

KABR310003952011



TITLE SHEET

**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE & JUDICIAL MAGISTRATE
OF THE FIRST CLASS AT DEVANAHALLI**

**PRESENT : SRI KUMARA G. B.COM. LL.B.
PRINCIPAL SENIOR CIVIL JUDGE & JMFC
DEVANAHALLI**

**ORIGINAL SUIT NO.193 OF 2011
DATED ON THIS 07TH DAY OF JANUARY, 2025**

**PLAINTIFF :- SMT MUNIYAMMA @ MANJULA,
AGED ABOUT 49 YEARS,
W/O SRI R. VENKATESH,
R/AT: NO.458,
M.S. RAMAIAH ENCLAVE,
8TH MILE, NAGASANDRA POST,
BANGALORE - 560073.**

(REPRESENTED BY SRI PVR, ADVOCATE)

VERSUS

**DEFENDANTS :- 01. SRI K.M. ANJINAPPA,
AGED ABOUT 63 YEARS,
S/O LATE MUNISHAMAPPA,

02. SRI K.M. RAMAIAH,
S/O LATE MUNISHAMAPPA,
SINCE DECEASED BY HIS LRS.**

- (a). **SMT KEMPAMMA,
W/O LATE RAMAIAH K.M.,
AGED ABOUT 55 YEARS.**
- (b). **SMT USHA,
D/O LATE RAMAIAH K.M.,
W/O MANJUNATHA,
AGED ABOUT 32 YEARS.**
- (c). **SRI NAVEEN KUMAR,
S/O LATE RAMAIAH K.M.,
AGED ABOUT 30 YEARS.**
- (d). **SRI SUNIL KUMAR,
S/O LATE RAMAIAH K.M.,
AGED ABOUT 28 YEARS.**

**03. SRI SURESH,
S/O K.M. ANJINAPPA,
AGED ABOUT 40 YEARS,**

**ALL ARE R/AT: KEMPATHIMMANAHALLI
VILLAGE, KANNAMANGALA POST,
KASABA HOBLI, DEVANAHALLI TALUK,
BENGALURU RURAL DISTRICT.**

**04. SRI SAI KANTHI PROPERTIES LLP,
A LLP PARTNERSHIP FIRM,
REGD. VIDE LLP, IN, ABZ-3696,
(EARLIER M/S. KANTHI PROPERTIES
A. REGD PARTNERSHIP FIRM)
OFFICE AT NO.13/1, 2ND FLOOR,
'G' BLOCK, SAHAKARANAGAR,
BENGALURU - 560092,
REPRESENTED BY ITS AUTHORIZED
PARTNER SRI M. CHANDRASHEKAR,
S/O LATE M. PULLAMARAJU,
AGED ABOUT 57 YEARS.**

(D-1 & D-3 ARE REPRESENTED BY SRI VV, ADVOCATE; D-2(a) to (d) ARE REPRESENTED BY SRI MM, ADVOCATE & D-4 IS REPRESENTED BY SRI ARSR, ADVOCATE)

PROVISION UNDER WHICH THE APPLICATION IS FILED	ORDER VI, RULE 16 R/W SEC. 151 OF CPC
RELIEF SOUGHT FOR	STRUCK OUT OF SUIT ITEM NO.12
DATE OF FILING APPLICATION	27-09-2024
NUMBER OF APPLICATION	IA NO.XVII
DATE OF FILING OBJECTION	30-11-2024
DATE OF PRONOUNCEMENT OF ORDER	07-01-2025

ORDER ON IA NO.XVII

This order arises out IA No.XVII filed by applicant/defendant No.4 under Order VI, Rule 16 read with Section 151 of Civil Procedure Code, 1908 for striking out/deletion of suit Item No.12.

02. The land bearing survey No.100 (old survey No. 9 and 9/P-14), measuring 04-00 acres, situated at Kempathimmanahalli Village, Kasaba Hobli, Devanahalli Taluk is the subject-matter of the suit.

