



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C., AT MUDIGERE**

: PRESENT :

**SRI. JAYAPRAKASH V., B.A., L.L.B.,
SENIOR CIVIL JUDGE & JMFC,
MUDIGERE**

O.S. 41/2021

DATED THIS THE 12th DAY OF OCTOBER 2023

PLAINTIFF: 1. Smt. Anusooya,
W/o Late Chandrashekar Raj,
Aged about 57 years,

2. Vinay Kumar,
S/o Late Chandrashekar Raj,
Aged about 29 years,
Both are R/o No.3,
Vasthu Nagara,
Chikka Tegooru Road,
Electronic City-560100,
Bengaluru.

(By Sri. K.A.M., Advocate)

V/s.

DEFENDANT: 1. Smt. Savithramma @ Sharadamma,
W/o Krishnaraju,
Aged about 80 years,



2. Sri. Kiran,
S/o Krishnaraju
Aged about 45 years,

3. Smt.Malathi
W/o Dasharatha Raju,
Aged about 45 years,

4. Smt. A.K.Prema @ Raji,
W/o Chandrashekar
Aged about 60 years,

All are R/o Bilagula Village
Hesgal Post
Kasaba Hobli
Mudigere Taluk.

(D1, 2 and 4 By Sri. S.B.A., Advocate)
(D3 by Sri. D.S., Advocate)

IA. NO.III

Applicant :- Smt. Savithramma and others

V/s.

Opponents:- Smt. Anusuya and another

ORDER ON I.A.NO. III FILED BY THE DEFENDANT No.1
UNDER ORDER VI RULE 16(a) (b) AND (c) R/W SEC. 151
OF CPC



1. Defendant No.1 has filed IA No.III to strike off the pleadings in relation to the schedule 'B' property from the plaint and strike off prayers at Paragraph 8(a) and (b) and to strike off reference to schedule 'B' property in paragraph 8(c) as the same are unnecessary vexatious and delay the fair trial of the suit and is also an abuse of the process of the Court.

2. In the affidavit annexed to the application defendant No.1 stated that, plaintiffs have filed the suit against defendants for the relief of declaration that the gift deed in SR No. 1238 of 2019-20, dated 19/11/2019, executed by defendant No.1 infavour of defendant No.2 is not binding on plaintiff and declaration that the sale deed in SR NO. 688 of 2012-13, dated 30/1/2012, executed by defendant No.1 infavour of defendant No.3 is not binding on plaintiffs and for partition and separate possession of their $\frac{1}{4}^{\text{th}}$ share in the plaint 'A' and 'B' schedule properties and mense profit.



3. Further defendant No.1 stated that plaintiffs have no manner of right over suit 'B' schedule property and are not entitled to the same, in any manner whatsoever, which fact the plaintiffs are aware of and despite the same, have sought for reliefs against the suit 'B' schedule property.

4. Defendant No.1 further stated that the suit 'B' schedule property is her sole and absolute property. In the year 1960 she had filed suit against Smt. Gowramma and others before the Munsif Court, Chikmagalur in O.S. No. 40/1960 with respect to the possession and ownership of certain properties including the schedule 'B' property. During the pendency of the said suit plaintiff and defendants in the said suit entered compromise petition and in terms of the said compromise agreement the court has decreed the suit. As per the decree the defendant No.1 is the sole and absolute owner of item No.1 and 2 of the suit 'B' schedule property. Pursuant to the decree in O.S. No. 40/1960 the revenue records of item No.1 and 2 of the suit schedule property had



been mutated in the name of defendant No.1. The item No.1 and 2 of the 'B' schedule property constitute the absolute property of defendant No.1 as per section 14 of the Hindu Succession Act 1956.

5. Defendant No.1 further submitted that plaintiffs are fully aware of these facts but deliberately included item No.1 and 2 of the suit 'B' schedule property in the present suit. Hence, defendant No.1 prays to struck out the pleadings relating to the plaint 'B' schedule properties. Defendant No.1 further stated that since the item No.1 and 2 of the plaint 'B' schedule properties are the absolute property of defendant No.1 she has got every power to execute gift or sell the said properties in favour of any person as per her wish. Hence, the item No.1 of the plaint 'B' schedule property has been gifted by her in favour of her son i.e., defendant No.2 under the registered gift deed dated 14/10/2019 and she had conveyed the item No.2 of the 'B' schedule property to defendant No.3 under the registered sale deed dated 30/01/2012. Thereafter the revenue documents



pertaining to item No.1 and 2 of plaint 'B' schedule property stands in the name of defendant No.2 and 3 respectively. As per Section 14 of Hindu Succession Act any properties acquired by a female Hindu before or after commencement of the Act shall be held by her as full owner thereof and not as limited owner.

