

3. Smt. Sundamma
W/o C. Rajanna,
Aged about 66 years,
R/at: Karanala Village,
Tubugere Hobli,
Doddaballapura Taluk,
Bangalore Rural District.

4. Smt. K. N. Shanthamma,
W/o Chikkanarayanaswamy,
Aged about 64 years,
R/at: Nandi Village,
Sulthanpete Road,
Nandi Hobli,
Chikkaballapura Taluk
Chikkaballapura District.

5. Smt. Sujayamma
W/o Anjinappa,
Aged about 62 years,
R/at: Sunagatahalli Village,
Tubugere Hobli,
Doddaballapura Taluk.

6. Smt. Vijayalakshmi
W/o B. Narayana,
Aged about 60 years,
R/at: Bettahalasuru Village,
Chikkajala Hobli,
Bangalore North Taluk.

(D.1 to 4, 6 are By. Sri. M.B.S,
Advocate)

(D.5 Ex-Parte)

Date of Institution of suit : 27-08-2021
Nature of the suit : Partition and
Separate Possession
**Date of pronouncement of
Order** : **05-09-2023**
Total Duration : Yr. M/s D/s
02 01 22

(SUSHMA.M)
II Addl. Civil Judge & J.M.F.C.
Doddaballapura.

ORDER ON PRELIMINARY ISSUE

1. The plaintiff has filed the suit for Partition and separate possession to declare that the plaintiff is entitled for 1/6th share in the plaint schedule property and for partition and separate possession of plaint schedule property by metes and bounds of plaintiff's legitimate share. It is further submitted that, the suit schedule property of Old Sy. No. 14/p now assigned as Sy. No. 14 measuring to an extent of 2.00 acres, situated at Karanala Village, Tubugere Hobli, Doddaballapura Taluk, which is described in the suit schedule properties herein under, the property is

standing in the name of Narayanamma who is the mother of plaintiff and defendant No.2 to 6 which is no more she died leaving behind her legal heirs. It is further submitted that, the plaintiff and defendants are in joint possession and enjoyment of the plaintiff schedule property as coparceners they are the Hindu undivided joint family members and they having equal right share in it, the plaintiff schedule property is the ancestral and joint family property there is no partition among them till today. It is further submitted that, the defendant No.1 is the father of the plaintiff and the defendant No.2 to 6 are children of the defendant No.1 and Smt. Narayanamma since is no more, she died leaving behind plaintiff and defendants, they have constituted Hindu undivided joint family the genealogical tree discloses the relationship between the plaintiff and defendants. Therefore, the suit is filed.

- 2.** After service of summons, defendant No.1 to 4 have not appeared before the court and have not filed the written statement. On the other hand the defendant No.5 has not appeared before the court and placed Ex-Parte. Per contra, the of defendant No.6 appeared through his counsel and filed written statement. In

the written statement defendant No.6 denying all the facts narrated by the plaintiff and submitted that, the property bearing Sy. No. 14/P4 presently Sy. No. 14 totally measuring 2 acre situated at Karanala Village, Tubugere Hobli, Doddaballapura Taluk, Bangalore Rural District, is the self acquired property of Late. Smt. Narayanamma W/o Sri. K.N. Nanjegowda, the property was acquired by the mother of the defendant No.6 through the Grante vide LND RUC (T) No. 40/200-2001 dated 10.05.2003, and issued sagavali chit in favour of mother of defendant No.6 herein, thus the mother of defendant No.6 was the absolute owner of the property. After granted the property, all revenue records were transferred in the name of Late. Narayanamma. It is further submitted that, during the life time of Late. Narayanamma W/o Sri. K.N. Nanjegowda, had executed the registered will in favour of defendant No.6 Smt. K.N. Vijayalakshmi. It is further submitted that, the mother of the defendant No.6 had died on 15.09.2018, after demise of Late. Narayanamma, the will found in the house, after holding the will the defendant No.6 is in exclusive physical possession and enjoyment of the property. It is submitted that the defendant No.6 is continued

physical possession and enjoyment of the property by growing the crops like Mango, Coconut, niches and Anjura, plaited and also dogged the bore will and installed the bore and got the eclectic power and invested huge amount for development of the property.

- 3.** It is further submitted that, these defendant No.6 have invested the huge investment for development of the land, by sold her husband property at Bettahalusue Village, Jala Hobli, invested the said amount for the development of the property, the said facts is very well known to all the family members including the plaintiff, since the property is absolute property of these defendant No.6, in which neither the plaitniff nor other have no manner of right, title, interest, muchless the alleged share in the property. It is further submitted that, after developed the property, the defendant No.6 had applied for katha based the registered will, at that time, the Hon'ble Tahashidar, Doddaballapura had instructed the defendant No.6 to get the probate on the registered will to effect katha and RTC, thus the defendant No.6 has filed the P and SC 10006/2020 (old No. 5/2019) before the Hon'ble 4th Addl., District and Session Judge at Doddaballapura,

in the said petition holding enquire about the registered will by he Hon'ble 4th Addl., District and Session Judge had passed the order dated 24.03.2021 by allowed the P and SC 10006/2020, after passed the order the defendant No.6 has paid the court fee of Rs. 39,000/- (Rupees Thirty Nine Thousand Only) and got the probate certificate, thus the defendant No.6 is absolute owner in lawful physical possession and enjoyment of the schedule property. It is further submitted that, the schedule property is the absolute property of defendant No.6, therefore neither the plaintiff nor any of the family members do not have any kind of right, share on it in the RRT (Dispute) No. 274/2021, the Hon'ble Tahashildar holding enquire and passed the dated 17.02.2022 accordingly, revenue records like RTC and Mutation MR NO. T 33/2021-22 thus the defendant No.6 is in lawful physical possession and enjoyment of the schedule property, neither the plaintiff not other defendants are no manner of right title, interest muchless the possession over the schedule property, hence the suit filed by the plaintiff is liable to be dismissed. Hence, it is prayed to dismiss the suit.

