

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

Present : Smt. Fakirawwa Kelageri,
B.A.,LL.B.,
Civil Judge & JMFC, Hangal.

O S No.69/2020

Dated: This, the 13th Day of November, 2020

Plaintiffs : 1) Mehaboobjan S/o Abdulsattar Mokashi
Age: 33 years, Occ: Agriculturist, R/o
Kanchagar Oni, Hangal, Tq: Hangal, Dist:
Haveri and others.

-VS-

Defendants: 1) Abdulsattar S/o Hasanmiyya Mokashi
Age: 66 years, Occ: Agriculturist, R/o
Kanchagar Oni, Hangal, Tq: Hangal, Dist:
Haveri and others.

INTERLOCUTORY APPLICATION NO.II

Applicant/s: 1) Mehaboobjan S/o Abdulsattar Mokashi
and others.

-VS-

Opponents: 1) Abdulsattar S/o Hasanmiyya Mokashi
and others.

ORDERS ON IA NO.II

This is an application filed by Plaintiff No.3 U/o 6 Rule 17 R/w Sec.151 of C.P.C., requesting the court to permit the Plaintiffs to amend the plaint as shown in the schedule to the application.

2. In the affidavit, in support of the application, it is stated by the plaintiffs that, the above suit is for the relief of

declaration and permanent injunction. The plaintiffs are requesting the court to permit them to carry out the amendment of plaint as shown in the schedule to the application. If the present application allowed, it will not cause any hardship to other side. If the present application is not allowed, then the Plaintiffs will be put to irreparable loss and hardship. With these averments this Plaintiff has sought for allowing the I.A.No.II.

3. The above application is objected by the counsel for the defendants on the grounds that application filed by the plaintiffs is not maintainable under law. Further the amendment as prayed by the plaintiffs is not binding on the defendants and at this stage the amendment cannot be made. Further the suit of the plaintiffs suffers from mis-joinder of necessary parties and they have not paid proper court fee. If proposed amendment is allowed, nature of suit will change. Further the plaintiffs in order to harass these defendants and also drag on the matter have filed the present application and on the other grounds it is requested by the defendants to dismiss the application with cost.

4. Heard the Learned Counsels appearing for the parties and perused the materials on record.

5. Now the following points arise for consideration of this Court are.

Point No.1: Whether the Plaintiffs have made out grounds for allowing I.A.No.II and thereby permitting them to carry out the proposed amendment as sought for?

Point No.2 : What Order?

6. The findings of this Court on the above said points are as under:

Point No.1 : In the Affirmative

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

REASONS

7. It is stated in the affidavit filed in support of application that, the plaintiffs have filed this suit for relief of declaration and consequential relief of permanent injunction and also sought for declaration to declare that sale dated 24-07-2019 is null and void. In this regard necessary amendment to the plaint has to be carried out.

8. Learned counsel for plaintiff argued that the plaintiffs and defendants are Governed by Mohammedan Law. Hence it is necessary to amend the plaint and prayer column properly in order to avoid unnecessary complications. The proposed amendment is not allowed the plaintiff will be put to hardship and injury on the other hand no hardship or injury would be caused to other side. The proposed amendment does not change the nature of suit or cause of action. It is only by mistake there were mistakes crept in plaint. The proposed amendment does not change nature of suit or cause of action and the plaintiff has not amend main relief and sought to amend ancillary relief only.

9. Learned counsel for defendant No.2 much argued that the party who seeks reliefs itself not binding on him indirectly seeking cancellation of the said document has to pay court under Sec.38 of KCF and SV Act only. The plaintiffs

sought for relief of declaring that the registered agreement of sale in favour of defendant No.2 is not binding on them. That means indirectly they are seeking cancellation of this registered agreement of sale. Therefore, the plaintiffs have to pay court U/sec.38 of KCF and SV Act. Further argued that sale consideration amount mentioned in the agreement of sale is 21,00,000/- to an extent of 3A-00Gs. The plaintiffs have filed this suit for declaration pertains to an extent of 1A-20Gs. The valuation of property will come Rs,10,50,000/-. So suit of the plaintiffs is not maintainable.

