

KAHS610054882014



IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,
AT CHANNARAYAPATNA

PRESENT:- Sri. DEEPU B.C., B.A.L., LL.B.,
Prl. Civil Judge & JMFC,
Channarayapatna.

Dated this the 16th day of January 2023

O.S. NO.655/2014

Plaintiff/s : N. Krishnaswamy
S/o Late P.B. Nanjaiah

V/s

Defendant/s : Jayashree Jayanth
W/o Jayanth Balakrishna
and another

PARTIES TO I.A. No. 27

Applicant/s :- Jayantha Balakrishna
(GPA holder for defendant No.1)

V/s

Opponent/s :- N. Krishnaswamy
(Plaintiff)

ORDER ON I.A. No.27

The instant application is filed by the GPA holder of the defendant No.1 U/o.14 Rule 5 of C.P.C. praying to frame the following proposed additional issues for the proper adjudication of the matter in dispute.

i. Whether D-1 proves in her counter claim that she is entitled to a share in the suit properties, including any rights of pre-emption that she may exercise in the event of alienation of the suit properties to third parties?

ii. Whether D-1 proves that the plaintiff should be non-suited in respect of the latter's filing of the injunction suit in accordance with the provisions of the law?

2. In support of the application affidavit is filed, wherein, the the GPA holder of the defendant No.1 has sworn to fact that the plaintiff has filed the suit for permanent injunction in respect of suit schedue properties. The defendant No.1 has filed a counter claim on 22-09-2018 seeking direction from the court for Permanent Injunction restraining the plaintiff from interfering with her joint possession and enjoyment of

the suit schedule properties. The suit schedule proeprties are ancestral and undivided coparcenery properties, in which the defendant No.1 has right, title and interest. The plaintiff had alienated one of the coparcenary suit properties without the knowledge and consent of the defendant No.1 during the pendency of the suit. Therefore, in the light of necessary implication, the first defendant claims her preemption rights over the suit schedule properties as per Sec.22 of Hindu Succession Act 1956. Hence, the proposed issues are need to be framed for proper adjudication of the matter in dispute. Accordingly, he prayed to allow the application.

3. Per contra, the counsel for the plaintiff has resisted the application by filing the objection statement, wherein he has denied the entire averments made in the affidavit annexed to the application and contended that the proposed additional issue No.1 is not based on any pleadings or prayer of the defendants in the counter claim. The additional issue No.2 is vague, ambiguous and does not assist the court in any manner to adjudicate the

facts in issues in the present proceedings. The present suit is for bare injunction, restraining the defendants from interfering the plaintiff's possession. In the counter claim, the defendants do not expressly claim any right of pre-emption in respect of the suit schedule properties nor is there any prayer for declaration of such right and the only prayer in the counter claim is for Permanent Injunction against the plaintiff. Hence, the only fact in dispute which needs to be adjudicated in the present proceedings is with respect to actual possession of the suit schedule properties. As such, the proposed additional issue No.1 is not required to be framed. Further, the proposed additional issue No.2 is not required to frame, if at all the plaintiff would be non-suited as per law, the defendants ought to have filed an application U/o.VII Rule 11(d) of C.P.C. Further, affidavit accompanying the application is completely bald and does not in any manner specify as to how these additional issues are relevant to adjudication of the disputes between the parties and there is no such implication in the pleadings filed by the defendant No.1. So, under these circumstances the proposed

additional issues are not required to be framed for adjudication of the matter in dispute. Accordingly, he prayed to dismiss the application.

4. Heard on both sides and perused the materials on record.

5. The points that arise for consideration of this court are as under :

1. Whether the GPA holder of defendant No.1 has made out sufficient grounds to frame the proposed additional issues ?

2. What order?

6. The answers to the above points are as here under:-

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

Point No. 2 :- As per final order.

For the following :

:: REASONS ::

7. Point No.1 :- As could be seen from the record, the instant suit has been filed by the plaintiff against the

defendants for the relief of prohibitory permanent injunction, restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule properties. In pursuance to the suit summons, the defendants appeared through their counsel and filed their written statement. Upon considering the rival pleadings of both parties, this court has framed five issues, accordingly, the plaintiff has led his evidence and matter was posted for defendants' evidence. At this juncture, the defendant No.1 has come up with this application.

8. As stated supra, as per GPA holder of defendant No.1, since the suit schedule properties are ancestral and undivided co-parcenary properties, being an elder daughter of the plaintiff, the defendant No.1 has right, share and interest thereof, but the plaintiff without the knowledge and consent of the defendant No.1 has sold one of the co-parcenary property. Being a one of coparcener, the defendant No.1 is having pre-emption right over the suit schedule properties. Hence, it required to be framed the additional issues with regard to preemption right.

9. On the other hand, as per the plaintiff, there is no specific pleading or prayer in the counter claim of the defendant No.1 with respect to pre-emption right over suit schedule properties and she is seeking the relief of prohibitory permanent injunction against the plaintiff in respect of same suit schedule properties. The only fact in dispute which needs to be adjudicated with respect to actual possession over the suit schedule properties. So, under these circumstances, the question of framing the issues with regard to preemption right of the defendant No.1 does not arise at all.

10. It is pertinent to note here that as per Rule 5 of order 14 CPC, the court may at any time before passing a decree amend the issues or frame additional issues for determining the matters in controversy between the parties. Herein this case, as aforesaid both the plaintiff and defendant No.1 are seeking the relief of prohibitory permanent injunction against each other in respect of suit schedule properties. Though the defendant No.1 in her counter claim has asserted that the suit schedule properties are ancestral and undivided co-parcenary properties of hers and the plaintiff and the plaintiff without her knowledge and consent has sold one of the co-parcenary property, she has not pleaded anything as

to her pre-emption right over suit schedule properties and even she is not claiming any reliefs as to right of pre-emption or any share over the suit schedule properties. So under these circumstances, the question of framing the proposed additional issue No.1 is not required to be framed.

11. In so far as proposed additional Issue No.2 is concerned, the defendant No.1 has nowhere clearly stated about the necessity of framing of the said issues. Herein, the fact in issue between the parties as to actual possession of the suit properties and both plaintiff and defendant No.1 are seeking relief of bare injunction in respect of same suit schedule properties. Further it is well settled principle of law the scope of suit for injunction is very limited and the possession of the parties only plays a vital role. So under these circumstances, without any pleadings or relief, the framing of the proposed issues would lead to deviate the entire suit. Moreover the proposed issues are not at all required for determination of dispute between the parties. However, since the defendant No.1 is seeking a relief of prohibitory permanent injunction against the plaintiff in respect of suit schedule properties in her counter claim, an additional issue in respect of counter claim relief may be

framed. Except said issue, it is need not to frame the proposed additional issues. Therefore, in view of above discussion, this court is of opinion that the defendant No.1 has failed to made out valid grounds to frame the proposed additional issues. Thus, **point No.1 is answered in the Negative.**

12. Point No. 2 : In the light of forgoing discussion, this court proceeds to pass the following:

ORDER

I.A. No.27 filed by the G.P.A. holder of defendant No.1 U/o.14 Rule 5 of C.P.C. is hereby rejected.

No order as to costs.

(Dictated to the Stenographer, transcribed and typed by her, corrected and then pronounced by me in open court on this **16th day of January 2023.**)

(Deepu B.C.)
Prl. C.J. & JMFC,
Channarayapatna.