

KAHV300002552019



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C AT HANGAL**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Senior Civil Judge & JMFC.,
Hangal.

Dated this the 19th day of November, 2022.

OS No.09/2019

- Petitioners:
1. Smt.Shamshunissa, W/o Abdulgani Gulamalishanavar, Aged 58 years, Household work, R/at Darga Hangal, Hangal Taluk, Haveri District.
 2. Irshad Ahamed, S/o Abdulgani Gulamalishanavar, Aged 40 years, Business, R/at Darga Hangal, Hangal Taluk, Haveri District.
 3. Smt.Sajida Begum, W/o Abdulkhader Kotwal, Aged 43 years, Household work, R/at Darga Hangal, Hangal Taluk, Haveri District.
 4. Smt.Gousiyabanu, W/o Hazaresab Ramgeri, Aged 31 years, Household work, R/at Darga Hangal, Hangal Taluk, Haveri District.

-Vs-

- Respondents:
1. Smt.Ayeshabi, W/o Abdulgani Mujawar, Aged 38 years, Household work, R/at H.No.661/E-F, Molla, St, Jose de Areal, Salcet, Goa.

2. Rafik, W/o Abdulgani Mujawar,
Aged 19 years, Student,
R/at H.No.661/E-F, Molla, St,
Jose de Areal, Salcet, Goa.
3. Smt.Fatimabi, W/o Abdulgani
Gulamalishanavar, Aged 65 years,
Household work, R/at H.No.661/E-F,
Molla, St, Jose de Areal, Salcet, Goa.

ORDERS PASSED ON IA NO.IV

When the case was posted for cross-examination of PW1, the learned counsel for the plaintiffs filed I.A.No.IV under Section 151 of CPC seeking direction from this court to direct defendants No.1 and 2 to deposit the rent amount accumulated from the suit schedule 'D' to 'J' properties which are commercial building into the court till the disposal of the suit.

2. The application is supported with the affidavit of the 2nd plaintiff stating that, the suit schedule 'D' to 'J' properties are the commercial building consisting of stalls and rented houses. Defendants No.1 and 2 are getting rent of Rs.70,000/- per month and total yearly rent comes to Rs.8,60,000/- and they are utilizing the said amount for their own purpose, with an intention to delay the plaintiffs claim or to avoid any process of the court and to obstruct the plaintiffs from executing the decree. They are about to dispose off whole or part of any rent and it is necessary at the time of execution of the decree. Hence, it is very much necessary to direct defendants No.1 and 2 to deposit rent into the court accumulated from the said suit schedule 'D' to 'J' properties.

If the said amount are not deposited they will be put to great hardship. Hence, prayed to allow the application.

3. After filing of the application the defendants filed the objection contending that, the application is not maintainable under law or on facts. The plaintiffs have filed the suit against the defendants seeking the relief of partition and separate possession. The suit schedule 'D' to 'J' properties are self acquired properties of defendants No.1 and 2 and the plaintiffs have got no share in the said properties. It is also contended that, the original propositus of the family by name Abdulgani went to Goa in empty hands about 30 to 35 years back and he has purchased suit schedule 'E, H, I, J, K, L' properties out of his hard earned money and it is his self acquired properties and the plaintiffs have got no share over it. It is also contended that, the suit schedule 'D, H, G' properties are the self acquired properties of the 1st defendant. Since, the share of the parties have not been determined or declared the application is not maintainable. Hence, prayed to reject the application with costs.

4. Thereafter, heard arguments addressed by learned counsels for the plaintiffs and the defendants and perused the case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

POINTS

1. Whether the plaintiffs have made out sufficient grounds to direct defendants No.1 and 2 to deposit the rent received from suit schedule 'D' to 'J' properties into the court?
 2. What order?
5. The findings of the above points are as hereunder:

Point No.1: In the Negative

Point No.3: As per the final order
for the following:

REASONS

6. **Point No.1:** The plaintiffs have filed the suit against the defendants seeking the relief of partition and separate possession of their 5/7th share in the suit schedule properties and to declare that the alleged gift deed dated 10-02-2016 is not binding on the plaintiffs. They have also sought for profits/rent accrued from the suit schedule 'E' to 'J' properties in their favour till delivery of possession. It is also plaintiffs case that, the original propositus by name Abdulgani had three wives i.e., 1)Shamshunnissa 2) Khatunbi and 3) Fatimabi. Defendants No.1 and 3 are the sole legal heirs of 1st wife of the original propositus. It is also stated that, the suit schedule properties are the tenancy in common properties of the defendants and plaintiffs. It is their specific case that, after purchasing the land the 1st defendant constructed building and defendants No.1 and 2 are receiving the rents from the said buildings and they are utilizing it.

7. On the other-hand the defendants denied the case of the plaintiffs and specifically contended that, the suit schedule properties are the self acquired properties of the defendants No.1 and 2 and the plaintiffs have got no share over the suit schedule properties. It is pertinent to note that, on the basis of the rival pleadings of the parties this court has framed the issues on 23-08-2019. Thereafter, the 2nd plaintiff stepped into the witness box and examined himself as PW1 and got marked five documents as per Ex.P1 to Ex.P5. It is pertinent to note that, since 28-10-2019 the case is being posted for cross-examination of PW1. In the meantime the defendants have filed I.A.No.III under Order 6 Rule 17 R/w Section 151 of CPC which came to be allowed. Thereafter, the plaintiffs filed this application under Section 151 of CPC to direct defendants No.1 and 2 in order to deposit the rents accumulated from the suit schedule 'D' to 'J' properties.

8. It is pertinent to note that, all the suit schedule properties are the building properties. In the description of the suit schedule properties it is mentioned that, the suit schedule 'D' to 'J' properties are the shops and RCC building. It is to be noted that, the plaintiffs have not sought for accounts. They have only sought for the relief of mesne properties upon the suit schedule properties and also sought for rents. It is very pertinent to note that, though the defendants No.1 and 2 are receiving the rent it has been utilized for the purpose of improvement of the suit schedule

properties. Furthermore, the share of the plaintiffs has not been declared till now. As per defendants No.1 and 2 the suit schedule 'D' to 'J' properties are their self acquired properties. Such being the case the matter is to be proved after conclusion of trial and if it is found that the plaintiffs are having share over the suit schedule properties definitely they will get an opportunity for an enquiry regarding accounts. As such this court comes to the conclusion that, at this stage the plaintiffs have not made out any grounds to direct defendants No.1 and 2 to deposit the rents into the court. Furthermore, there is no document before the court to show about the rent received by the defendants. Hence, point No.1 is answered in the Negative.

9. **Point No.2:** In view of the reasons discussed above, this court proceeds to pass the following:

ORDER

IA No.IV filed by the plaintiffs under Section 151 of CPC is hereby rejected with costs of Rs.250/-.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 19th day of November, 2022.)

Sd/-
(Anitha)
Senior Civil Judge and JMFC,
Hangal.