10. Further argued that where there is inherent lack of jurisdiction in the court to entertain the suit itself, it cannot make any order for amendment of the plaint to bring the suit within its jurisdiction. In support of his argument the learned counsel for defendant No.2 relied ruling reported in ***AIR 1983 Patna 53 between Pandit Rudranath Mishir and Others v/s Pandit Sheo Shankar Mishir and Others.***

11. The above suit is for the relief of declaration and consequential relief of permanent injunction against the defendants. After concluded hearing on IA No.I on behalf of defendants, the plaintiffs are come up with this application to amend prayer column stating that plaintiffs and defendants are Governed by Mohammedan law. Therefore due to by mistake the plaintiffs have mentioned in the plaint as ancestral instead of common in tenant and to amend in prayer column (b) agreement of sale is null and void in stead of agreement of sale is not binding on plaintiffs.

12. On perusal of pleadings of parties and records, it could be seen that the plaintiffs have filed this suit seeking the relief of declaration to declare that, they are owners of suit schedule property based on gift deed and also sought for declaration to declare that, the agreement of sale dated 24-07-2019 is null and void. Now the plaintiffs come up with this application to amend the prayer column (b) as the agreement of sale is not binding on plaintiffs instead of null and void. But these prayers are one and the same.

13. It is settled position of law that where a person who is not a party to the instrument seeks for a declaratory relief to the effect that the said instrument is not binding on the plaintiff, the valuation under u/sec 24(d) of the Act can be attracted, whereas a party to a document, who seeks for relief regarding the said document would be required to value the plaint in terms of sec.38 of the Act. Admittedly the plaintiffs are not parties to that registered agreement of sale.

14 The plaintiffs have sought for declaratory relief. The plaintiffs have valued subject matter of suit as per section 24(b) R/w 7(2)(B) of Karnataka court fees and suit valuation act. Admittedly suit schedule property is agricultural property, same is revenue paying land. As such the plaintiffs paid court fees under section 24(b) R/w 7(2)(B) of Karnataka court fees and suit valuation act, same is proper. But Sec.38 of the Act is applicable to this case. Hence suit filed by the plaintiffs is maintainable. The defendant No.3 is at liberty to file suit for specific performance of contract against the defendant No.1 to execute agreement of sale deed.

Admittedly the plaintiffs are not parties to that agreement of sale. Hence said declaration suit filed by the plaintiffs based on oral gift deed is maintainable. I am in respectful agreement with the principles laid down in the aforesaid ruling laid down by learned counsel for defendants. But the said decision is not applicable to this case Because the facts and circumstances of above decision and facts and circumstances of this case are different. It is pertinent to note that trial is yet to be commenced. As such at this stage, if the application filed by the plaintiffs is allowed, no prejudice would be caused to the defendants and the nature of the suit does not change. Therefore, an opportunity requires to be given to the plaintiffs to prove their case. Therefore, in the interest of justice and equity, the application filed by the plaintiffs deserves to be allowed. **With these observations, this Court has answered Point No.1 in the Affirmative.**

15. Point No.2: For the aforesaid discussion on Point No.1, this Court proceeds to pass the following:

ORDER.

I.A.No.II filed by the Plaintiff No.3 U/O 6 Rule 17 R/w Sec.151 of C.P.C is hereby allowed on cost of Rs.100/-.

The Plaintiffs are permitted to carry out necessary amendment to the pleadings, as prayed for in the application.

The Plaintiffs are directed to carry out necessary amendment to the plaint as prayed for in application

and furnish amended copy of the same within next date of hearing.

(Dictated to the Stenographer directly on computer, revised by me and then pronounced in the open court this the 13th day of November 2020).

(Fakirawwa Kelageri)
Civil Judge & JMFC, Hangal.