

IN THE COURT OF PRL. CIVIL JUDGE AND JMFC.,
SOMWARPET

Present:

Sri K GOPALA KRISHNA, B.A.L., L.L.B.,

Dated: 19th Day of July 2024

O.S.NO: 14/2022

Plaintiff : Nagaraja
V/s

Defendants : Smt. Arun & others.

ORDERS ON I.A. NO.IV

The defendant No.2,4,5 filed this I.A.IV under order 14 Rule 5 R/W sec 151 of C.P.C., seeking for amendment of issues and mentioned as follows

1. Whether the defendant No.2,4,5 proves that the suit is barred by limitation?

2. “Whether the defendant No.2,4,5 proves that the suit valuation made is in proper and court fee paid is sufficient?”

2. In the memorandum of fact filed by the defendant No.2,4,5 annexed to the said I.A, the defendant No.2,4,5 contended that the plaintiff has filed this suit against the defendants for the relief of declaration and possession in respect of suit properties. And the defendant No.2,4,5 have filed written statement and to file necessary application to get frame the necessary issues on the question of

limitation and court fee paid is sufficient. The defendant No.2,4,5 filed their side written statement in para No.6 and 7 raised the pleadings regarding the law of limitation. And suit valuation made is not correct and court fee paid is too less. It is necessary to raise proposed issues to meet ends of justice and he prays to allow this application.

3. On the other hand the plaintiff has filed objection and he is contended that this application is not tenable in eye of law the provisions of law and miscontracted and misinterpreted and court already framed proper issues in the suit hence additional issues not required, the pleadings in the written statement relating to proposed issues No.1 and 2 are formal and not supported with any documents and detail explanation relating to valuation of suit relief, sufficient court fee and limitation is not found. The issue already framed is sufficient for the just decision of the case and for the determination of the real controversy between the parties of the suit. The reasons stated in affidavit filed in support of the application are not sufficient to frame additional issues as sought by the defendant No.2,4,5. The defendant No.1 filed IA No.II under order 14 rule 5 r/w/sec 151 of CPC, to frame additional issues court fee and jurisdiction and limitation and the same is partly allowed on 19.01.2022. In the above order the

claim to frame additional issues and court fee. Jurisdiction and limitation was dismissed. The present application. Hence, he is prayed dismissed the above the IA.

4. The applicant/ defendant No.2,4,5 counsels and the plaintiff counsels argument heard.

5. The points that arise for my consideration are as follows;

1. Whether the I.A. No.IV U/o 14 Rule 5 r/w/section 151 of C.P.C deserves to be allowed?

2. What order?

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

Point No.1:: In the **Partly Affirmative**

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

::REASONS::

7. Point No.1:: In the memorandum of fact filed by the defendant No.2,4,5 annexed to the said I.A, the defendant No.2,4,5 contended that the plaintiff has filed this suit against the defendants for the relief of declaration and possession in respect of suit properties. And the defendant No.2,4,5 have filed written statement and to file necessary application to get frame the necessary issues on the question of limitation and court fee paid in sufficient. The

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8. On the other hand the plaintiff has filed objection and he is contended that this application is not tenable in eye of law the provisions of law and miss contracted and misinterpreted and court already frame proper issues in the suit hence additional issues not required, the pleadings in the written statement relating to proposed issues No.1 and 2 are formal and not supported with any documents and detail explanation relating to valuation of suit relief, sufficient court fee and limitation is not found. The issue already framed is sufficient for the just decision of the case and for the determination of the real controversy between the parties of the suit. The reason stated affidavit filed in support of the application are not sufficient to frame additional issues as short by the defendant No.2,4,5. The defendant No.1 filed IA No.II under order 14 rule 5 r/w/sec 151of CPC, to frame additional issues court fee and jurisdiction and limitation and the same is partly allowed on 19.01.2022. In the above order the claim to frame additional issues and court fee.

Jurisdiction and limitation was dismissed. The present application. Hence, he is prayed dismissed the above the IA.

9. C.P.C. Under order 14 Rule 5 power to amend and strike out issues;

1. The court may at any time before passing a decree amend the issues are frame additional issues on such terms as it thinks fit, and all such amendments are additional issues as may be necessary for determining the matter in controversy between the parties shall be so made or framed.

2. The court may also, at any time before passing a decree strike out any issues that appear to it to be wrongly framed are introduced.

10. This is suit filed by the plaintiff against defendants for the relief of declaration and possession in respect of suit properties. The plaintiff contended that the plaintiff is the owner of suit property bearing Sy.No.148/2 Vadayanapura Village, measuring 1.84 acres and is living his family of the construction of a house there in. The defendant No.1 a landing property measuring 1.00 acre in Sy.No.18/2 at Vadayanapura village, which is situated abutting to the above suit properties towards west of the property in Sy.No.148/2. Earlier this suit property Sy.No.148/2

measuring 1.00 acre of 1st defendant of part of Sy.No.148/2 and same as sold one Eramma by the father of the plaintiff late Dasegowda, in the year 1960 out of 2.84 acre. The land of plaintiff measuring 1.84 acres in Sy.No.148/1 Vadayanapura village, it is after called a suit property. The plaintiff by considering less area in his possession record area of 'A' schedule property applied to the Tahasildar, Somwarpet to conduct a Haddubastu Survey of 'A' schedule property. Haddubastu Survey conducted on 03.02.2020 after due notice to the neighbor land holders including the defendants. In that survey it was found that 0.42 acre out of 'A' schedule property and the defendant No.2 to 5 being the owners of abutting land in Sy.No.28/3 and 28/5 jointly have encroached 40 cents, out of a schedule property at its south but touching to the 'B' schedule property. As it is southern side with in encroached by the 1st defendant. It is after called 'B' schedule property, hence the plaintiff filed the suit for declaration in respect of 'A' schedule suit property and prays for directing to the 1st defendant to deliver wake an possession 'B' schedule property and D2 to D5 deliver possession of 'C' schedule property in favour of plaintiff.

