanamma, the 2<sup>nd</sup> plaintiff and Smt.Muthamma the 3<sup>rd</sup>

plaintiff herein. Late Gangappa was the absolute owner of the suit schedule properties which comprised then as 1 unit i.e., Sy.No.49 measuring 3 acres 33 guntas. After death of Gangappa the katha was effected in the name of the 1<sup>st</sup> defendant vide RR No. 333 and the plaintiffs with defendant No.1 were in joint possession and enjoyment of the said property. The plaintiffs demanded to effect partition which was postponed by defendant, hence the suit came to be filed. Thus it is clear that the plaintiffs are seeking share in the property of their father Late Gangappa.

12. On the perusal of the plaint averments, there are no grounds made out for rejection of the plaint. The plaint cannot be rejected on the basis of defense raised in the written statement by the defendant No.7. Moreover, the defendant No.7 has sought for rejection of the plaint only in so far as item No.2 which is measuring 1 acres in his affidavit accompanying the application and sought for rejection of plaint only against defendant No.7. It is settled principle of law that partial rejection of the plaint is not permissible under the law. The contentions of the defendant No.7 in the application is mixed question of law and facts and the same has to be adjudicated after full-fledged trial.

13. In the case on hand, from the above discussion, I am of the opinion on plain reading of the plaint, it discloses

cause of action and the issues raised therein are mixed question of facts and law which can be decided after trial. Therefore, I answer the Point No.1 in Negative.

14. **Point No.2**:- For the above reasons, I proceed to pass the following:

**ORDER**

The I.A.No.2 dated: 02-12-2016 filed Under Order VII Rule 11(a) (b) & (d) r/w. Section 151 of C.P.C. filed by the defendant No.7 is dismissed.

(Dictated to the Stenographer directly on computer, same is corrected and then pronounced by me in the open court on this the 19<sup>th</sup> day of February, 2020).

**(B. DILEEP KUMAR)**  
**Senior Civil Judge & JMFC.,**  
**Devanahalli.**