

## **ORDERS ON MEMO**

The plaintiff has filed the memo for not press the suit in respect of item No.4 of the suit schedule property which is standing in the name of defendant No.2 bearing Sy.No.69 measuring 9 acres situated at Manchanayakanahalli Village, Kasaba Hobli, Belur Taluk.

2. The learned counsel for defendants have filed objection to the aforesaid memo.

3. Heard learned counsel for the plaintiff and defendants.

4. After perusal of materials on record, the following points would emerge for consideration:

1) Whether the plaintiff has made out grounds to allow the memo?

2) What order?

5. My answer to the above points are as under:

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

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

### **REASONS**

#### **6. POINT No.1:**

The plaintiff has filed present memo to not to press the suit in respect of item No.4 of the suit schedule property standing in the name of defendant No.2.

7. Per contra, the defendants have filed objections. In the objection, the defendants have denied the entire averments

stated in the memo. The defendants contended that item No.4 of the suit schedule property has been purchased by father of plaintiff Basavegowda during the minority of the 2<sup>nd</sup> defendant, out of the money earned from the joint family property. Therefore, the said property is joint family property. The memo filed by the plaintiff for not press the suit in respect of item No.4 of the suit property is not in accordance with law and same is liable to be dismissed. It is contended that if item No.4 of the suit property is dismissed, the suit of the plaintiff is not maintainable. If item No.4 of the suit property is dismissed, the rights of other property in respect of said property will be deprived. The plaintiff has filed present suit with an intention to knock off the suit schedule property which is purchased by father of plaintiffs and defendants namely Basavegowda and Shivarudregowda in the name of 2<sup>nd</sup> defendant. Hence, the defendants prays to dismiss the memo.

8. The plaintiff has filed the present suit against the defendants for the relief of partition and separate possession in respect of the suit schedule properties. After issuance of summons, the defendants have entered their appearance through their counsels and filed written statement. In the written statement, the defendants have denied entire case of the plaintiffs and therefore, prays to dismiss the suit. Now when the case is posted for hearing on preliminary issue, the plaintiff has filed present memo to not to press the suit in respect of item No.4 of the suit schedule property.

9. The defendants contended that the plaintiff has not shown any sufficient reasons for dismiss the suit in respect of item No.4 of the suit schedule property. Further the defendants

contended that if the suit of the plaintiff is dismissed, in respect of item No.4 of the suit schedule property, the rights of the other defendants in respect of above said property will be deprived. Further, the plaintiff by troubling the defendants has wasted the precious time of Hon'ble Court and therefore the memo filed by the plaintiff is liable to be rejected.

10. It is pertinent to note that the plaintiff has filed the present suit against the defendants for partition and separate possession in respect of suit schedule properties. When the case is posted for hearing on preliminary issue, the plaintiff has filed present memo to not press the suit in respect of item No.4 of the suit schedule property. The defendants have filed written statement and prays to dismiss the suit. When the defendants have strongly filed written statement and praying for dismissal of the suit, if the plaintiff not pressed the suit in respect of item No.4 of the suit property, what is the injustice will be caused to the defendants has not been stated in the objection filed by the defendants. Because the defendants have strongly denied the case of the plaintiff and therefore prays to dismiss the suit. Therefore, if the memo filed by the plaintiff is allowed and not pressed the suit in respect of item No.4 of the suit schedule property, there is no injustice or loss will be caused to the defendants. Merely because the rights of the other defendants will be deprived in respect of item No.4 of the suit property and therefore, memo filed by the plaintiff for not pressing the suit in respect of item No.4 of the suit property is not a ground to reject the memo filed by the plaintiff. Because the plaintiff is dominus litus and he is the master of the suit. The plaintiff is the person who has carriage and control of the action. The plaintiff is vested

with the prerogative to chose the remedy and the forum. Therefore, the plaintiff can file the memo to not to press the suit in respect of item No.4 of the suit schedule property. In the event of suit is not pressed by the plaintiff in respect of item No.4 of the suit schedule property, no injustice or loss will be caused to the defendants. As such, this court is of the considered opinion that the memo filed by the plaintiff is maintainable. Hence, for the reasons and discussions made supra, point No.1 is answered in the **Affirmative.**

**11. Point No.2:** For the foregoing reasons and discussions made supra, I proceed to pass the following:

**ORDER**

The Memo filed by the plaintiff is hereby allowed.

The suit of the plaintiff in respect of item No.4 of the suit schedule property is dismissed as not pressed.

**(Nagendra)**  
**Civil Judge & JMFC, Belur.**

