

ORDER ON ISSUSE NO.3

The present suit is filed seeking for a decree of declaration that the suit properties are joint family properties. Consequently it is sought for a declaration to declare right relinquishment deed allegedly created by defendant no.1 in her favour on 30.01.2020 as illegal, null and void and not binding on the plaintiffs undivided share. As a consequential relief the plaintiffs have sought for a decree of perpetual injunction restraining alienation by any of the defendants.

2. The contentions raised by the plaintiff are denied and disputed by the defendant by filing written statement. Having perused both the pleadings this Court on 18.10.2021 framed issue no.1 to 7 and direct to both the parties to submit their arguments on issue no.3 and 5 which are considered as preliminary issue. Despite grant of sufficient time neither plaintiff and defendant appeared nor there was any representation for them. Hence, arguments are taken as heard.

3. Issue no.3 framed by this Court on 18.10.2021 reads as under;

“3. Whether the relief claimed in para no.13(c) of the plaint for grant of decree of “perpetual injunction restraining defendants or anybody acting on their behalf not to alienate or create encumbrance or change records and disturbing joint possession of plaintiffs” is liable to be struck off from the plaint as per Order VI Rule 16(c) of CPC for being impermissible under law? “

4. Having perused the pleadings in the plaint and considering the relief mentioned in para no.13(c) relating to consequential relief

of perpetual injunction, this Court has perused the provisions of **Sections 10 of Transfer of Property Act**. According to the said Section any condition or limitation absolutely restraining the transfer of any property is considered to be void. The object of the said provision is to enable transferability of the property. If the prayer as sought by the plaintiff in para no.13 (c) of the plaint is granted then it would have same effect as that of imposing condition permanently restraining alienation. As such it would be counter to the spirit of law and such pleading results in abuse of process of Court as per **Order VI Rule 16(C) of CPC**. Hence, this Court is of the considered view that the relief in para no.13(c) of the plaint is liable to be struck down. Hence, I answer issue no.3 in the **Affirmative** and proceed to pass the following;

ORDER

*Issue no.3 as framed on 18.10.2021 is answered in the **Affirmative**.*

Consequently the relief sought in para no.13(c) is hereby struck down as per VI Rule 16(c) of CPC.

Since the plaintiffs have challenged the relinquishment deed dated 30.01.2020 which is registered at the office of Sub Registrar, Navalgund, ad-voluerum Court fee on the market value of the said property is required to be paid as per Section 38 of Karnataka Court Fee and suit Valuation Act. Hence, plaintiff is directed to furnish the document depicting the market value of suit property and also to correct value of the suit

*and also make submissions with respect to
the payment of proper Court fee.*

*For compliance by the plaintiff and
hearing on issue no.5, call on 08.02.2023.*

(Dictated to the stenographer, transcribed and typed by her, the transcript revised, corrected and then pronounced by me in the Open Court on this **23.01.2023**).

(Santhosh M.S.)
Civil Judge and J.M.F.C.,
Navalgund.