11. in this case the defendant No.2,4,5 filed written statement denied the entire case of the

plaintiff. The defendant No.2,4,5 contended that the plaintiff conducted the Haddubastu Survey of 'A' schedule property on 03.02.2020, but it stated that the survey was conducted 09.01.2020. It is true that the defendant no. No.2,4,5 being the owners of Sy.No.28/3 and 28/5 but it is not correct to say that the encroached 0.40cents land out of 'A' schedule property at it it sour touching to 'B' schedule property but they refused to deliver the same upon the demand of plaintiff.

12. It is stated that at the time of conducting survey on 09.01.2020 only the 4th defendant was present and the other defendant No. No.2,3,5 are not present. After the said survey when the 4th defendant valued the survey sketch with the village, map and neighboring land Survey numbers he came to know that is residential house is situated with in the alleged encroached area and the said spot of house existing aria covered to the extent of 0.50 acres was already sold by the father of plaintiff Sri. Dasegowda infavour of Lingappa Poojari the father of the defendant No.2,4,5 through a register sale deed 09.07.1948 by mistake it is wrongly mentioned the survey number as survey number 126 Sri. Dasegowda knowing the said mistake and after 17 years that it is in the year 1965 again he sold the entire area of 1.04 acres in survey number 126 in favour of Smt.

Muttamma without knowledge of the father both defendants.

13. The defendant No.2,4,5 in the written statement para 6 taken contention that the father of the those defendants and defendant No.2,4,5 are in possession and enjoyment of the suit 'C' schedule property since date of purchase of the year 1948. The suit is barred by limitation without prejudice the about defense if the plaintiff establishes rights and title over the suit property when it is adverse to defendants rights and possession and the suit is barred by law of limitation and the defendants house is existing in 'C' schedule property the plaintiff has to pay the court fee on the basis of actual market value of the residential tiled house. The plaintiff has not paid the required court fee the court fee paid by the plaintiff is to less. The suit valuation made by the plaintiff is not correct.

14. In this case the plaintiff admitted the same. And there is no disputed to the defendant No.1 he is absolute owner and position and respect of the suit property bearing Sy.No.148/2 measuring 1 acre and the plaintiff not disputed the registered sale deed 1960. And the plaintiff taken contention in the plaint the defendant No.2 to 5 being owners of abutting land in Sy.No.28/3 and 28/5 jointly have encroached 0.14

acres that the land out 'A' schedule property, and it is south but touching to the 'B' schedule property. The defendants were present at the time said Haddubastu survey but they refused to deliver the respective encroached land. The written statement filed by the defendant No. No.2,4,5 contended that the 4th defendant house is existed in the 'C' schedule property. The plaintiff has to pay the court fee but the defendant No. No.2,4,5 not produce any document to shows that the 'C' schedule property house is existed. Asper the RTC extract only landed property shown. hence the additional issue No.2 Not required in this case and also the plaintiff valued the suit U/Sec 24(a) of Karnataka Court fees and suit valuation Act. And the suit for declaration position in respect of the suit properties and paid court of Rs.4,875/-. Hence this court have original jurisdiction tried this case.

15. The defendant No,2 to 5 taken contention in the written statement the defendant No.2 to 5 are in possession and enjoyment of the suit schedule property, since the date of purchase of the year 1948. Hence the suit is barred by limitation. Without prejudice to the about defence if the plaintiff establishes rights and title over the suit property. Then it is adverse to defendants rights and possession and the suit is barred by law of limitation.

16. In this case the plaintiff taken contention as per Tahasildar Somwarpet to conduct a Haddubastu Survey of 'A' Schedule property conducted on 03.02.2020 there after the plaintiff find out and noticed that 0.42 acres of A Schedule property at it is Southern end is in occupation of defendants. And the said contention denied by the defendant No.2,4,5 and this case already framed five issued in this case but limitation point no issues framed. It is necessary to frame the additional issues as limitation point and in this point court come to the conclusion in this regard after the full pledge trial. In my opinion is necessary to frame one additional issue in regard limitation point is very necessary for deciding the dispute in question. Otherwise, the same may lead to multiplicity of proceedings between the parties. With these observation my findings on the **point No.1** is in the **Partly Affirmative.**

17. **Point No.2::** In view of my findings on point No.1, I proceed to pass the following;

::ORDER::

I.A. No.IV filed by the applicants/defendant No.2,4,5 U/o. 14 rule 5 r/w 151 of C.P.C., is hereby partly allowed.

For additional issues No.1

and thereafter pronounced in the open court on this the 19th day of July, 2024]

Sd/-
[K. Gopala Krishna]
Pr1.Civil judge and JMFC.,
Somwarpet.