

**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC.,
AT GOWRIBIDANUR**

Dated this 3rd day of June 2022

:: PRESENT ::

SRI. SACHIN P.M.

B.A., L.L.B., (Hons)

***Prl. Civil Judge & J.M.F.C,
Gowribidanur***

ORIGINAL SUIT NO.243/2017

- PLAINTIFF/S:**
- 1.** Smt. Puttamma
Wife of B.N.Gangadharaiah @
Gangadharappa,
Aged about 59 years,
 - 2.** Smt. B.G.Gangamma
Daughter of B.N.Gangadharaiah @
Gangadharappa,
Aged about 40 years,
 - 3.** Smt. Nagarathna G. @ Narathnamma G.
Daughter of B.N.Gangadharaiah @
Gangadharappa,
Wife of Ramachandrappa,
Aged about 39 years,
Resident of 28, Ward No.31,
Manchanbele Road,
Opp. K.E.B. Office, Vappasandra,
Chikkaballapura Town and Taluk,
Chikkaballapura District.

- 4.** Smt. Rekha
Daughter of B.N.Gangadharaiah @
Gangadharappa,
Wife of Govindaraju,
Aged about 30 years,

The plaintiffs No.1, 2 and 4 are
Resident of G.Bommasandra village,
Thondebavi Hobli,
Gowribidanur Taluk.

**(Represented by Sri. Hanumantharaya,
Advocate)**

-Vs-

- DEFENDANT/S:1.** Sri. B.N.Gangadharaiah @ Gangadharappa
Son of Late Narayanaswamy Naidu,
Aged about 67 years,
Resident of G.Bommasandra village,
Thondebavi Hobli,
Gowribidanur Taluk.
- 2.** Sri. K.S.Subramanyam
Son of K.V.Sreenivasan,
Aged about 53 years,
Resident of Muneshwara extension,
Aravindanagara Bajju,
“A” Division, Gowribidanur Town,
Chikkaballapura District.
- 3.** Sri. K.J.Ramakrishnareddy
Son of K.T.Jayaramareddy,
Aged about 64 years,
Resident of House No.61, 1st Cross,

*Mother Theresa Enclave,
Mariyanapalya, H.A. Farm Post,
Bengaluru – 560 024.*

(Defendant No.1 – Exparte;

***Defendant No.3 – represented by Sri.
Chaluvaraj R.)***

PARTIES ON I.A.No.III

APPLICANT/S : *Sri. K.J.Ramakrishnareddy
(Defendant No.3)*

-Vs-

OPPONENT/S : *Smt. Puttamma and others
(Plaintiffs)*

ORDERS ON I.A.NO. III

This application filed by the defendants under Order 7 Rule 11(d) reads with Section 151 of C.P.C, contending that plaint is liable to be rejected in respect of item No.1 of the suit schedule property, since it is barred by law.

2. *This application is supported by an affidavit sworn to by the defendant No.3 wherein it is stated that as per the plaint averments, the defendant No.1 is the husband of the plaintiff*

No.1 and the father of the plaintiffs No.2 to 4 who constitute a Hindu undivided family and that the plaintiffs have claimed that the suit schedule properties are the ancestral and joint family properties of the plaintiffs and the defendant No.1. The defendant No.3 has denied the plaint averments but has admitted that the suit schedule item No.1 was alienated by the defendant No.1 as per the sale deed dated 26/08/2002. It is stated that the defendant No.1 acquired the suit schedule item No.1 through a panchayath parikath dated 03/06/1997 and has alienated the same in favor of third parties.

3. *That the defendant No.3 is in possession of the suit schedule item No.1 by virtue of the sale deed dated 20/11/2014 and paying the requisite taxes and that the revenue records are standing in his name. That the defendant No.2 had installed a bore-well and pump set in the suit schedule item No.1 and that the defendant No.3 has constructed a farm house with ACC sheet and a pump house in the item No.1 by investing a lot of money. That that defendant No.3 has also developed the suit schedule item No.1 by*

obtaining an electric transformer to run the pump-set and also employed laborers for the purpose of cultivating the suit schedule item No.1 with maize, ragi and other crops.