4. On the basis of the rival pleadings of the parties, my predecessor has framed the following issues.

1) Whether the plaintiff proves that the suit schedule property is the ancestral and joint family property of the plaintiff and defendants?

2) Whether the plaintiff proves that the plaintiff and defendants are in joint possession of suit schedule property?

3) Whether the Defendant No.6 proves that the suit schedule property is the self acquired property of defendant No.6 as per will and she has become absolute owner of the suit schedule property ?

4) Whether the defendant No.6 proves that suit is bad for non-joinder of necessary parties and

non inclusion of other joint family properties ?

5) Whether the defendant No.6 proves that the suit is not properly valued and court fee paid is insufficient?

6) Whether the plaintiff proves that he is entitled for partition of 1/6th share in the suit schedule property?

7) Whether the plaintiff is entitled for the relief as sought for?

8) What order or decree?

- 5.** Among the above issues, issue No. 5 is treated as preliminary issue and posted for hearing on preliminary issue.
- 6.** Heard the arguments and perused the records
- 7.** My answer to the above preliminary issue is in the Affirmative for the following :

REASONS

- 8. Preliminary Issue:-** The plaintiff has filed the suit against defendants for partition and separate possession in respect of suit property. The plaintiff has valued the suit to come under the jurisdiction of this court and he has paid court fee of Rs.200/-.
- 9.** The defendant no.6 has filed written statement and he has taken up the specific defence in the written statement by stating that this court has no pecuniary jurisdiction to try the suit and the plaintiff has not valued the suit property as per law.
- 10.** On the basis of pleadings, the issues are framed. The issue relating to pecuniary jurisdiction is also framed as preliminary issue. Therefore, the defendant is directed to make enquiry with regard to said issue. But defendant No.6 is not examined as DW.1. Though he has furnished Gazette Notification. In the Gazette Notification the suit property value is Rs. 14 lakh per acre. The suit schedule property measures 2 acres of land situated at Karanala Village, Tubugere Hobli, Doddaballapura Taluk, bearing Sy.No.14 measuring 2 acres, but plaintiff is claiming 1/6th

share in the suit schedule property. The suit schedule property values Rs. 28 lakhs. According to valuation certificate issued by the Sub-Registrar, 1 acre dry land values Rs.14,00,000/-. But the suit schedule property is measuring 2 acres. The value of suit schedule property is Rs.28,00,000/- plaintiff's $1/6^{\text{th}}$ share values Rs. 4,66,666/-. Therefore, this court has pecuniary jurisdiction to entertain the suit claim. And the plaintiff has paid court fee on the market value of the suit property. Therefore, the suit is maintainable.

- 11.** On perusal of the schedule, it is clear that the suit property is same as stated by defendant No.6. As per Gazette Notification, Rs.14,00,000/- per acre. The suit property is 2 acres. Therefore, the total value of the suit property is Rs.28,00,000/-. The plaintiff's $1/6^{\text{th}}$ share values Rs. 4,66,666/-. The defendant No.6 has filed memo. In the said memo he has mentioned as Rs. 18,00,000/- per acre. The value of suit schedule property is Rs. 36,00,000/-. The plaintiff's $1/6^{\text{th}}$ share values Rs. 6,00,000/-. I have perused RTC. In the said RTC the suit schedule property mentioned as Khushki land. As per Gazette

Notification 1 acre Khushki land values Rs. 14,00,000/-. Therefore, it is not beyond the pecuniary jurisdiction of this court as per the notification. It is comes under the pecuniary jurisdiction of this court. Knowingly, this court has got pecuniary jurisdiction to try the suit in which the value of the suit property is upto Rs.5,00,000/-. Since the market value of the suit property not exceeds the pecuniary jurisdiction of this court. Hence this court has jurisdiction to try this suit.

- 12.** Therefore, I am of the opinion that the suit is maintainable as this court has pecuniary jurisdiction to try the suit. Accordingly, I hold that defendant no.6 has not proved that this court has no pecuniary jurisdiction to try the suit, as per their contention in the written statement.
- 13.** Therefore, Gazette Notification has not supported the version of defendant No.6 with respect to valuation of the suit property. Therefore, I believe the contention of plaintiff. On the basis of available materials on record and according to the reasons stated above, I hold that the suit is maintainable as this court has

pecuniary jurisdiction to try the suit. Hence, I answer the preliminary issues in the Affirmative.

- 14.** For the above said discussion and my findings to the above preliminary Issues, I pass the following :

ORDER

The suit of the plaintiff for partition and separate possession is maintainable as this court has pecuniary jurisdiction to try the suit.

No Order as to costs.

(Directly dictated to the Typist directly in the computer, corrected and then pronounced by me in the Open Court, on this the 5th day of September 2023).

-Sd-

(SUSHMA.M)
II Addl. Civil Judge & J.M.F.C.
Doddaballapura.