

IN THE COURT OF THE SENIOR CIVIL JUDGE &
JMFC VIRAJPET
FDP.19/2018

Plaintiffs/Petitioner/Dhr : Chimmanira Muthanna

Vs

Defendant /respondent/Jdr: Chimmanira S.Ponnappa

ORDER ON MAINTAINABILITY OF THE PETITION

The petitioners have filed this petition U/O 20 R 18 of CPC for partition of petition schedule properties by metes and bounds and to allot 1/4th separate share out of B schedule properties coming under A schedule properties and for delivery of possession.

It is stated that on 14.06.1978 one C.S.Ponnappa filed suit for partition of petition schedule properties before Senior Civil Judge, Madikeri in O.S.34/1978 against petitioners and other respondents. During the pendency of suit, compromise petition was filed on 29.09.1982 U/O 23 R 3 of CPC by plaintiff and defendant No.1 to 5 therein. The petitioners No.1 and 2 and other respondents were not parties to the said compromise. On the basis of said compromise petition, compromise decree was drawn. In the compromise petition, the properties were allotted to plaintiff and defendant No.1 to 11 therein. They are the B schedule properties in the petition. The parties are entitled to 1/4th share in the B schedule. It is also stated that A and B schedule properties are not surveyed

and demarcated by metes and bounds between the petitioners and respondents. All are in deemed possession. As per the compromise decree, A and B schedule properties are not partitioned by metes and bounds and no separate shares were allotted to the petitioners and respondents. As of convenience, the petitioners and respondents were cultivating the portion of schedule properties. Therefore, the present petition is for survey and demarcation of the schedule properties and to allot 1/4th separate share. Along with petition, application is also filed to appoint commissioner.

The respondent No.1(a) has filed objection to the petition admitting the compromise petition filed in O.S.34/1978 and compromise decree drawn therein. It is stated that there is no necessity to appoint commissioner for survey and demarcation of schedule properties. It is also stated that survey was conducted in respect of all suit properties involved in the said suit in the presence of directors of Kodava Samaja and all the parties to the suit and properties were divided and parties were allotted their respective share with full satisfaction as per the partition mahazar. The rights of the parties were already settled and they are in separate possession of their respective shares. The respondent No.1(a) has also purchased some properties from other respondents. Therefore, the petition is not maintainable. The petitioners could have to file execution petition as there is compromise decree and it has to be considered as final decree. Now to file execution petition also,

it is barred by law of Limitation. He has also raised the question of maintainability of the petition.

Heard the both and perused the materials on record.

The plaint in O.S.34/1978 is produced. It shows that one C.S.Ponnappa filed suit for partition in respect of suit properties against Subbaiah and others including the present petitioners who are defendant No.4 and 6 in the said suit. Compromise petition in the said suit is also produced. It shows that plaintiff and defendant No.1 to 11 have been allotted suit property according to their respective shares. But no boundaries are mentioned with respect to the respective properties shown as allotted to the parties. It is also clear that the petitioners and other respondents did not put their signatures in to the said petition except Ponnappa, Subbaiah and Aiyanna who are the plaintiff, defendant No.1 and 5. It is also stated in the objection of respondent No.1(a). In view of the compromise petition, compromise decree was drawn.

In support of the arguments, the advocate for petitioners has produced the rulings. It is held in 2015 (4) AKR 683 in between Govardhana Vs Appi that consent of both parties evidenced by their signatures to compromise petition is a condition precedent for any lawful order. The signatures of counsel alone on compromise petition can not bind parties to lis. It is held in ILR 2021 KAR 2793 in between Sowmya Vs Halappa Poojari that if there is absence of division of property by metes and bounds with measurements and boundaries in compromise, such compromise did not result in creation of

title over the property. Partition attains finality only after division of property by metes and bounds and to this effect, there must be a final decree. A compromise decree in a partition suit can be considered as final decree if in the compromise petition, share allotted to each party is described with boundaries and measurements. If such description is not given in the compromise petition, the decree based on such a compromise can not have the effect of final decree and in that event, a proceeding has to be initiated for drawing up of final decree. This ruling is clearly applicable to the case on hand. Because, in the compromise petition in O.S.34/1978, there is no proper description of boundary. Therefore, the decree passed on the basis of compromise petition can not be treated as final decree as it is contended by the advocate for respondent No.1(a). It is also held in AIR 2017 SC 2447 in between Venu Vs. Ponnusamy that till partition is carried out and final decree is passed, there is no question of limitation running against right to claim partition as per preliminary decree. It is also held in AIR 2015 Tripura 84 in between Anjali Deb Vs. Jitendra Deb that application for drawing up final decree can be moved by either party. It is also held in AIR 2020 KAR 149 in between Veena Vs Mamatha and others that if the plaintiff neither consented nor is signatory to the compromise petition, then recording of compromise between some of parties to suit is not proper compromise. Court is not obliged to pass decree on such compromise.

In support of arguments, the advocate for respondent No.1(a) has also produced the rulings. It is held in AIR 2003 SC 1608 in between Renu Devi Vs Mahendra Singh that on perusal of decree and contents of compromise application with schedules of properties show that the property was partitioned by metes and bounds and hence compromise decree can be treated as final decree. It is not helpful to the respondent No.1(a). Because, in the compromise in this case, there is no partition by metes and bounds. It is also held in AIR 2012 SC 1586 in between Bimal Kumar Vs. Shakuntala Devi that if the parties, entered in to compromise, clearly admitted that they were in separate and exclusive possession of the properties allotted them, no final decree or execution is required to be filed. This ruling is also not applicable to the case on hand. Because, petitioners have not admitted so.

The advocate for respondent No.1(a) has produced record of rights, 11E sketch and Jamabandi to show that the schedule properties are properly surveyed and demarcated and identified. But this is not admitted by the petitioners. Since the petitioners are not parties to the compromise petition, they have right to proceed with the present petition on merits with respect to petition schedule properties and the petition can be entertained.

Admittedly, the petitioners were not parties to the compromise petition dated 29.09.1982 and they did not put signatures to the said compromise. Even though, they are seeking the relief of survey and demarcation of A and B

petition schedule properties to allot their 1/4th separate share and for delivery of possession. But they have not stated that they have admitted/are admitting the compromise petition and compromise decree passed in O.S.34/1978. Therefore, they can not seek such relief in the present petition. However, there is absence of description of proper boundary in the compromise petition, the decree based on that can not be treated as final decree.

Therefore, the final decree can be filed by the petitioners and it can be proceeded with on merits. But, the maintainability of the petition is subject to the fact that before proceeding with the petition on merits, the petitioners shall have to accept the shares allotted to the respective parties in respect of the properties involved in the compromise petition and the decree thereon. If they do not admit the same, the petition is liable to be dismissed on the ground of maintainability which will be considered later.

Dated this the 13th day of January, 2023.

Sd/- xxxxx
Senior Civil Judge and JMFC
Virajpet