

**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE
& J.M.F.C., CHANNARAYAPATNA**

**PRESENT: OONKAR MURTHY K.M.
B.Sc., L.L.M.,
PRINCIPAL SENIOR CIVIL JUDGE
CHANNARAYAPATNA**

DATED ON THIS 27th DAY OF NOVEMBER 2019

O.S.No.59/2017

Plaintiff : Smt.Kempamma W/o Huchegowda

V/s

Defendants : Sri.K.P.Balakrishna and others

PARTIES TO I.A.5

Applicant/Defendant No.1: Sri.K.P.Balakrishna

V/s

Respondent/Plaintiff : Smt.Kempamma

ORDER ON I.A.No.5

The defendant No.1 has filed I.A.No.5 under Order 7 Rule 11 R/w Sec.151 of CPC for rejection of the plaint in view of the effective partition that had already taken place in the year 1996 through oral partition and also the panchayath palupatti. Also the plaintiff was not having any right of partition at the time of filing the suit and therefore has sought to reject the plaint.

2) In the accompanying affidavit it is stated that, the plaintiff has filed this suit against the defendants for the relief of partition and separate possession. The defendant No.1 is the only contesting defendant. The marriage of the plaintiff was conducted in the year 1971 i.e., 48 years prior to filing of this suit. During the lifetime of their father, in the year 1996 the defendant No.1 and his brothers along with their father got divided the joint family and ancestral properties through oral partition. Only with a view to get the katha changed for their respective properties and to avoid future complication, panchayath palupatti dt.12.06.2000 was executed. Since from the date of oral partition, he along with his brothers are in separate possession and enjoyment over their respective allotted properties. Katha of the properties have also been changed to their respective name in the year 2001. They have improved their respective properties. His brothers have already sold some of the properties through registered sale deeds and have also raised loan from financial institutions by mortgaging some of the properties.

Since the plaintiff and his other brothers started to interfere with his absolute possession and enjoyment over the properties, the defendant No.1 has filed suit in O.S.13/2017 seeking relief of declaration and permanent injunction in respect of his separate properties. After filing the suit, as a counter blast, the other defendants in collusion with the plaintiff have got filed the present suit.

Their father died in the year 1996 after oral partition. The

plaintiff is very much aware of the oral partition and panchayath palupatti. Even though the plaintiff knows that the defendant No.1 and his other brothers are in possession of their respective allotted shares, the plaintiff has filed this mischievous suit without any rights. Since oral partition had taken place in the year 1996 and panchayath palupatti has been executed on 12.06.2000 in pursuance of the oral partition, the plaintiff is not at all having any right of partition and therefore has prayed to reject the plaint.

3) On the contrary, the plaintiff has filed her objections stating that the partition alleged is not a registered partition or the partition has not been affected through decree of a civil court. Therefore the contention of the applicant that there was already partition of the family properties through oral partition and subsequently reduced into writing through panchayath parikath during the year 2000 is not at all tenable. The plaintiff has filed this application to drag on the matter. The plaintiff is entitled for partition in all the suit schedule properties. Hence, has prayed to reject the application.

4) Heard arguments of both the counsels and perused the materials on record.

5) Now the point that arise for my consideration is;

*1. Whether the suit filed by the plaintiff
disclose cause of action ?*

2 What order?

6) My findings on the above points are as under:

Point No.1: Negative

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

-.:REASONS:-

7) **Point No.1:** The plaintiff has filed this suit for partition and separate possession of her 1/56th share in all the suit schedule properties by metes and bounds. In the plaint it is stated that the father of the plaintiff and the defendants by name Puttaswamygowda died during the year 1996 and has left behind the suit schedule properties inherited by him at Didiga and Kammanaghatta villages, Hirisave hobli, Channarayapatna taluk which consists of good yielding coconut trees. Their mother Boramma died in the year 2006. The marriage of daughters were performed during the lifetime of their father.

The defendant No.1 being the elder male member of the family and also being the member of taluk panchayath was looking after the management of the family properties. There is no partition taken place in the family through registered partition deed during the lifetime of the father of the plaintiff. The plaintiff's father had died as a member of Hindu undivided family. The other brothers of the plaintiff are in control of the 1st defendant. The 1st defendant has amassed huge properties and

manipulated the records in the name of his son to defeat the claim of plaintiff and her sisters. The suit schedule properties have been acquired by 1st defendant with the income derived from Hindu ancestral and joint family. The plaintiff has issued legal notice to her brothers i.e., defendants 1 to 6 demanding partition and separate possession of her legitimate share. In spite of it the defendants have failed to allot share to her. On the other hand the 1st defendant has filed a suit for declaration and injunction against the plaintiff and other sisters and also against defendants 2 to 6 in O.S.No.13/2017 before the Senior Civil Judge Court at Channarayapatna. Since the defendants have declined to allot legitimate share of the plaintiff and her sisters in the suit schedule ancestral and joint family properties, the plaintiff has filed this present suit.

8) The averments of the plaint manifestly disclose that the plaintiff is claiming share in the ancestral joint family properties. It is alleged that the propositus of the family Puttaswamygowda had inherited the properties at Didiga and K.Kammanaghatta villages and had died as a member of Hindu joint family without any partition in the family. Under Hindu Law, succession opens on the death of the propositus. It is alleged that the propositus Puttaswamygowda died in the year 1996. The daughters during the year 1996 cannot be considered as coparceners. However the daughters have got right in the notional share of their father i.e., in the notional share of propositus Puttaswamygowda. The fact

of oral partition and thereafter subsequently reducing into a panchayath palupatti dt.12.06.2000 is a matter to be proved during trial by the defendant No.1.

9) Under Order 7 Rule 11 of CPC, the court can reject the plaint where the plaint does not disclose a cause of action. A duty is casted on the court to reject the plaint if it finds that the facts pleaded in the plaint do not disclose the cause of action. Though the defendant may indicate to the court by an application that the plaint is liable to be rejected under Order 7 Rule 11 of CPC, it is primarily the duty of the court to decide the matter and for that reason it is the plaint alone which is relevant for decision under Order 7 Rule 11 of CPC. Under the circumstances it cannot be said that the averments of the plaint is devoid of cause of action. The contentions of the defendants that there was a prior partition in the year 1996 and the same was reduced under the panchayath palu patti dt.12.06.2000 cannot be considered while deciding the application under Order 7 Rule 11 and the same is subject to proof during the trial. Under the circumstances, the plaint averments manifestly discloses cause of action and therefore the contention of the defendants that the plaint is to be rejected in view of the oral partition and subsequently reduction of the same into panchayath palupatti dt.12.06.2000 and also the contention that the plaintiff was having right to seek partition during filing of the suit does not hold any water. Under the circumstances, I hold **Point No.1 in the Negative.**

10) **Point No.2:** In view of the discussion made while answering the point No.1, I proceed to pass the following:

ORDER

*I.A.No.5 filed by defendant
No.1 under Order 7 Rule 11 R/w
Sec.151 of CPC for rejection of the
plaint is hereby rejected.*

(Dictated to the stenographer directly on computer, typed by her, corrected and then pronounced by me in the open court on this 27th day of November 2019)

(OONKAR MURTHY K.M.)
Principal Senior Civil Judge and JMFC
Channarayapatna

(Order pronounced in the open
court Vide separate order)

ORDER

*I.A.No.5 filed by defendant
No.1 under Order 7 Rule 11 R/w
Sec.151 of CPC for rejection of the
plaint is hereby rejected.*

(OONKAR MURTHY K.M.)

Principal Senior Civil Judge and JMFC
Channarayapatna