03. IA No.XVII is supported with an affidavit duly sworn by the applicant/partner of defendant No.4. It is sworn in the affidavit that plaintiff had instituted the suit against defendant No.1 to 3 for declaration of his 1/3rd share in suit Item No.1 to 11; for partition and separate possession therein and for declaration that unregistered Partition Deed dated 09-05-

1984 is not binding on the share of the plaintiff. It is further sworn that suit Item No.12 was sold by Sri Munishamappa who was the original owner in favour of vendors of defendant No.4. It is further sworn that several proceedings have been taken place before the various forums between the family members of plaintiff, defendant No.4 and vendors of defendant No.4 relating to suit Item No.12. It is further sworn that in spite of it, the plaintiff in collusion with other defendants included suit Item No.12 during pendency of the suit knowing fully well that she and other defendants have no right over the same in order to have unlawful gain. It is further sworn that the plaintiff has included suit Item No.12 without impleading defendant No.4 and hence it has voluntarily filed application for impleadment and came on record. It is further sworn that the plaintiff or other defendants are not having any kind of right or title or interest over the suit Item No.12 in view of findings given by the Deputy Commissioner, Bangalore Rural District in LND SC/ST(A) No.75/2010-11 and Order passed by Hon'ble High Court of Karnataka in WP No.7694/2023 dated 26-07-2023. It is further sworn that the plaintiff has included suit Item No.12 without any legal right and therefore suit Item No.12 is liable to be struck down or deleted as the claim of the plaintiff over the same is false, frivolous and vexatious. It is further sworn that if the application is not allowed, irreparable loss or injury will be caused

defendants No.4. For the above said reasons, the applicant/defendant No.4 has prayed to struct down or delete suit Item No.12.

04. The plaintiff has filed objection of IA No.XVII contending that the same is not maintainable either in law or on facts and liable to be dismissed. It is further contended that the partner of defendant No.4 company has sworn false affidavit filed in support of IA No.XVII. It is further contended that IA No.XVII is filed at the belated stage after completion of plaintiff side evidence and after commencement of defendant side evidence in order to drag the proceedings and therefore same is not maintainable. It is further contended that suit Item No.12 is the joint family property and granted land for and on behalf of joint family members. It is further contended that suit Item No.12 was sold by father of plaintiff without her consent and without her knowledge and behind her back and therefore the same is not binding. It is further contended that the plaintiff is not aware about the proceedings taken place between her family members, defendant No.4 and his vendors. It is further contended that IA No.XVII is not maintainable and to give finding on it, full-fledged trial is necessary. For the above said reasons, the plaintiff has prayed to reject IA No.XVII.

05. Heard the arguments advanced by ARSR, the learned counsel for defendant No.4 and Sri PVR, the learned counsel for plaintiff on IA No.XVII.

06. Perused the application, affidavit filed in support of application, objection filed to IA No.XVII, pleadings and documents produced from both sides.

07. Upon hearing arguments and on perusal of materials available on record, the following points that would arise for determination;

1. Whether the applicant/defendant No.4 has made out grounds to strike out/delete suit Item No.12?

2. What order?

08. Upon hearing the arguments and on perusal of materials placed on record, my findings to the above points are as under;

Point No.1 :- In the affirmative and

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

REASONS

09. POINT NO.01: - Admittedly the plaintiff had initially instituted the suit against defendants No.1 to 3 for declaration that he is entitled for 1/3rd share in suit Item No.1 to 11 and for partition and separate possession therein by metes and bounds. During pendency of the suit, plaint has been amended, Para No.3 (a) to (e) have been added and suit Item No.12 to 14

have been included. But the defendant No.4 has not been impleaded. The defendant No.4 itself filed application and the same was allowed.

10. According to the plaint averments, the plaintiff and defendants No.1 to 3 are the members of Hindu Undivided joint family; suit lands are the ancestral and joint family properties; all are in joint possession and enjoyment of the suit schedule properties and all are having undivided interest therein and partition is not taken place among them relating to suit lands so far by metes and bounds. The defendants No.1 to 3 have acted detrimental to the interest of the plaintiff and therefore she has instituted present suit.

