

02-08-2024

Plt. - D.S.P.,
Def.1 to 7 - K.S.,
Def.2 - J.M.R.,
Def.3 - H.M.,
Def.4 - Dead
Def.5 & 6 - T.G.,
Def.8 to 10 - A.R.S.R.,

ORDERS ON I.A.No.XX

The instant application has been filed by the plaintiff U/o.VI Rule 17 of C.P.C for amendment of plaint.

2. In the affidavit, It is stated that the above suit has been filed by the plaintiff seeking partition and separate possession. The proposed item sought in the amendment is the joint family property. The grandmother, the father and uncles of the applicants have jointly executed registered Sale Deed dated 29.01.2005 in favour of Smt. Sathyaprema. At the time of

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alienation of Sy.No.52 of Yarthiganahalli village the applicant was a minor. The father of the applicant has already deserted his mother. The purchaser has no absolute title over the suit property. Hence, prayed to allow the application.

3. The defendants No.1 & 7 filed objection to the present application by stating that the same is not maintainable under law. It is stated that originally property bearing Sy.No.52 measuring an extent of 01 acre 02 guntas of Yarthiganahalli village was the joint family and ancestral property of the plaintiffs and the defendants. The defendants No.1 to 5 and 7 and the father of the plaintiff sold the same through registered Sale Deed dated 29.01.2005. Now, the said property is in possession and enjoyment of the purchaser. During the lifetime of the father of the plaintiff he has alienated the proposed property and the plaintiffs themselves have admitted the execution of registered Sale Deed. After demise of their father, the plaintiffs have filed the present application without any reason. The father of the plaintiffs has already entered into partition deed dated 14.12.2005 and the properties have been already divided. Hence, prayed to reject the application.

4. Heard both the sides.

5. **The following points would arise for my consideration:**

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1. Whether the plaintiffs have made out ground to allow the application ?
2. What order?

6. My answer to the above points are as follows:

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

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

REASONS

7. **Point No.1:** The plaintiffs have file the present application to insert Sy.No.52, measuring 01 acre 02 guntas, situated at Yarthiganahalli Village as a suit schedule property. It is the specific case of the plaintiffs that the said property was also a joint family property and the same was alienated in favour of one V.G. Sathyaprema behind the back of the plaintiffs. The defendants No.1 and 7 have admitted that the proposed property was a joint family and ancestral property of the plaintiffs and the defendants. However, it is contended that the father of the plaintiffs has already alienated the same in favour of the purchaser through registered Sale Deed dated 29.01.2005 and the same is not a joint family property any more. However, there is objection by stating that the plaintiffs

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have no right to seek for partition in respect of the said property and also that the Sale Deed dated 29.01.2005 has been executed by the plaintiffs. The burden is on the plaintiffs to establish that the proposed property is also liable for partition. Under such circumstances, the proposed Sy.No.52, measuring 01 acre 02 guntas is to be inserted in the schedule of the plaint. Accordingly, the plaintiffs have made grounds to allow the application. Hence, I answer **Point No.1 in the Affirmative.**

8. **Point No.2** : In view of the above findings, this court proceed to pass the following:

O R D E R

I.A. No.XX filed by the plaintiff U/o.VI Rule 17 of C.P.C is hereby allowed.

The plaintiffs are permitted to carryout amendment as sought in the application.

**For amendment and amended
plaint by: 04.09.2024**

Sd/-

**Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.**