

IN THE COURT OF THE PRL.CIVIL JUDGE AND JMFC.,
ARASIKERE.

PRESENT: SRI.AMARANATHA B.N.
B.A. LL.B
Prl. Civil Judge & J.M.F.C.
Arasikere

O.S.No.46/2016

DATED ON THIS THE 7th DAY OF NOVEMBER 2023

Plaintiffs

:

1. Sri.Manjunatha,
S/o Basavanna,
aged about 45 years,
2. Sri.Siddaiah S/o Basavanna,
aged about 40 years,
3. Rathish S/o Basavanna,
aged about 38 years,

All are R/o Sanklapura Village,
Kasaba Hobli, Arasikere Taluk.

(By Sri.JKK Advocate)

V/s.

Defendants

:

1. Chandraiah S/o Boralingegowda,
Dead, Represented by his legal heir,
i.e., defendant No.7 who is already on record.
2. Honnuraiah S/o Boralingegowda,
Dead, represented by his legal heirs,
(a) Mahesh S/o Honnuraiah,
aged about 36 years,
Dead, Represented by his legal heirs,

(a) Shaila W/o Mahesh,
Major,

(b) Manjunatha S/o Mahesh,
Major,

Both are R/o Sanklapura Village,
Kasaba Hobli,
Arasikere Taluk,

3. Shivalingaiah S/o Late. Boralingegowda,
Major,
4. Mahadevaiah S/o Late. Boralingegowda,
Major,
5. Renukaiah S/o Late. Boralingegowda,
Major,
6. Mallikaiah S/o Late. Boralingegowda,
Major,
7. Rajashekhar S/o Chandraiah,
Major,
D1 to D7 are R/o Sanklapura Village,
Kasaba Hobli, Arasikere Taluk.
8. Ravish S/o Thimmegowda,
aged about 40 years,
R/o Garden house,
Sanklapura Village,
Kasaba Hobli, Arasikere Taluk.

**(D1, D7 and D8 By Sri.PV Advocate
D3 to 6 Exparte)**

Proposed Defendant /Applicant

- :1 Sri.M.T. Ashoka,
S/o Thimmegowda M.S,
R/o Mallaghatta Village,
Chikkamangaluru Taluk.

(By Sri.NSL, Advocate)

RANK OF THE PARTIES IN NO.VII

Applicants : Sri.Manjunatha

V/s

Opponent : M.T. Ashoka

i.	Provision under which the application is filed	Under Order I Rule 10 of CPC
ii	Relief sought for	To permit them to come on record as defendant No.9
iii	The date on which the application is filed	16.06.2023
iv	Number of the application	VII
v	The date on which the order objections are filed by different opponents	19.03.2022
vi	The date on which the order were passed on the said applications	07.11.2023
vii	Stage of the suit	Issue notice to proposed defendant no.2(b)

ORDERS ON IA No.VII

1. The plaintiff has filed this application under Order I Rule 10 of CPC with a prayer to permit the plaintiff to implead the proposed defendant as defendant in the above case.
2. The plaintiff no.2 in the affidavit filed in support of the application stated that the plaintiffs have filed this suit for the relief of partition and separate possession in respect of the suit schedule

properties during the pendency of the suit the defendant no.1(a) with sole intention to defeat the shares of the plaintiff sold Item no.3 of the suit schedule property to the proposed defendant. Hence the proposed defendant is proper and necessary party to the suit, by stating so filed this application.

3. Upon receipt of notice the proposed defendant appeared and opposed the application by contending that the application filed by the plaintiff is not maintainable and liable to be rejected and denied the contents of the affidavit. Further contended that the plaintiffs and defendants are no way related to each other as the father of the plaintiff namely Basavaiah and father of the defendant namely Basavalingegowda divided about 75 to 80 years ago and they are residing separately. Further contended that the suit land bearing Sy.No.5/1B measuring 5 acres 10 guntas situated at Sanklapura Village purchased by the father of the defendant under the registered sale deed dated 24.11.1950 from one Balegowda S/o Ningappa. Hence the suit land bearing Sy.No.5/13 is the self acquired property of father of the defendant. After the death of father of the defendant the khatha of the said property mutated in the name of mother of the defendant. When the defendant No.1(a) filed an application to mutate khatha of the

Item no.3 of the suit schedule property in his name the plaintiffs have filed objections to the same. The Tahasildar after hearing both the parties order to mutate the khatha in the name of defendant No.1(a) and the plaintiffs have not challenged the said revenue entries. Thereafter the defendant no.7 sold the Item no.3 of the suit schedule property in favour of the proposed defendant. Further contended that the plaintiff with sole intention to trouble and harass the proposed defendant has filed this application. Hence the application filed by the plaintiff is liable to be rejected, by stating so prays to reject the application.

