

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,

AT DODDABALLAPUR.

Dated this the 29th day of August, 2019

PRESENT: Sri.M.B.KULKARNI,
B.Sc., LL.B (Spl)
Senior Civil Judge & JMFC.,
Doddaballapur.

O.S.No.96/2017

Plaintiff: Sri.A.N.Nataraj.

(Represented by Advocate Sri.B.R.Ananda.)

V/s.

Defendants:- 1. Smt.Jayamma and 13 Others.

(Represented by Advocate
Sri.TNB for D9 to D13,
D1, D4, D6 to D8 are exparte,
Steps to D2, D3, D5 & D14.)

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Order on I.A.No.II

This is the application filed by the defendant No.1 under order 7 Rule 11 (a) and (d) R/w section 151 of f CPC for rejection of plaint, on the ground that suit is not maintainable for want of cause of action and suit is barred by law.

2. In the accompanying affidavit of I.A.No.II it is averred by defendant No.1 that, she is 2nd wife Sri.T.Nanjundaiah. It is averred that out of wedlock between Sri.Nanjundaiah and 1st wife three children by name Sri.T.N.Nanjundaih, Sri.T.N.Basavaraju, Smt.Subadramma had borned

and after death of his 1st wife Sri.T.N.Nanjundaih married defendant No.1 but the children of 1st wife neglected defendant No.1 and not provided income for her livelihood. Therefore, she has filed O.S.No.899/1995 for partition of her share in Sy.No.15 of Maralenahalli Village of Doddaballapur Taluk, before Hon'ble Senior Civil Judge Court at Bangalore which was transferred to this Court and re-numbered as O.S.No.35/2002 and thereafter one of the grand children of Sri.T.N.Nanjundaiah by name Sri.Vijayakumar filed O.S.No.90/1984 and in that suit defendant No.1 was not party. The plaintiffs in that suit compromised the matter without knowledge of the defendant No.1. Therefore, the compromise took place in O.S.No.35/2002 by way of the decree of the Court. The judgment and decree passed by this Court in O.S.No.90/1984 was challenged before Hon'ble High Court Karnataka by the 1st defendant in RFA No.571/2007 and one more RFA No.914/2007 came to be filed by Sri.Gurudeva and one more RFA No.669/2007 was filed by the Sri.T.N.Basavaraju and Hon'ble High Court of Karnataka by setting order the judgment of trial Court remanded matter to Trial Court for reconsideration and to provide opportunity to both parties. In the meanwhile when the defendant No.1 got certified copy of documents of the suit property, he came to know that the defendants sold out suit property infavour of plaintiff of this suit by name Sri.Nataraju under sale deed infavour of third party on 15-04-2005. Such sale deed is created and concocted by defendant No.1. Hence, suit is hit by principles of lispendence. Therefore, suit is not maintainable. Therefore, there is no cause of action for this suit. On the bases of the judgment and decree

passed by this Court in O.S.No.35/2002, the defendant No.1 has filed false suit. Hence, prayed to reject the plaint by allowing I.A.No.II.

3. The plaintiff has filed objection to I.A.No.II contending that the averments of I.A.No.II are all false and such I.A. is not maintainable either in law or on facts. It is further contended that the plaintiff is not party in O.S.No.35/2002. Therefore, decree passed in that suit is not binding on him who is bonafide purchaser of suit property. In O.S.No.35/2002 the vendor of plaintiff has not taken pain to prove will dated 04/12/1981 and decree passed by Court in O.S.No.90/1984. Therefore, such decree passed in O.S.No.35/2002 is not binding on the plaintiff, which was obtained by practicing fraud by the parties on the Court. Hence, on these grounds prayed to dismiss I.A.No.II.

4. Heard both sides on I.A.No.II Perused the material placed on record.

5. In the light of the above following points arise for my consideration.

Point No.1: Whether I.A.No.II filed by the defendant No.1 under order 7 Rule 11 (a) and (d) R/w section 151 of CPC for rejection of plaint deserves to be allowed?

Point No.2: What order?

6. My finding to the above points is as under.

Point No.1: In the negative.

Point No.2: As per final order.

REASONS

7. Point No.1: The defendant No.1 by filling I.A.No.II sought for rejection of plaint on the ground that, the suit is hit by principle of Lis-pendency. It is case of the defendant No.1 that during the pendency of the suit O.S.No.96/2017 filed by one of the party and the sale deed executed by defendants on 15-04-2005 during the pendency of the above suit is hit by Section 152 of Transfer of Property Act and same is not binding on the defendant No.1 and the suit is barred by law and there is no cause of action for this suit. Such defence taken by defendant No.1 for rejection of plaint cannot be considered for allowing I.A.No.II because whether suit is hit by Lis-pendence or not it is a question of fact to be proved by the party during the trail of the suit, but it is not question of the law. Therefore, the plaint cannot be rejected on the question of the fact.

8. Even though the limitation issues is mixed question of law and fact then also trial is required to collect evidence from parties to decide the rights on the parties of the suit. The plaint can be rejected only on point of law but not on point of fact. The question of limitation being mixed question of law and fact it requires trail of the suit and only averments of plaint can be considered for rejection of plaint but not contentions of written statement. The plaint cannot be rejected on the basis of the written statement of the defendants. Whether the suit is maintainable or not and whether suit is hit by Lis-pendence or not is burden of proof of the defendant No.1 to prove the same in the trail of the suit and only after proving such fact by defendant No.1 finding can be given.

9. As rightly contended by the plaintiff in his objection to I.A.No.II he was not party in O.S.No.35/2002 or in O.S.No.90/1984 or in O.S.No.96/2007. Therefore, decree obtained behind back of the plaintiff in respect of suit property is not binding on the plaintiff who is not party to the above suit. Whether such suit is maintainable or not is different issue and only if plaintiff proves all the issues of the suit he can succeed. Therefore, at present such application is not maintainable which is prematured one. The advocate for plaintiff has relied upon citation reported in :-

1. (2004) 9 Supreme Court cases 512
2. ILR 2007 KAR 5282
3. 2006 (4) KCCR SN 219.

10. On the basis of principles laid down in the above citations I.A.No.II is not maintainable. Hence, I answered point No.1 in the negative.

11. **Point No.2:** On the basis of my above reasons and in the result I proceed to following;

Order

I.A.No.II filed by the defendant No.1 is
hereby dismissed with cost of Rs.500/-
for having caused delay in the trail of
the suit. It is held that suit is
maintainable.

(Dictated to the stenographer, typed by her, corrected and then pronounced by me in the open Court on the 29th day of August, 2019.)

(M.B.KULKARNI)
Senior Civil Judge,
Doddaballapur.