6. Defendant No.1 further stated in the year 2007 she conveyed the coffee plantation in Sy.No. 14/2 to the third party for a valuable consideration there after out of the said consideration she has given a sum of Rs.3,00,000/- to the plaintiff No.1 and her husband namely M.K. Chandrashekar Raj and paid sum of Rs.50,000/- to the husband of plaintiff No.1 and deposited a sum of Rs.25,000/- in the name of plaintiff No.2 for his education. The defendant No.1 further stated that there was a panchayath held on 7/7/2011 between the defendant No.2 and 4, plaintiff No.1 and husband of the plaintiff No.1 and the defendant No.1. In the said panchayath the plaintiffs have agreed that in future they shall have no right, title or interest whatsoever in nature with respect to



the properties held by defendant No.1 and they have affixed their signature in the panchayath letter. The plaintiffs have not entitled for any share as prayed in the plaint. The prayer sought in the plaint in relation to the item No.1 and 2 of 'B' schedule property is unnecessary. The plaintiffs with an intention to harass and knock of the item No.1 and 2 of the plaint schedule 'B' property has cleverly drafted the plaint to create the illusory cause of action with respect to item No.1 and 2 of the schedule 'B' property. Defendant No.1 further stated that she is aged about 82 years and the plaintiffs have approached the court with unclean hands hence, prays to allow the application.

7. On the other plaintiff filed the objection to the I.A. No. III and contended that application filed by the defendant No.1 is not maintainable either in law or on facts. The application is filed with an intention to drag on the proceedings and defer justice to the plaintiff. The defendants have taken the false contention at this belated stage when the matter



is posted to cross examination of the plaintiffs. The 1st defendant can very well put forth her defence by way of cross examination of witness and then Court will decide about the claim of plaintiffs on the plaint 'B' schedule properties.

8. Plaintiffs further stated that under Hindu Law there is provision as to blending of properties. The self acquired properties if blended if the other joint family properties then same will also become the joint family property. If the self acquired and separate properties are enjoyed together along with other joint family properties it will lose its nature of self acquisition, but assume the character of joint family property. So, also the both the plain 'A' and 'B' schedule properties have been blended together and put in the common hatch pot and possession and enjoyment was is in common, the same is evidenced by joining the plaintiff No.1 and her husband Chandrashekar Raj Urs in the sale deeds executed while selling the other family properties. If at all the said properties sold are the self acquisition of



defendant No.1 then there was no need of join the plaintiffs or her husband as parties to said sale deed and there was no necessity of payment of portion of sale consideration to them. The rulings of Hon'ble Supreme Court referred by defendant No.1 in para No. 12 and 13 of the affidavit of defendant No.1 (Affidavit filed in support of I.A.) are not applicable to the facts of the present case. The age of defendant No.1 cannot be considered while decreeing the suit on merits. Hence, plaintiff prayed to dismiss the application.

9. Heard on both side.

10. The following points arise for my consideration.

1) Whether defendants have made out grounds to strike out the pleading as sought in the IA No. III ?

2) What order?

11. Upon appreciation of rival contention in the arguments advanced by the both parties, my findings to the above points as follows:-



Point No. 1 : In the Negative

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

REASONS

12. POINT NO.1 :-

Defendant No.1 has filed the present application under order VI rule 16 (a), (b) and (c) R/w Section 151 of CPC to strike out pleadings in relation to the plaint 'B' schedule property from the plaint. The defendant No.1 contended that plaintiff has filed the suit for declaration that the gift deed dated 19/11/2019 registered as document No. 1238 executed by defendant No.1 in favour of defendant No.2 is not binding on the plaintiff and declaration that the sale deed dated 30/01/2012 executed by defendant No.1 in favour of defendant No.3 is not binding on plaintiff. Plaintiff also sought for partition and separate possession of his share in the plaint 'A' and 'B' schedule property. The defendant No.1 contended that the plaint 'B' schedule property is the absolute property of defendant No.1. Defendant No.1



