

IN THE COURT OF THE SENIOR CIVIL JUDGE, CHITTAPUR

AT: CHITTAPUR

ORIGINAL SUIT No.36/2014

Present: Sri M.D. Talawar, B.A.LL.B.,(Spl.),
Senior Civil Judge, Chittapur.

Dated: 30th day of July 2016

1. Revanamma W/o Amruth Rao Chittapure, Aged about 68 Years, Occupation: Agriculture, Resident of Gundagurthi, Taluka Chittapur, District Gulbarga.

... Plaintiff.

(By Sri S.S. Saradagi, Advocate)

-Versus-

1. Shivalingappa S/o Revagundappa Beloor, Aged about 70 Years, Occupation: Agriculture.
2. Shantabai W/o Shivalingappa Beloor, Aged about 65 Years, Occupation: Agriculture.
3. Shivasharanappa S/o Shivalingappa Beloor, Aged about 40 Years, Occupation: Agriculture.
4. Kallappa S/o Shivalingappa Beloor, Aged about 36 Years, Occupation: Agriculture.
5. Basawaraj S/o Shivalingappa Beloor, Aged about 30 Years, Occupation: Agriculture.

... Defendants.

(D.1, 2, 4 and 5 by Sri B.R.K. Advocate)
(D.3 – Ex-parte)

ORDER ON MAINTAINABILITY OF SUIT

1. This is a suit filed by the plaintiff against the defendants for partition and separate possession of her half share in the suit schedule properties as shown at Para No.2 of the plaint by metes and bounds.

2. On the other hand, the defendant no.1, 2, 4 and 5 who filed their written statement. In the written statement at Para No.7 to 9, who contended that, the defendant no.2 had filed a suit in O.S.No.71/2011 claiming half share in the joint family properties. The present plaintiff was the defendant no.1 in the said suit and filed her written statement, who not claimed the suit properties is the joint family properties. Now the plaintiff saying that, the suit properties are the joint family property and she is entitled for her ½ share in the suit property after more than 3 years. Therefore, the suit filed by the present plaintiff is barred by limitation. If the suit properties are joint family property, she should have claimed her share by filing her counter-claim in the O.S.No.71/2011. One of the land Sy.No.78/1 of this suit was involved in O.S.No.71/2011 and it is alleged by the plaintiff that, the said suit land was purchased by her mother in the name of the defendant no.2. But, the court held that, it is the self-acquired property of defendant no.1. Likewise, the other suit properties are also self-acquired properties of family of the defendant no.1 and not purchased out of the income of the joint family properties of the plaintiff and defendant no.2. The decision in O.S.No.71/2011 operates as Res-judicata in the suit. Therefore, prays to dismissal of the suit with costs.
3. I heard the arguments of both the side, perused the documents on record. Now, the following Points arises for my consideration.

POINTS

1. Whether the suit of the plaintiff is maintainable against the defendants for partition and separate possession of her ½ (half) share in the suit schedule properties as prayed-for?
2. What Order?
4. My findings on the above Points are as under:

Point No.1: Negative.

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

REASONS

5. **Point No.1**:- The plaintiff in her plaint, who claimed for partition and separate possession of her ½ share in the plaint Para No.2 of schedule properties.
6. On the other hand, the defendant no.1, 2, 4 and 5 in their written statement at Para No.7 to 9, who contended that, the defendant no.2 had filed a suit in O.S.No.71/2011 claiming half share in the joint family properties. The present plaintiff was the defendant no.1 in the said suit and filed her written statement, who not claimed the suit properties are the joint family property. Now the plaintiff saying that, the suit properties are the joint family properties and she is entitled for her ½ share in the suit properties after more than 3 years. Therefore, the suit filed by the present plaintiff is barred by limitation. If the suit properties are the joint family properties, she should have claimed her share by filing her counter-claim in the O.S.No.71/2011. One of the land Sy.No.78/1 of this suit was involved in O.S.No.71/2011 and it is alleged by the plaintiff that, the said suit land was purchased by her

mother in the name of the defendant no.2. But, the court held that, it is the self-acquired property of defendant no.1. Likewise, the other suit properties are also self-acquired properties of family of the defendant no.1 and not purchased out of the income of the joint family properties of the plaintiff and defendant no.2. The decision in O.S.No.71/2011 operates as Res-judicata in the suit.

7. Further, I have also gone through the certified copy of plaint and written statement as filed in O.S.No.71/2011 on the file of this court wherein, the defendant no.2 in the present suit, who filed the suit in O.S.No.71/2011 for partition and separate possession of her ½ share in the suit properties as described in the plaint para No.2 of the plaint in that suit. In the said suit, the present plaintiff, who was the defendant no.1 wherein, defendant no.1, 4 and 5 filed their written statement.
8. It is an admitted fact that, the suit filed by the defendant no.2 in the above suit in O.S.No.71/2011 was be pleased to decreed. Aggrieved by the said judgement and decree in O.S.No.71/2011, the present plaintiff preferred an appeal in R.A.no.125/2011 on the file of Hon'ble I Additional District and Sessions Judge, Gulbarga. The said appeal is also dismissed. Further, it is an admitted fact that, after dismissal of the said appeal, the final decree proceedings filed before this court, which is pending. In the said suit O.S.No.71/2011, the present plaintiff in the above suit, who not included or claimed counter-claim in respect of plaint para no.2 of schedule properties. After dismissal of O.S.No.71

- of 2011 and R.A.No.125/2011, the plaintiff filed the present suit for partition and separate possession of her half share in respect of para no.2 of the plaint schedule properties.
9. Further, I have also gone through the provisions of Order-II Rule-2 of C.P.C. Further, it is well-settled preposition of law that, in a suit for partition and separate possession, the plaintiffs and defendants stood in the same position, the plaintiff, defendants as also plaintiffs. Therefore, in view of Order-II Rule-2 of C.P.C., the present suit as filed by the plaintiff for partition and separate possession of her half share is not sustainable either in law or on facts, it is hit by Order-II Rule-2 of C.P.C. Therefore, the Point No.1 is answered in the Negative.
10. **Point No.2**:- In view of my findings to Point No.1, I pass the following;

O R D E R

The plaint is rejected under Order VII Rule-11 (d) of C.P.C. as hit by Order-II Rule-2 of C.P.C.

No order as to cost.

(Dictated to the Stenographer directly on the computer, corrected by me, then pronounced in the open court this 30th day of July 2016)

(M.D. Talawar)
Senior Civil Judge, Chittapur.

ORDER

The plaint is rejected under Order VII Rule-11 (a) and (d) of C.P.C. as not maintainable.

No order as to cost.

Senior Civil Judge, Chittapur.