

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 8th Day of January, 2020

O.S.No.708/2013

1. Sri. Ramesh and Others : **Plaintiffs**
(Pltfs. - By Sri.
N.R., Advocate)

V/s.

1. Sri. Narayanappa and Others : **Defendants**
(D1, 6 to 9 - By
Sri. R.V.N.S.,
Advocate)
(D2 to 4 - By Sri.
C.M., Advocate)
(P.D5 - By Sri.
N.S., Advocate)

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**ORDERS ON I.A.No.8**

The defendants No.1, 6 to 9 have filed application under Order VII Rule 11(a) of C.P.C. seeking rejection of the plaint. On the other hand, the plaintiffs have filed 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 and separate possession of their 1/6<sup>th</sup> share and for permanent injunction. It is contended by defendants that father of the plaintiffs had filed suit for partition and separate possession in O.S No. 305/2006 before this Hon'ble Court and the same was decreed by judgement and decree dated: 24-3-2010 and as against it the defendant No.6 has filed appeal before the II Addl District and session judge, Bangalore rural district in R.A No. 96/2010 set down for arguments. The father of the plaintiffs has no legal right, title or interest over the suit property and hence the suit of the plaintiff is liable to be rejected with exemplary costs under section 35 of CPC. Thus, the defendants sought for rejection of the plaint.

3. On the other hand, the plaintiff has filed objections contending that the application is not maintainable and liable to be dismissed in-limine. It is contended that the suit property was attached to office of Thoti of Reddihalli village and it was re-granted posthumously to Thotti Kapaniga and that the only question is whether the mother of plaintiffs Smt.Akkayamma is entitled to succeed to her father's estate or not. The order of regrant was effected only in the year 1984. The averments made in the affidavit accompanying application are denied by the plaintiffs. The regrant was in the year 1985 hence Hindu Succession Act 1956 would be applicable and it conferred ownership upon Kapaniga hence all his children will be entitled to succeed to the same under Section 8 of the Hindu succession Act

and not under Section 6 as contended by the defendants. Further it is contended that suit property being an agricultural land the same is covered under Section 7(2) of the Karnataka Court Fees and suits Valuation Act hence the court fee paid is right. The application is filed only to drag the proceedings and the defense raised by the defendants is frivolous, vexatious and thus prays to dismiss the application.

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 and separate possession of their 1/6<sup>th</sup> share and for permanent injunction. In response to the suit summons the

defendants appeared and filed their written statement and objections. That apart the defendant 1, 6 to 9 have also filed the present application and the plaintiffs filed their objections to the application.

8. The Counsel for the defendants has argued that defendants that father of the plaintiffs had filed suit for partition and separate possession in O.S No. 305/2006 before this Hon'ble Court and the same was decreed by judgment and decree dated: 24-3-2010 and as against it the defendant No.6 has filed appeal before the II Addl District and session judge, Bangalore rural district in R.A No. 96/2010 set down for arguments. The plaintiff's father has no legal right, title or interest over the suit property and hence the suit of the plaintiff is liable to be rejected with exemplary costs under section 35 of CPC. Thus, the defendants sought for rejection of the plaint.

9. On the other hand, the counsel for the plaintiffs argued that the application is not maintainable and liable to be dismissed in-limine. It is further argued that the suit property was attached to office of Thoti of Reddihalli village and it was re-granted posthumously to Thoti Kapaniga and that the only question is whether the mother of plaintiffs Smt.Akkayamma is entitled to succeed to her father's estate or not. The order of regrant was effected only in the year 1984. The averments made in the affidavit accompanying application are denied by the plaintiffs. The regrant was in the year 1985 hence Hindu

Succession Act 1956 would be applicable and it conferred ownership upon Kapaniga hence all his children will be entitled to succeed to the same under Section 8 of the Hindu succession Act and not under Section 6 as contended by the defendants. Further it is contended that suit property being an agricultural land the same is covered under Section 7(2) of the Karnataka Court Fees and suits Valuation Act hence the court fee paid is right. The application is filed only to drag the proceedings and the defense raised by the defendants is frivolous, vexatious and thus prays to dismiss 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 plaintiff filed the suit for partition and separate possession. The plaintiff contended in the plaint that the suit property was granted in favour of Motappa who is their grandfather. The plaintiff's father had filed O.S No. 305/2006 against the defendants for partition and separate possession which came to decreed on 24-03-2010 and thereafter, plaintiff's father filed FDP No.12/2010 for division of property by metes and bounds. The defendants therein have filed R.A No.96/2010 challenging the judgment and decree passed in O.S No. 305/2006. It is contended by the plaintiffs in

the plaint that the defendant No.5 i.e., the plaintiffs father along with other defendants are colluding with each other and in order to deprive their rights in the suit property are trying to form sites and alienate the same to 3<sup>rd</sup> parties. Hence the plaintiffs were forced to file the above suit to get their legitimate share out of the share of the defendant No.5.

12. The plaintiffs have filed the above suit to protect their legitimate rights over the suit schedule property which they are entitled and decretal of the O.S No. 305/2006 is not a ground for rejection of the plaint under order 7 Rule 11 of CPC. The rights and interest of the plaintiffs in the ancestral property has to be determined in a full-fledged trial. Hence the defendants have not made out any grounds for rejection of the plaint.

13. Therefore, the rival contentions of the parties are to be decided only after full-fledged trial. From the above discussion for the above said reasons, I am of the opinion that 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.8 filed under Order VII Rule 11(a) of C.P.C. dated 16-07-2015 filed by the defendants Nos.1, 6 & 9 is hereby dismissed.

(Dictated to the Stenographer directly on computer, same is corrected and then pronounced by me in the open court on this the 8<sup>th</sup> day of January, 2020).

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