4. *It is further stated that although the plaintiffs have claimed a share in the suit schedule item No.1 in the capacity of co-parceners of the joint family. That by enactment of the Hindu Succession Amendment Act of 2005, Section 6 sub-section (1) was inserted wherein the coparcenary right over a Hindu coparcenary property was declared and conferred on the daughter of a Hindu coparcener. That therefore, till the amendment that came into force on 09/09/2005, the daughter of a coparcener was not a coparcener and the daughter became a coparcener only from 09/09/2005. That as such, the suit schedule item No.1 was sold by the father of the plaintiffs No.2 to 4 on 26/08/2002 and that as on the date of said sale deed, the daughters were not coparceners of the joint family. Hence, this suit is barred by law and the plaint deserves to be rejected. That the proviso to section 6 sub-section (1)*

of the Hindu Succession (Amendment) Act 2005, makes it clear that Section 6 sub-section (1) has no application and that it shall not affect or invalidate any disposition or alienation or partition or testamentary disposition which has taken place before the 20th day of December, 2004. That even according to the statement of the plaintiffs in the plaint, the father of the plaintiffs No.2 to 4 i.e., the defendant No.1 alienated the suit schedule item No.1 on 26/08/2002 itself and thereby the daughters will not get any right in the said property. Under such circumstances, the suit is liable to be rejected as it is barred by law. That the various decisions of the Hon'ble High Court of Karnataka and the Hon'ble Supreme Court of India have laid down that the dispositions or partitions which have taken place before the 20th day of December 2004 will remain unaffected by the amendment of 2005. That as such, the plaintiffs in this case will not get any right over the social property as the same is barred by law.

5. *It is further contended that the defendant No.3 is a bona-fide purchaser of the suit schedule item No.1 which was purchased by*

him from his hard earned money for his own use and cultivation. That when the suit schedule item No.1 one was alienated, the Plaintiff No.4 was a minor and the other daughters were dependant of their father i.e., the defendant No.1 and that the plaintiffs are beneficiaries of the said sale proceeds. That the plaintiffs have suppressed the said facts and after lapse of 15 years, are making an illegal and unjust claim over the property in order to harass the defendant No.3. On these grounds, it is paid that the plaint may be rejected in respect of the suit schedule item No.1 as the same is barred by law.

6. On the other hand, the plaintiffs filed objection stating that the defendant No.3 has filed a false application without having any proper grounds and that the application may be dismissed. That the defendant No.3 has partly admitted the contents of the plaint averments but he has created a story and made false allegations in his affidavit. That the defendant No.3 has admitted the relationship of the plaintiffs and the defendant No.1 and that he has also admitted the share of the plaintiffs in the suit schedule

properties. The plaintiffs have taken a contention that the registered sale deed dated 26/08/2002 is not binding upon the plaintiffs but the defendant No.3 has intentionally denied the contention of the plaintiffs. That the sale deed dated 26/08/2002 is a created document of the defendant No.3 with the defendants No.1 and 2 as the defendant No.1 never delivered the suit schedule item No.1 in favor of the defendant No.2 or in favor of the defendant No.3 but the defendant No.1 has colluded with the other defendants and has created the said document and changed the khatha.

7. *It is further contended that the defendant No.3 has admitted about the coparcenary right of the plaintiffs and the defendant No.1 in the suit schedule properties. That the defendant No.1 and one Mangamma have illegally sold the suit schedule item No.1 which is the ancestral and joint family property of the plaintiffs and the defendant No.1. That the defendant No.2 and 3 are not in possession and enjoyment of the property mentioned in the registered sale deed dated 26/08/2002 That the said registered*

