

IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C
GUNDLUPET

Present

**Sri. H.P. Mohan Kumar, B.Sc, L.L.B.,
Prl., Civil Judge and JMFC.,
Gundlupet.**

Dated this the 22nd day of October 2020.

O.S.No.93/2018

Plaintiff : Smt. Veena.B.V

V/S

Defendant : Sri. Shyam.S.P

Parties to I.A No.2

Applicant :
Defendant

Sri. Shyam.S.P
S/o Parashivamurthy
Aged about 40 years,
R/at Somahalli Village,
Begur Hobli,
Gundlupet Taluk
and # 36, 3rd stage,
Kanakadasa Nagara, Datgalli,
Mysore City

(By Sri. B.P.D and S.N Advocate)

V/S

Opponents : : **Smt. Veena.B.V**
Plaintiff W/o Shyam.S.P
Aged about 40 years
R/at # 8, F Street,
1st Main, Hosaguddahalli
Mysore Road,
Bengaluru.

(By Sri. H.V.P Advocate)

ORDERS ON IA No.2 FILED U/O 7 R 11 (a) OF CPC

The defendant has filed the application under order 7 rule 11(a) of CPC with a prayer to reject the plaint for not disclosing the cause of action.

2. In the affidavit the applicant has stated that the defendant has filed a false case without there being any cause of action. The plaintiff is not his legally wedded wife and there is no marital status by and between plaintiff and himself. The plaintiff has created documents and filed the suit with respect the suit schedule property. It is also stated that the plaintiff has no rights over the suit schedule properties. It is also stated that the defendant has married one B.V. Jayanthi long back and the said marriage was registered before the Sub Registrar. The said B.V. Jayanthi is none other than the sister

of plaintiff. The plaintiff has created photos of the defendant and she has taken undue advantage. The plaintiff has also filed a petition u/s 125 of Cr.PC in Crl.Misc No. 727/2017 before the Hon'ble Prl. Family Judge, Bengaluru. The plaintiff has no cause of action to continue the suit. If the suit continues the precious time of the court will be wasted. If the application is allowed no hardship would be caused to the plaintiff. Per contra if the application is not allowed he will be put to great hardship. **With these averments defendant prayed to allow the application and reject the plaint.**

3. On the other hand the plaintiff has filed her detailed objection statement to the application. In the objection statement she has denied the entire affidavit averments and inter-alia contended that she is the legally wedded wife of defendant and their marriage took place on 17.05.2017 at the residence of plaintiff under the customs prevailed in the family. The plaintiff and defendant lived happily for four years. Thereafter the defendant without any reasons he has tortured the plaintiff mentally and physically and also treated the plaintiff in a disrespect manner. The plaintiff tolerated

with a fond hope that the defendant will mend his behavior. However, the hope of plaintiff went in vein. The defendant has not given maintenance only with an intention to harass the plaintiff. The plaintiff has a right to claim maintenance against the defendant. The present suit filed by the plaintiff to safe guard her rights regarding claiming of maintenance over the suit schedule property. The sister of plaintiff has been hand in glove with defendant in order to cheat the plaintiff. In the said regard a criminal case is pending before the Hon'ble 4th JMFC at Mysore. The sister of plaintiff by name B.V. Jayanthi is not the legally wedded wife of defendant. The defendant tried to alienate the suit schedule properties in order to cheat the plaintiff, then only the plaintiff filed the present suit. It is also stated that maintenance petition filed in C.Mis No. 727/2017 is pending for adjudication before the Hon'ble family court at Bengaluru. To create charge over the suit schedule property, this is the court having jurisdiction.

With these contentions plaintiff prayed to reject the application.

4. Heard arguments of Sri. H.V.P for plaintiff. However, no representation from defendant side. Hence, arguments of defendant on IA No.2 was considered as not addressed. Perused the materials available on record.

5. Now, the points that emerge for the consideration of the court in IA No.2 are as hereunder:

1. Whether the defendant has made out a ground to reject the plaint for want of cause of action ?

2. What order?

6. My findings to the above referred points are as hereunder:

Point No.1: In the **Negative**

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

REASONS

7. Point No.1: A meticulous reading of plaint averments it is clear that plaintiff has alleged that she is the legally wedded wife of defendant. The defendant has not given maintenance. In this regard maintenance petition is pending before the Hon'ble Judge Family Court at Bengaluru. It is needless to

mention that the plaintiff has filed the suit in claiming the relief of maintenance and also to create charge over the suit schedule property. The suit schedule properties are situated within the jurisdiction of this court.

8. A careful perusal of affidavit averments it is crystal clear that defendant has specifically stated that plaintiff is not his legally wedded wife and on the other hand B.V. Jayanthi is his legally wedded wife. The plaintiff has created the photos and filed the present suit.

9. It is crystal clear that at one end the plaintiff has alleged that she is the legally wedded wife of defendant but the defendant has alleged that plaintiff is not his legally wedded wife and she has created the documents. Further more the plaintiff has pleaded that to safeguard the maintenance amount charge has to be created. This shows that there is a cause of action. It is settled position of law that cause of action is a bundle of facts. The plaintiff has made out a prima-facie case to go for trial. In other words full fledged trial is absolutely required to arrive at a just and necessary conclusion with regard to the matter in issue. Therefore, in

my considered opinion if the application is allowed definitely it will leads to multiplicity of proceedings. Hence, application filed by the defendant to reject the plaint for not disclosing the cause of action deserves to be rejected. Accordingly, I answered Point No.1 in the **Negative**.

10. Point No.2:- Having thus discussed in detail, this court proceeds to pass the following.

ORDER

**The application filed by the
defendant U/O 7 R 11(a) of CPC is
hereby rejected with cost of Rs.
300-00.**

(Judgment dictated to the stenographer on computer typed by him, revised, corrected & then pronounced by me in open court on this the 22nd day of October 2020.)

(H.P. MOHAN KUMAR.)
Prl., Civil Judge & JMFC,
GUNDLUPET.