4. Heard the arguments of Sri.JKK advocate for the plaintiff and Sri.BMP advocate for proposed defendant on I.A.No.VII.
5. Perused the materials on record. Upon perusing the materials on record the following points arises for my consideration:-

POINTS

1. Whether the proposed defendant is a proper and necessary party to the suit?
 2. What order ?
6. Upon on hearing the arguments on IA No.III and on perusal of the materials on record my answer to the above points is as under:-

Point No.1 : In the Negative

Point No.2 : As per final order
For the following:

::REASONS::

7. **POINT NO.I:-** The plaintiffs have filed this suit against the defendants for the relief of partition and separate possession and mesne profits in respect of suit schedule properties by contending that the plaintiffs and defendants are the joint family members and suit schedule properties are the ancestral and joint family properties of plaintiffs and defendants and there is no partition in the family and the plaintiffs are entitled for share in the suit schedule properties.
8. Upon service of summons the defendant no.1 and 7 appeared and contested the suit by filing the written statement contending that the plaintiffs and defendants are the divided family members and there is no joint family. Further contended that about 40 years ago partition taken place in the family and they are leaving separately. Further contended that Nanjappa filed a suit for partition as per O.S.No.29/1980, said suit decreed later on he has taken possession of his share. Hence question of effecting partition once again does not arise. Further contended that Item no.3 of the suit schedule property purchased by the father of the defendant No.1 under the registered sale deed dated 24.11.1950.

Hence plaintiffs are not entitled for any share in the said property. Further contended that the plaintiffs earlier to filing this suit filed a suit in O.S.No.438/2015. Hence plaintiffs have not approached the Court with clean hands. Hence the suit of plaintiff is liable to be dismissed by stating so prays to dismiss the suit.

9. Upon perusing the materials on record it is noticed that the plaintiffs have filed this suit for the relief of partition and separate possession by contending that the plaintiffs and defendants are the joint family members and the suit schedule properties are the ancestral and joint family properties of the plaintiffs and defendants. On the other hand the defendant no.1 and 7 contended that the plaintiffs and defendants are the divided family members and the Item no.3 of the suit schedule property is the self acquired property of father of defendant No.1. The plaintiffs by virtue of filing the application prays to permit them to implead the proposed defendant who has purchased Item No.3 of the suit schedule property during the pendency of the suit.
10. It is relevant to note that the plaintiffs have filed this suit for the relief of partition and separate possession in respect of the suit schedule properties. The proposed defendant being the purchaser

of Item no.3 of the suit schedule property during the pendency of the suit is not a necessary party to the suit decide the shares of the parties. The proposed defendant can claim equities in the final decree proceedings. Hence this Court is of the opinion that the proposed defendant is not necessary party to the suit.

11. Further it is relevant to note that the proposed defendant has purchased the suit schedule property during the pendency of the suit. Hence sale deed executed by the defendant no.7 in favour of proposed defendant is subject to result of the suit. Hence the presence of the proposed defendant is not necessary in a suit for partition to decide the shares of the parties.
12. Upon perusing the materials on record and in view of the reasons stated above this Court is of the opinion that in order to decide the shares of the parties in the suit schedule properties the presence of the proposed defendant is not necessary. ***Hence I answer Point No.1 in the Negative.***
13. **POINT No.2:-**In view of the reasons on point No.1, I proceed to pass the following,

ORDER

I.A. No.VII filed by the plaintiff under order I

Rule 10 of CPC is here by rejected.

(Dictated to the stenographer, computerized by her, corrected by me and then pronounced in the open court today on this the 7th day of November 2023)

(AMARANATHA B.N.)

Prl. Civil Judge & JMFC
Arasikere.