sale deed dated 26/08/2002 is created and concocted by the defendants and that the defendant No.2 never acquired the suit schedule item No.1. That the consideration amount mentioned in the alleged sale deed was never utilized for domestic necessities of the plaintiffs and the defendant No.1. That the registered sale deed dated 12/08/2013 is also a created and concocted document by the defendants in collusion with one R.C Shanthamma and that the said sale deed is not binding on the plaintiffs. That the defendant No.2 never delivered the possession of the property to the said Smt.Shanthamma who is an utter stranger to the suit schedule properties That the said Shanthamma had no manner of right, title or position over the suit schedule properties and that she had no right to alienate the suit schedule item No.1. That the purchaser of the suit schedule item No.1 DC Veerabhadrappe has no right, title or possession over the suit schedule properties and that the registered sale deed dated 13/02/2014 is a created and concocted document. That as the defendant No.3 is not having any right, title or possession over the suit schedule item No.1, the

question of hard earned money does not arise at all. That the defendant No.3 has colluded with the revenue authorities and has created illegal documents by illegally changing the khatha of the suit schedule item No.1. That the defendant No.3 has not spent any money for the development of the property for cultivation and that the defendant No.3 has not cultivated in the suit schedule item No.1. That the plaintiffs are having a right, title, interest and joint possession and a legitimate share in the suit schedule item No.1 but the defendant No.3 has misled the Hon'ble Court in respect of the amended Act. That the Amendment Act stated by the defendant No.3 is not applicable to the case and that the same may be decided by this Court on merits and not at this stage. That the grounds urged by the defendant No.3 in his affidavit are not proper and not applicable.

8. *It is further contended that the plaintiffs never signed any registered sale deed and that the defendant No.3 is also not having any voice with regard to the right of the daughters in the suit schedule properties. That the ratio laid down in the case of*

Prakash v/s Phulavathi is not applicable to the case at hand. That the defendant No.3 is not a bona fide purchase of the suit schedule item No.1 and as he is not in possession and enjoyment of the suits schedule property, the question of investing money for cultivation does not arise. That the question of lapse of time in this suit does not arise as this suit is one for partition and separate possession of the plaintiffs' share in the suit schedule properties. On these grounds, it is prayed that the application may be dismissed.

9. *Heard the arguments on both side. The following point arise for my consideration.*

- 1. Whether the plaint is barred by law under section 6(1) of Hindu Succession(Amendment) Act 2005?*

10. *My findings on above point is in Negative for the following:-*

:: REASONS ::

11. *At the outset, the plaintiffs have filed this suit against the defendants for the relief of partition and separate possession in*

*respect of the suit schedule items No.1 and 2. It is averred in the
plaint that the defendant No.1 Gangadharaiah alias
Gangadharappa is married to the plaintiff No.1 Puttamma and that
they have three daughters by name B.G Gangamma, Nagarathna
G alias Nagarathnamma G and Rekha who are the plaintiffs No.2
to 4 respectively. That the plaintiffs and the defendant No.1
constitute a Hindu undivided joint family and that the suit
schedule properties are the ancestral and joint family properties of
the plaintiffs and the defendant No.1. That the plaintiffs and the
defendant No.1 are in joint possession and enjoyment over the suit
schedule properties and that the suit schedule properties have not
been partitioned. That the defendant No.1 acquired the suit
schedule properties by way of partition between him and his
brothers and accordingly, the khatha has been changed to his
name. That the plaintiffs are having a lawful right, title interest,
joint possession and legitimate share over the suit schedule
properties. That the defendants No.2 and 3 are the utter strangers
to the suit schedule properties and they are not having any kind of*

right, title or possession over the suit schedule properties, but now all the defendants have concluded with each other and changed the khatha and pahani of the suit schedule item No.1 in the name of defendant No.1. That the khatha and pahani does not give any kind of right, title or possession to the defendants No.2 and 3 in the suit scheduled properties. That the defendant No.1 colluded with the other defendants and sold the suit schedule item No.1 in favor of the defendant No.2. On 26/08/2002 without the knowledge, consent and acceptance of the plaintiffs. That the said registered sale deed is a created and concocted document and the same is not binding on the legitimate share of the plaintiffs in the suit schedule properties.

