

IN THE COURT OF CIVIL JUDGE AND JMFC, KITTUR.

PRESENT: **MARUTHI.K.**

B.A.LL.B.

Civil Judge and JMFC, Savanur.

O.S. No. 129/2010

Dated, this day of 31st day of March 2021

Plaintiffs :1. Smt. Chandravva W/o Govindappa Lamani,
Since dead by her LR's,

1A.Shivakka W/o Ramannna Lamani,
Age : 39 years, Occ : Coolie,
R/o Bevinahalli, Tq : Savanur,
Dist : Haveri, and others.

V/s

Defendants : Smt. Gangavva W/o Balappa Bikkimatti,
Age : 75 Years, Occ : Household work,
R/o : Shirabadagi, Tq : Savanur,
Dist : Haveri and others.

Parties to the Application

Applicants/Plaintiff No.3 : Smt. Neelavva W/o Mahadevappa
Lamani and others

V/S

Opponents/Defendant No.1 : Gangavva W/o Balappa Bikkimatti
and others.

ORDERS ON IA-XIX

The plaintiffs have filed present application U/Order XIV Rule 5 of CPC seeking framing of additional issues.

2. Along with application counsel for plaintiffs files memo of facts. In memo of facts it is stated that plaintiffs have filed this suit seeking partition and separate possession of suit properties. Defendant No.2 to 6 appeared through their counsel and filed written statement. In their written statement they have contended at para No.10 that the deceased Fakkirappa S/o Jatreppa Lamani had treated Mallappa as his son and stands as guardian to the Mallappa because of love and affection he got entered the name of Mallappa to the suit properties. It is further stated in memo of facts that the burden to prove this facts is upon the defendants. To prove the said facts which was contended by defendants it is just and necessary to frame additional issues casting burden upon defendants. The additional issues are necessary to find out real controversy between the parties. Without said issues it is very difficult to come at the proper conclusion. Hence, prayed to allow the application.

3. Counsel for defendants filed objections to the present application. In objections it is stated that application filed by the plaintiff is false, frivolous and vexatious. Hence, same is not tenable in law. The alleged facts can be decided on the issues already framed. Framing of additional issues is not necessary, It is only defense of the defendant. The burden is already casted on

plaintiff to prove that the suit properties are their ancestral properties. The application filed just to drag on the proceedings. Hence, prayed to reject the application with cost.

4. Heard counsel for plaintiff on present application. In spite of providing sufficient opportunity counsel for defendants has not chosen to canvas arguments on application. Hence, arguments of defendants to the present application is taken as nil.

5. The following points have arise for my consideration;

POINTS

1. Whether plaintiffs made out sufficient grounds to allow the IA No.19?
2. What order ?

6. My findings to the above points are as under;

Point No.1 : In the Affirmative

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

REASONS

7. Point No.1 :- The plaintiffs have filed this suit seeking the relief of partition and separate possession of their 1/6th share over suit schedule properties. It is the version of plaintiffs that Fakkirappa S/o Jatreppa Lamani was the absolute owner in possession of suit properties. Fakkirappa the propositus had son by name Somappa @ Somaleppa S/o Fakkirappa Lamani, who died

earlier to his father. The wife of Fakkirappa by name Lachchavva died long back leaving behind plaintiffs and defendants as their legal heirs. Somappa and his wife Lachchavva had six children, out of them 5 daughters and a son by name Mallappa. Mallappa also died long back leaving behind defendant No.2 to 6 as his legal heirs. The suit schedule properties are ancestral joint family properties of plaintiffs and defendants. They are in joint cultivation and possession over the suit property till today and there was no partition between the parties in respect of suit properties.

8. Per contra defendant No.4 filed written statement by denying each and every averments of plaint. Defendant No.4 has taken specific contention at para No.10 of his written statement that suit properties were belongs to one Fakkirappa S/o Jatreppa Lamani who is not the ancestor of plaintiffs and defendants. Said Fakkirappa Lamani had very love and affection towards Mallappa. Mallappa was residing with Fakkirappa Lamani. Thus Fakkirappa Lamani was treating the Mallappa as his son. The father of plaintiffs i.e. Somappa @ Somaleppa had no ancestor or self acquired properties. The suit properties were at no point of time belonging to the Somappa. The father of defendant No.3 to 5 Mallappa was residing with his guardian (faster father). The said Fakkirappa Lamani during his life time got entered the name of Mallappa to the suit properties. Accordingly, Mallappa has become absolute owner of suit properties.

9. I have perused the issues and additional issues framed by predecessors in office. It come to the notice of this court that with respect of specific defense of defendant No.4 no issues have been framed casting burden on defendant No.4 to prove his specific contention. All the other issues and additional issues casted upon plaintiff and defendants. But the present aspect of consideration of Mallappa as faster son by the Fakkirappa Lamani has not framed. When defendant No.2 to 5 claiming their absolute ownership and possession over the suit schedule properties from Mallappa the burden is to be casted upon them to prove their version. The question of framing issues or additional issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. The material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right or a defendant must alleged in order to constitute his defense. Each material proposition affirmed by the one party and other shall form the subject of a distinct issues. Here in the present suit the plaintiff claiming suit schedule properties are the ancestral properties through one Fakkirappa S/o Jatreppa Lamani. Per contra on the other hand defendants have taken specific contention that Somappa @ Somaleppa Lamani who is father of plaintiff had no ancestors. Fakkirapa S/o Jatreppa Lamani is not the ancestors of plaintiffs and defendants. Further contended that Fakkirappa treated Mallappa as his faster son, on that basis he got entered properties in the name of Mallappa. This court has satisfied that the framing of additional issues are necessary for

determining the matters in controversy between the parties. If the additional issues framed the defendants will get an opportunity to lead their evidence with respect to their defense and in turn cross-examination by the plaintiff. Therefore present application filed by the plaintiffs deserves to be allowed in order to ascertain real controversy between the parties. The issues may be framed at any time of proceedings before passing of judgment. As such plaintiffs made out grounds to allow the application. Accordingly, I answer point No.1 in the Affirmative.

10. Point No.2:- In view of reasons stated above, I proceed to pass the following;

ORDER

The IA No.XIX filed by the plaintiffs
U/O XIV Rule 5 of CPC is hereby allowed.

Additional issue No.1 & 2 have been
framed.

No order as to cost.

CJ & JMFC, Savanur.