contended that in the year 1960 she had filed suit against the one Gowramma and others in O.S. No. 40/1960 with respect to the possession and ownership of certain properties including the plaint 'B' schedule property. In the said suit they have entered into compromise and the court passed compromise decree. In the said compromise decree the defendant No.1 has acquired the item No.1 and 2 of the plaint schedule property and she is the sole and absolute full owner of item No.1 and 2 of the plaint 'B' schedule property as per section 14 of Hindu Succession Act. The plaintiff fully aware that they have no manner of right, title or interest over the item No.1 and 2 of the plaint 'B' schedule deliberately included the said property in the suit. The defendant No.1 contended that as per section 14 of the Hindu Succession Act defendant No.1 is the absolute owner of item No.1 and 2 of the suit schedule property and she has executed the gift deed in favour defendant No.2 and executed sale deed in favour of defendant No.3 respectively pertaining to



the item No.1 and 2 of the plaint 'B' schedule property.

13. The plaintiff contended that the plaint 'A' and 'B' schedule properties are joint family properties of late Krishnaraj i.e., the husband of defendant No.1. Said Krishnaraj acquired plaint 'A' schedule property through his mother and for improvements of the plaint 'B' schedule property Krishnaraj has invested his salary and pension benefits. The said Krishnaraj was worked as driver in health department. Krishnaraja had 3 children by name M.K. Prema @ Raji, Chandrashekar Raj and Kiran. Krishnaraj died on 2007 after that Chandrashekar Raj also died in the year 2013. The plaintiff No.1 is the widow and plaintiff No.2 is the son of late Chandrashekar Raj. It is the contention of the plaintiff is that late Chandrashekar Raj has invested huge amount towards the improvements of plaint schedule properties and doing cultivation of plaint 'B' schedule property. The plaint 'B' schedule property was blended with 'A' schedule property and possessed



and enjoyed as joint family properties. Plaintiffs contended that they are in constructive possession of the suit schedule property. Hence sought relief of partition and cancellation of alleged gift deed and sale deed executed infavour of defendant No.2 and 3 respectively. According to the defendant No.1 the suit 'B' schedule property is the absolute property of defendant No.1 hence she has executed the gift deed infavour of defendant No.2 and executed sale deed infavour of defendant No.3.

14. In the present case the plaintiff has taken the contention that the plaint 'B' schedule property was blended with the plaint 'A' schedule property and possessed and enjoyed as joint family property. Therefore, plaintiffs are entitled for share in the suit schedule property. On perusal of the record it reveals that as per the compromise decree defendant No.1 acquired suit 'B' schedule property. Whether the plaint 'B' schedule property was blended with 'A' schedule property cannot be decided in the present stage. Whether plaintiffs got right in the plaint 'B'



schedule property cannot be decided at the present stage while deciding the application filed U/order VI rule 16 (a), (b) and (c) of CPC. At this stage this court cannot conduct mini trial. To decide the rights of the parties over the plaint schedule property it requires full fledged trial.

15. The plaintiff has taken specific contention that the plaint 'B' schedule property blended with plaint 'A' schedule property and the same is possessed and enjoyed as joint family properties. The separate property of a member of a Joint Hindu Family may be impressed with the character of joint family property if it is voluntarily thrown by him into the common stock with the intention of abandoning his separate claim therein. The separate property of a Hindu ceases to be a separate property and acquires the characteristics of a joint family or ancestral property not by any physical mixing with his joint family or his ancestral property but by his own volition and intention by his waiving and surrendering his separate right in it as separate



property. Whether the plaint 'B' schedule property was blended with the plaint 'A' schedule property and whether plaintiff have right over the suit schedule property are to be decided by the court. Without trial at this stage this court cannot come to the conclusion that whether the plaint 'B' schedule property is blended with the joint family properties and treated as part of joint family properties. At this stage this court cannot decide the right of the parties over the plaint 'B' schedule property. The present application is filed by the defendant No.1 when the matter is posted for cross examination of PW-1. The defendant No.1 can foot forth his defense by way of cross examination of witness. If the IA No. III is dismissed no hardship will be caused to the defendant No.1. To avoid multiplicity of proceedings this court inclined to dismiss the IA No. III. Accordingly, Point No.1 is answered in Negative.

15. Point No.2:- For the aforesaid reason and discussion, I proceed pass the following: -



O R D E R

I.A. No. III filed by the defendant
No.1 Under Order 6 Rule 16(a), (b) &
(c) R/w Sec. 151 of CPC is hereby
dismissed.

(Dictated to the stenographer, transcribed by her, corrected and then
pronounced in the open court on this the 12th day of October 2023.)

(JAYAPRAKASH V.)
SENIOR CIVIL JUDGE & JMFC,
MUDIGERE.

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