12. *It is averred that the defendant No1 one is not having any independent right to eliminate the suit schedule item No.1 in favor of the defendant No.2 or in favor of any other person. That the plaintiffs are having an equal legitimate share and right over the suit schedule properties but all the defendants have colluded with each other and are trying to knock off the suit schedule properties*

of the plaintiffs. That all the sale transactions of the defendants are void as per law and that such sale transactions are not binding upon the plaintiffs' share in the suit schedule properties. That the plaintiffs recently came to know about the above said act of the defendants and questioned the defendant No.1 with regard to the sale transactions, but the defendant No.1 kept mum. That the defendant No.1 also misused the joint family income arising out of the suit schedule properties and that he also neglected the plaintiffs and that the defendant No.1 has also not arranged the marriage of the plaintiff No.2 who remains an unmarried daughter. That the plaintiffs arranged a panchayath wherein they demanded their share, but the defendant No.1 has refused to partition the suit schedule properties. It is also averred that the defendant No.3 is trying to alienate the suit schedule item No.1 without the knowledge, consent and acceptance of the plaintiffs. Hence, this suit.

13. *While considering the application filed under Order 7 Rule 11 of CPC, the Court has to see whether the plaint discloses a cause*

of action or whether the plaint is barred by any law. Order 7 Rule 11(d) deals with rejection of plaint and it categorically states that a plaint shall be rejected in the following cases:-

(d) where the suit appears from the statement in the plaint to be barred by any law.

14. *What the Court has to refer to are the averments contained in the plaint. If the averments in the plaint shows that the suit is barred by any law, then the Court has no option but to reject the plaint. But while deciding on an application under Order VII Rule 11 of C.P.C, the Court must look into the defence put forth by the defendants in their written statement. In the case at hand, it is averred in the plaint that the cause of action arose in the third week of July 2017 when the defendant No.1 refused to give the plaintiffs their share in the suit schedule properties. Whether the plaintiffs entitled to relief of partition and whether the plaintiffs are entitled to a share in the suit schedule properties is a matter of trial and that cannot be decided on this application.*

15. *The defendant No.3 has filed this application contending that the suit is barred under section 6(1) of Hindu succession (Amendment) Act, 2005. Section 6(1) of Hindu Succession (Amendment) Act, 2005 is reproduced as under:-*

Section 6: Devolution of interest in coparcenary property.

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,

(a) by birth become a coparcener in her own right the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

16. *Keeping in mind the aforementioned provision, let us examine the contents of the plaint. It is well settled principle of law that while deciding an application and Order VII Rule 11 of CPC, the Court must look into the averments contained in the plaint and not the contents of the written statement of the defendant. In order to ascertain whether the suit is barred by law or whether the plaint is liable to be rejected under a law. This is a suit for partition and separate possession in respect of the suit schedule items No.1 and 2 filed by the plaintiffs No.1 to 4 against the defendants No.1 to 3. The bone of contention of the defendant No.3 who is the applicant in this case is that the plaint is liable to be rejected as it is barred under the proviso appended to Section 6 sub-section (1) of the Hindu Succession (Amendment) Act of 2005. The proviso to section 6 sub-section (1) of Hindu Succession (Amendment) Act of 2005 provides that any disposition or alienation, including any partition or testamentary disposition of property which had taken place before the 20th day of December 2004 shall not be affected by the Amendment Act of 2005. The defendant No.3 has contended that*

the defendant No.1 who is the father of the plaintiffs No.2 to 4 alienated the suit schedule item No.1 on 26/08/2002 itself and that as the said sale transaction took place before the commencement of the Hindu Succession (Amendment) Act of 2005, the plaintiffs have no right or share in the suit schedule item No.1. The defendant No.3 has also contended that the plaintiffs No.2 to 4 had no coparcenary rights as on the date of the said sale deed executed by the defendant No.1 dated. 26/08/2002.