11. Averments in Para No.3 (a) of the amended plaint is relating to suit Item No.12. According to Para No.3 (a) of the plaint, defendant No.1 being the Kartha of the joint family initiated proceedings in PTCL SR (Devanahalli) No.35/2006-07 before the Assistant Commissioner, Doddaballapura Sub-Division against Sri Anwar s/o Abdul Razak Sab relating to suit Item No.12 for cancellation of the Registered Sale Deed executed by his father Sri Munishamappa in favour of Sri Anwar s/o Abdul Razak Sab, for restoration and regrant of the said land in favour of original grantee or to his legal heirs. It is also averred that after enquiry, Assistant Commissioner,

Doddaballapura Sub-Division allowed the application on 17-01-2010 and cancelled the Registered Sale Deed dated 24-10-1987 bearing document No.835/1987-88 as null and void, resumed suit Item No.12 and ordered to restore it to original grantee/his legal heirs. It is averred that subsequently Sri Anwar s/o Abdul Razak Sab has preferred an Appeal in LND SC/ST(A)No.75/2010-11 before the Deputy Commissioner, Bangalore Rural District and the same was dismissed on 24-03-2015 and accordingly katha had been mutated in the name of Sri Munishamappa s/o late Ajjappa as per MR No.H14/2014-15 and therefore suit Item No. No.12 is also the ancestral and joint family property of plaintiff and defendants No.1 to 3 and it is ensure to the benefit of the members of the joint family.

12. So by looking to the plaint averments, it appears that suit land was granted in the name of Sri Munishamappa; during his lifetime he sold the same in favour of Sri Anwar s/o Abdul Razak Sab through Registered Sale Deed bearing document No.835/1987-88 on 24-10-1987; after the death of Sri Munishamappa, defendant No.3 initiated PTCL proceedings before THE Assistant Commissioner; the same was allowed; against which Sri Anwar s/o Abdul Razak Sab preferred an Appeal before Deputy Commissioner, Bangalore Rural District and the same was dismissed.

13. According to defendant No.4, suit Item No.12 was the absolute property of Sri Munishamappa s/o late Ajjappa as he acquired the same under Government Grow More Food (GMF) Scheme by virtue of order by Special Deputy Commissioner in No.59/1953-54 on 10-11-1995. It is further contended that during his lifetime Sri Munishamappa along with his brothers Sri Doddobaiah and Chikkaobaiah sold suit Item No.12 in favour of Sri Anwar s/o Abdul Razak Sab through Registered Sale Deed on 28-10-1987 and accordingly katha was mutated in the name of Sri Anwar s/o Abdul Razak Sab. It is further contended that Sri Anwar entered into an Agreement of Sale with defendant No.4 and executed irrevocable General Power of Attorney. It is further contended that defendant No.1 initiated PTCL proceedings before Assistant Commissioner and the same was allowed on 17-01-2011. It is further contended that Sri Anwar challenged the same before Deputy Commissioner and the Appeal was allowed and order of Assistant Commissioner was set-aside. It is further contended that the legal heirs of defendant No.2 have preferred WP No.7694/2023 before the Hon'ble High Court of Karnataka and the same was dismissed on 26-07-2023. It is further contended that though the plaintiff or other defendants having no manner of right or title, they have included suit Item No.12 on false and frivolous grounds in order to harass the defendant No.4 in his

absence and therefore it had impleaded itself and filed IA No.XVII for struck out of suit Item No.12 as the claim is false, frivolous and vexations.

14. In support of her claim, the plaintiff has produced revenue records and also copy of order passed by the Assistant Commissioner, Doddaballapura Sub-division, Doddaballapura relating to suit Item No.12. On the other hand, in order to substantiate its contention, the defendant No.4 produced the certified copy of Order passed by the Deputy Commissioner in LND SC/ST(A)No.75/2010-11, copy of Order by Hon'ble High Court of Karnataka in WP No.7694/2023 dated 26-07-2023, certified copy of Registered Sale Deed dated 15-02-2023 and Conversion Order passed by the Deputy Commissioner.

15. The documents placed on record from both sides, apparently shows that suit Item No.12 was granted by the Government in the name of Sri Munishamappa s/o Ajjappa under GMF scheme; Saguvali chit was issued on payment of price and accordingly katha was mutated in his name. They also show that Sri Munishamappa s/o Ajjappa along with his two brothers sold the suit Item No.12 in favour of Sri Anwar s/o Abdul Razak Sab bearing document No.835/1987-88 on 24-10-1987, conveyed title and delivered the possession.

16. The copy of order passed by the Assistant Commissioner, Doddaballapura Sub-division, Doddaballapura release that after the death of Sri Munishamappa, defendant No.1 initiated proceedings under Section 5 of Karnataka Schedule Caste and Schedule Tribe (Prohibition of Transfer of Certain Lands) Act, 1978 for cancellation of Registered Sale Deed executed by Sri Munishamappa in favour of Anwar relating to suit Item No.12, for restoration and re-grant of the same in favour of original grantee or his legal heirs. It also shows that after inquiry the Assistant Commissioner, Doddaballapura Sub-division, Doddaballapura allowed the application, declared the Registered Sale Deed bearing document No.835/1987-88 dated 24-10-1987 as null and void and consequently ordered to restore the land and re-grant in favour of original grantee or his legal heirs.

