

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,

AT DODDABALLAPUR.

Dated this the 3rd day of December, 2019

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

O.S.No.267/2019

Plaintiff: Sri.V.Anjanegowda.

(Represented by Advocate
Sri.A.Krishnamurthy.))

V/s.

Defendants: 1. Sri.Ravikumar.G.T. & Anr.

(Represented by Advocate
D1-Inperson & Sri.M.V.Vijaykumar for D2.)

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Order on I.A.No.IV

This is the application filed by the defendant No.1 under order 7 Rule 11 (a) and (b) of CPC R/w Section 11 (1) of Karnataka Court Fees and Suit Valuation Act, 1958 for rejection of plaint as prayed for.

2. In the accompanying affidavit of I.A.No.IV it is averred by defendant No.1 that, the plaintiff has filed this suit for relief of declaration his title over suit property and for injunction. Such suit is false and frivolous suit, which has no cause of action. The plaintiff has created false cause of action. It is averred that the defendant No.1 being the owner of suit property acquired title over suit property by virtue of partition deed dated 30-04-2009 and sold

out the same in favour of defendant No.2 and handed over the possession of the same in favour of defendant No.2. The plaintiff being a stranger, has no right title or interest over suit property. The market vale of suit property is more than Rs.7,35,768/- and the plaintiff has not paid proper and correct Court fee. Therefore, suit is not maintainable. Hence, there is no cause of action for this suit. Therefore, prayed to reject the plaint by allowing I.A.No.IV.

3. The plaintiff has filed objections to I.A.No.IV contending that the averments of I.A.No.IV are all false and I.A.No.IV is not maintainable either in law or on facts. It is further contended that, the defendant No.1 has field I.A.No.IV under wrong provision of law and stated falsehood in his application. The plaintiff has made out good cause of action for this suit and suit of plaintiff is perfectly maintainable and the defense of defendants is baseless and unfounded one. The question of limitation and Court fee is mixed question of law and facts, they require trial of the suit. Therefore, plaint cannot be rejected without holding trial. Hence, on these grounds prayed to dismiss I.A.No.IV.

4. Heard both sides on I.A.No.IV. 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.IV filed by the defendant No.1 under order 7 Rule 11 (a) and (b) of CPC R/w Section 11 (1) of Karnataka Court Fees and Suit Valuation Act, 1958 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 careful perusal of the averments of the plaint reveals that originally suit property was belonging to father of defendant No.1 Late Sri.V.Thimmaiah who had purchased it from his vendor by name Sri.Siddappa under registered sale deed dated 16-03-1989 and thereafter the vendor Sri.Siddappa has sold out the said property in favour of one Smt.Gowramma W/o. Sri.Krishnappa under registered sale deed dated 21-02-1994 and got changed katha in her name. Thereafter the second vendor Smt.Gowramma W/o. Sri.Krishnappa has sold out suit property in favour of plaintiff of this suit under registered sale deed dated 21-11-2014. The plaintiff has produced the above said three sale deeds before this Court. Such being the facts the averments of the plaint reveals that the father of defendant No.1 has lost his title over suit property in the year 1989 itself, but how the defendant No.1 got partition deed in the alienated and disposed of property in the year 2009 and how she got ownership over suit property is a question of fact to be proved by the parties to the suit on record. If at all the defendant No.1 proves his title over suit property by virtue of partition deed dated 30-04-2009 then only the defendant No.2 gets title over suit property to alienate same by virtue of sale deed executed in his favour by defendant No.1 under registered sale deed having its No.1-12548/2014-15 but not otherwise.

Therefore, the crucial points of law and facts are involved in this case which requires trial and without holding such trial the plaint cannot be rejected at pretrial stage when there is no ground made out by defendant No.1 regarding the bar of the suit under any law.

8. The grounds claimed by the defendant No.1 for rejection of plaint or non payment of proper Court fee by the plaintiff and non existence of the cause of action are the question of facts but not question of law. The cause of action being bundle of facts requires to be proved in the trial of the suit and on the basis of the so called alleged title deeds produced by the plaintiff it appears that there is cause of action for the case of plaintiff. The Court fee issue can be tried by giving opportunity to the both parties to prove what is the market value of suit property and how much Court fee requires to be paid as per the law. If the plaintiff fails to pay the proper Court fee as per the order of the Court within fixed time then only the question of rejection of plaint arises but not prior to that.

9. Apart from that it is pertinent to note here that as per the number of decisions of our Hon'ble High Court of Karnataka the plaint can be rejected only on the basis of the admissions of the plaintiff given in the plaint regarding the bar of the suit, but the contentions of the written statement cannot be taken into consideration while passing order on preliminary issue. The plaintiff has shown cause of action in his plaint. Therefore, the defendant No.1 has not made out any grounds at this pretrial stage regarding the rejection of plaint. Hence, I.A.No.IV deserves to be dismissed. Therefore I answered point No.1 in the negative.

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

ORDER

I.A.No.IV filed by the defendant No.1 is hereby dismissed with cost of Rs.500/- for having caused unnecessary delay in the trail of the suit and it is held that suit is maintainable subject to payment of proper Court fee to be decided by this Court and also subject to final judgment of the suit.

(Dictated to the Typist copyist, typed by her, corrected and then pronounced by me in the open Court on the 3rd day of December, 2019.)

(M.B.KULKARNI)

Senior Civil Judge,
Doddaballapur.