17. *It is true that a daughter of a Hindu Co-parcener was granted coparcenary rights by the amendment of Section 6 of the Hindu Succession Act in the year 2005, through the insertion in Amendment Act 2005, which came into effect from 09/09/2005, but it needs to be borne in mind that prior to the Hindu Succession Amendment Act of 2005, a daughter of a copartner in Karnataka was already granted the status of a coparcener through the Hindu Succession (Karnataka Amendment) Act of 1990. Thus, Section 6A of the Hindu Succession (Karnataka Amendment) Act of 1990 reads as follows.*

Section 6A. Equal rights to daughter in coparcenary property.-

Notwithstanding anything contained in section 6 of this Act,-

(a) in a joint Hindu family governed by Mitakshara law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property as she would have had if she had been a son inclusive of the right to claim by survivorship and shall be subject to the same liabilities and disabilities in respect thereto as the son;

(b) at a partition in such Joint Hindu Family the coparcenary property shall be so divided as to allot to a daughter the same share as is allottable to a son:

Provided that the share which a predeceased son or a predeceased daughter would have got at the partition if he or she had been alive at the time of the partition, shall be allotted to the surviving child of such predeceased son or of such predeceased daughter:

Provided further that the share allottable to the predeceased child of the predeceased son or of a predeceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such predeceased child of the predeceased son or of such predeceased daughter, as the case may be;

(c) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (a) shall

be held by her with the incidents of co-parcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by will or other testamentary disposition;

(d) nothing in clause (b) shall apply to a daughter married prior to or to a partition which had been effected before the commencement of Hindu Succession (Karnataka Amendment) Act, 1990.

18. *Section 6 clause (a) of the Hindu Succession (Karnataka Amendment) Act of 1990 clearly states that a daughter of a Hindu Coparcener becomes a coparcener by birth. The Hindu Succession Karnataka Amendment Act of 1990 received the assent of the president on 28/07/1994 and it was published by the Karnataka government in the Official Gazette on 30/07/1994. The said amendment to the Hindu Succession Act brought about by the Karnataka government remained in force till the Hindu Succession Amendment Act of 2005 which came into force on 09/09/2005. Therefore, a daughter of a Hindu Coparcener in Karnataka also had Coparcenery right in the Hindu Joint Undivided Family by virtue of the Karnataka Amendment Act 1990 until the amendment*

of the Hindu Succession Act in 2005. In the case at hand, the contention of the defendant No.3 that the plaintiffs were not coparceners as on the date of the sale deed dated 26/08/2002 does not hold any water as the plaintiffs had coparcenary rights in the Hindu undivided joint family properties of the defendant No.1 by virtue of the Hindu Succession (Karnataka Amendment) Act 1990. Therefore, the contention of the defendant No.3 that the plaint is liable to be rejected as it is barred under the proviso appended to section 6, sub section (1) of the Hindu Succession Amendment Act is unfounded.

19. *The defendant No.3 has further contended that he is a bona-fide purchaser of the suit schedule item No.1 property and that the plaint may be rejected in respect of the suit schedule item No.1 property. It is well settled principle of law that a court cannot reject a plaint in part. But the plaint must be read as whole and rejected as a whole. The prayer of the defendant No.3 that the plaint be rejected with respect to the suit schedule item No.1 cannot be entertained as a plaint cannot be split into parts where*

one part is kept open for trial and the other part is rejected under order 7 rule 11(d) of CPC. The burden of proof is cast upon the defendant No.3 to prove that he is a bona fide purchaser of the suit schedule item No.1 and this burden of proof can only be discharged by the defendant No.3 by leading evidence at this stage of trial and not at this preliminary stage. The defendant No.3 has also contended that the plaint is liable to be rejected as it is barred by time and the law of limitation, but it is a well settled principle of law that there is no limitation to file a suit for partition, as the cause of action in a suit for partition is a recurring cause of action. Under such circumstances, the averments contained in the plaint do not disclose any ground for rejection of the plaint under order 7 Rule 11 of CPC and the contentions raised by the defendant No.3 in his application do not sustain the prayer for rejection of plaint. Therefore, I find no reasons to reject the plaint. Accordingly, this point answered in Negative and I pass the following:-

:: ORDERS ::

*I.A.No.III filed by the defendant
No.3 under Order VII Rule 11(d) read
with section 151 of CPC is dismissed
with cost of Rs.500/-.*

*(Typed by me, corrected and then pronounced by me in the
Open Court on this 3rd day of June 2022).*

Sd/-
(SACHIN P.M)
*Prl. Civil Judge & JMFC.,
Gowribidanur*