

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
HOSAKOTE.**

PRESENT:

Sri. Arun Kumar.G. B.A., LL.B.
Senior Civil Judge & JMFC,
Hosakote.

Dated this the 2nd day of February 2024

O.S.No.937/2022 (Old No.363/2021)

Plaintiff/s : Smt.Lakshamma & Ors.

- V/s -

Defendant/s : Sri.D.M.Jayaramaiah & Ors.

Applicant/s : Sri.D.M.Jayaramaiah

ORDER ON I.A.

The defendant No.1 has filed the above application under Section 151 of CPC seeking permission to construct a residential house in the suit schedule item No.2 property as the same is the self acquired property.

2. In the affidavit annexed to the application it is stated that the plaintiff had filed O.S.No.247/2018 in the first instance before the Civil Judge and JMFC, Hosakote. At that time, it was contended that he had two wives by name Jayamma and Rathamma. During

pendency of the said suit, the plaintiff has included item No.4 of the property and item No.2 is the self acquired property of defendant No.2 which was acquired through gift deed dated 19-3-2017 from his brother by name Ganeshappa. He had no other properties. Therefore, the said property is not the joint family property. Hence, the plaintiffs have no right, title or possession over the said item No.4 property.

The plaintiffs have also filed application under Section 151 of CPC seeking permission to construct a building in item No.4 property which was came to be rejected. The defendant No.1 had availed loan for construction of building. If the house is not constructed, he will cause monetary loss and inconvenience as he is aged about 77 years. Hence, prays to allow the application.

3. The plaintiff filed objections to the above application by denying the entire statement of the defendant and further taken a contention that the defendant has filed similar application seeking permission to construct the building over the suit property in item No.2 property which was came to be dismissed as the same is pre-matured one. Again this application is filed with an untenable reasons. Hence, on other grounds prays to dismiss the application with costs.

4. The defendant in support of his claim, he has produced the copy of gift deed and other revenue records which shows that one

Ganeshappa gifted the suit item No.4 property in favour of defendant No.1.

5. Heard arguments. Perused the records.

6. The points that arise for my consideration are here under:-

1. Whether the defendant No.1 has made out sufficient reasons to allow the application?

2. What Order?

7. My findings to the above said points are as follows :-

Point No. 1 :- In the Negative,

Point No. 2 :- As per the final order for the following;

REASONS

8. **Point No.1** :- The above suit is filed by the plaintiff against the defendants for partition and separate possession in respect of the suit schedule properties and also for declaration that the partition deed dated 30-01-2018 effected between the defendant No.1 to 9 is not binding on the plaintiffs' share.

9. On perusal of available records, it clearly goes to show that the defendant No.1, 3 and 9 and also plaintiffs have filed similar application under Section 151 of CPC seeking construction

of residential house in suit schedule item No.4 property which was dismissed by this court on 3-2-2022. Against the said order, the plaintiff and defendants have not preferred any appeal before the appellate authority.

10. Though, the defendant No.1 has produced the copy of gift deed dated 19-3-2017 and other revenue records to show that one Ganeshappa has gifted the suit property in favour of defendant No.1. It is the contention of the plaintiff that the suit schedule properties are the joint family properties of both the parties, if the defendant No.1 is allowed to construct the building over the suit item No.4 property, it may cause inconvenience to the parties at the time of drawing final decree.

11. At the time of arguments, the counsel for the defendant submits that they are not claiming equity over the said constructed property. But, here in this case, the rights of the parties is not yet decided. Furthermore, the defendant No.1 has also disputed the existence of joint family between the parties. Therefore, before adjudication of the rights of the parties, if the relief claimed in the present application is granted, it may cause injustice to the plaintiff and other defendants. Hence, on the above reasons, I answer Point No.1 in the “**Negative**”.

12. **Point No.2:-** In the light of discussion made above, I proceed to pass the following:-

ORDER

I.A. filed by the defendant No.1 U/ Section 151 of CPC is hereby rejected.

For issues, Call on: 5.03.2024

Senior Civil Judge & JMFC.
Hosakote.