

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 3rd Day of January, 2020

O.S.No.528/2008

1. Smt. Bhagyamma and Another : **Plaintiffs**
(Pltf. - By Sri.
T.S.R., Advocate)

V/s.

1. Sri. Muniyappa and Others : **Defendants**
(D1 to 5,7,11 -
Exparte)
(D6 (a to c) - By
Sri. D.N.N.,
Advocate)
(D8 - By Sri.
S.K., Advocate)
(D9 - By Sri.
R.V.N.S.,
Advocate)
(D10 - By Sri.
Y.N.S.R.,
Advocate)
(D12,13 - By Sri.
T.K.S., Advocate)

~~~~~

**ORDERS ON I.A.No.17**

The defendant No. 6(a) and (b) have filed application Under Order VII rule 11(a) & (d) of CPC seeking rejection of the plaint in so far as item No.1 of the suit property is concerned against them. On the other hand, the plaintiffs have filed their objections to the IA praying to dismiss the application.

2. It is contended by the defendants that the plaintiffs have filed the above suit for partition of their 1/7<sup>th</sup> share in the suit schedule properties by metes and bounds. It is contended that the defendant No.6 (a) is the sole and absolute owner in peaceful possession and enjoyment of the suit item No.1 property. The plaintiff's suit against defendant No.6(a) & (b) is not maintainable, since the first sale transaction of the schedule property has taken place vide regd sale deed dated: 22-08-1981 which is prior to the amendment to Hindu Succession Act by inserting new Section 6 with effect from 09-09-2005. It is contended that the item No.1 belongs to one Venkatarayappa and after his death the plaintiff's father was allotted 1.19 guntas in item No.1 and another son Narayanappa was allotted 1.19 guntas and RTC's were also made out in their respective names. Further in the year 1988-89 the plaintiff's father sold the item No.1 of suit property for his urgent family necessities vide regd sale deed dated: 22-08-1981, thereafter the defendant No.6 got his name mutated in revenue records and he continued to be in physical possession of the same. Hence the item No.1 of the

suit property is not available for partition. After death of his father, the revenue records were made to name of the defendant No.6(a), hence the sale transaction having taken place before the amendment act the same is not available for partition. Thus, the defendants pray for rejection of the plaint.

3. On the other hand, the plaintiffs filed their objections, denying the contentions in the affidavit accompanying the application filed by the defendants is devoid of merits and it is stated that the I.A is not maintainable either in law or facts hence the same is liable to be dismissed in-limine. It is contended that application is filed only to drag on the proceedings with malafide intention to defraud rights of the plaintiffs. It is contended that the defendant No.8 had filed similar application in I.A No.8 and the same was dismissed vide order dated: 19-03-2015 and in light of the order the present application does not survive. Thus, pray for dismissal of the application filed by defendants.

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 as there is no cause of action, non-payment of sufficient court fees and barred by law?
  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 above suit for partition of the suit schedule properties by metes and bounds. In response to the suit summons the defendants have appeared and defendant No. 6(a) & (b) filed the present application and the plaintiffs filed their objections to the I.A No.17.

8. The counsel for the defendants argued that the defendant No.6 (a) is the sole and absolute owner in peaceful possession and enjoyment of the suit item No.1 property. The plaintiff's suit against defendant No.6(a) & (b) is not maintainable, since the first sale transaction of the schedule property has taken place vide regd sale deed dated: 22-08-1981 which is prior to the amendment to Hindu Succession Act by inserting new Section 6 with effect from 09-09-2005. It is contended that the item No.1 belongs to one Venkatarayappa and after his death the plaintiff's father was allotted 1.19 guntas in item No.1 and another son Narayanappa was allotted 1.19 guntas and RTC's were also made out in their respective names.

Further in the year 1988-89 the plaintiff's father sold the item No.1 of suit property for his urgent family necessities vide regd sale deed dated: 22-08-1981, thereafter the defendant No.6 got his name mutated in revenue records and he continued to be in physical possession of the same. Hence the item No.1 of the suit property is not available for partition. After death of his father, the revenue records were made to name of the defendant No.6(a), hence the sale transaction having taken place before the amendment act the same is not available for partition. Thus, the defendants pray for rejection of the plaint.

9. On the other hand, the counsel for plaintiffs denies the contentions in the affidavit accompanying the application filed by the defendants as devoid of merits and it is stated that the I.A is not maintainable either in law or facts hence the same is liable to be dismissed in-limine. It is argued that application is filed only to drag on the proceedings with malafide intention to defraud rights of the plaintiffs. It is further argued that the defendant No.8 had filed similar application in I.A No.8 and the same was dismissed vide order dated: 19-03-2015 and in light of the order the present application does not survive. Thus, pray for dismissal of the application filed by defendants.

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 filed the suit for partition of their 1/7<sup>th</sup> share over the suit schedule properties and consequential reliefs. It is contended that plaintiffs are daughters of the defendant No.1 and the defendants 2 to 5 are also the children of defendant No.1. The suit schedule properties are the ancestral and joint family properties, there is no partition among the plaintiffs and defendants 1 to 5. It is contended that the defendant No.6 to 13 are strangers to the plaintiff's family.

12. It is further contended that the revenue records also reveal that the suit properties are ancestral properties. The defendant No.1 without any family necessity has alienated the ancestral joint family properties and the defendants No.2 to 4 have signed the said document as attesting witnesses. The item No.1 of the suit property has been sold in favour of the defendant No.6, the defendant No.1 has executed a general Power of Attorney in favour of defendant No.7 in respect of item No.2 of the suit property and on the basis of GPA the defendant No.7 has sold the same in favour of defendant No.8.

13. The defendant No.6(a) and (b) have filed the application for rejection of the plaint in so far as item No.1 of the

suit property is concerned. In view of decision of the Hon'ble Apex Court and Hon'ble High Court of Karnataka the partial rejection of plaint is not permissible and the Hon'ble High Court of Karnataka in RFA No.1114/2016 Dated: 28-06-2018 in case of Kanthamma and others Vs N.Ananda Kumar Reddy and others, wherein it was held that "*there is no provision in the Civil Procedure Code for the rejections of a plaint in part*", Thus, on exercise of powers under Order VII Rule 11 of CPC the plaint cannot be partially rejection as the same is not permissible in law. In the case on the hand, though the defendant No.6(a) & (b) sought for rejection of plaint in so far as item No. 3 of the suit schedule property i.e., purchased by him, there are other properties which are alienated and some remaining with the defendants 1 to 5 as narrated in the plaint.

14. In the case on hand, hence at this stage it cannot be concluded that the plaintiffs are or are not coparceners. Even if it is considered that the plaintiffs are not the coparceners, yet they would be entitled to notional partition. Therefore, in my humble opinion, the rival contentions have to decided only after conclusion of full-fledged trial. The dispute involves mixed question of law and facts and the same have to be decided after full-fledged trial. At this stage, the plaint cannot be rejected and the defendants have not made out any grounds to reject the plaint. Therefore, I answer the Point No.1 in Negative.

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

**ORDER**

The I.A.No.17 dated: 14-11-2017 filed by the defendant No.6(a) & (b) under Order VII Rule 11 (a) & (d) of C.P.C. is dismissed.

(Dictated to the Stenographer directly on computer, same is corrected and then pronounced by me in the open court on this the 3<sup>rd</sup> day of January, 2020).

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