17. The copy of order passed by the Deputy Commissioner, Bangalore Rural District in LND SC/ST(A)No.75/2010-11 shows that Sri Anwar s/o Abdul Razak Sab preferred appeal against the order passed by the Assistant Commissioner, Doddaballapura Sub-division, Doddaballapura and the same was allowed holding that suit Item No.12 was granted to Sri Munishamappa under GMF Scheme and therefore it will not attracts Section 4 of PTCL Act. The copy of Order passed by Hon'ble High Court of Karnataka in WP

No.7694/2023 dated 26-07-2023 shows that the legal heirs of deceased defendant No.2 herein have filed Writ Petition by challenging the order passed by the Deputy Commissioner and WP was dismissed by confirming the Order passed by the Deputy Commissioner.

18. So, on combined reading of the documents and also orders passed by the revenue authorities and Hon'ble High Court of Karnataka, it is crystal clear that suit land was granted to Sri Munishamappa s/o late Ajjappa under grow more food (GMF Scheme) and during his lifetime he sold the same through Registered Sale Deed in the year 1987 in favour of Sri Anwar, conveyed title and delivered the possession. It is further clear that that after the death of Sri Munishamappa, the defendant No.1 initiated PTCL proceedings and the same was concluded against the plaintiff and her family members and in his favour Sri Anwar who was the purchaser. When such being the case, either the plaintiff or her family members including the defendants No.1 to 3 cannot claim right over suit Item No.12 as it is already concluded that they have no right or title or interest over the suit Item No.12. In spite of it, during pendency of the suit, Item No.12 has been included by the plaintiff by amending the plaint by including Para No.3 (a).

19. The averments made in Para No.3 (a) are totally contrary to the orders passed by Deputy Commissioner, Bangalore Rural District and Hon'ble High Court of Karnataka in WP No.7694/2023 dated 26-07-2023. As I already pointed out, the order passed by the Assistant Commissioner, Doddaballapura Sub-division, Doddaballapura in favour of defendant No.2 has been set-aside by the Deputy Commissioner, Bangalore Rural District and the same was confirmed by the Hon'ble High Court of Karnataka. But the plaintiff has falsely pleaded in Para No.3 (a) that the Deputy Commissioner has dismissed the Appeal preferred by Sri Anwar s/o Abdul Razak Sab which is nothing but misleading the court and also false claim based on false averments. It is well settled that the court is having power to striking out of pleadings under Order VI, Rule 16 of Civil Procedure Code, 1908 at any stage of the proceedings when the pleadings are unnecessary, scandalous, frivolous or vexatious. As I already stated the averments of plaintiff in Para No.3 (a) are false, frivolous and vexatious and contrary to the findings given by the competent authorities and Hon'ble High Court of Karnataka. Similarly, inclusion of suit Item No.12 in the absence of defendant No.4 based on false pleadings that too without there being any vested or legal right. Under these facts and circumstances of the case, I am of the opinion that averments in Para No.3 (a) of the plaint are false,

frivolous and vexatious and inclusion of suit Item No.12 is also without any basis and without any legal right and therefore Para No.3 (a) of the plaint and suit Item No.12 have to be struck down or deleted. Hence, I am answering to ***Point No.1 in the affirmative.***

20. POINT NO.2:- In view of the discussions made above and reasons assigned and also in view of finding to Point No.1, I proceed to pass the following order:

ORDER

IA NO.XVII filed by applicant/defendant No.4 under Order VI Rule, 16 of Civil Procedure Code, 1908 is hereby allowed with exemplary costs of Rs.2,500/-.

Consequently, Para No.3 (a) of the plaint and Item No.12 of the plaint schedule are hereby struck down/deleted.

(Dictated to the stenographer, transcribed and typed by her, corrected and then pronounced by me in the open court on this the 07th day of January, 2025)

***(KUMARA G.)
PRINCIPAL SENIOR CIVIL JUDGE &
JMFC, DEVANAHALLI.***
