

KAKL200000822009



**IN THE COURT OF THE ADDL. CIVIL JUDGE, & JMFC.,
AT BANGARPET**

DATED THIS THE 09th DAY OF JANUARY 2024

:PRESENT:

**SRI. AJIT DEVARAMANI., B.SC. LLB.,
Addl. Civil Judge and JMFC, Bangarpet.**

O.S. No. 182/2009

Plaintiff/s :- N.Yadhavan Dead by Lrs & others

(Reptd. by Sri.K.M.V- Advocate)

V/s

Defendant/s :- Venugopal & Others

**(Reptd. by Sri. K.M, K.V.P, B.L.N
& N.M.G-Advocates)**

Applicant/s:- Vishnu Kamal Naidu & Others

/Vs/

Opponent/s:- N.Yadhavan Dead by Lrs & others

ORDERS ON IA -31

The defendant Nos.7 to 15 have filed instant application U/o 7 rule 11(a) & (d) r/w Sec. 151

of CPC seeking to reject the plaint as there is no cause of action for the suit and suit is barred by law.

(This I.A. is filed when the case is posted for cross examination of PW-1)

2) In the affidavit annexed to the application the defendant No.10 has contended that, the plaintiffs have filed this suit against the defendants for partition and separate possession. The suit schedule property is not ancestral or joint family property. Defendants No.1 and 2 have purchased the suit schedule property out of their own income. The sale deeds of defendant no.1 and 2 clearly shows that entire sale consideration amount was paid by defendant no.2. Therefore suit schedule property cannot be turned as joint family property. Defendant No.2 has sold the suit schedule property to an extent of 4 acres of land through registered sale deed dated 27-06-1984. Since from 1984 plaintiffs have not questioned and challenged the said sale deed. The suit is filed in the year 2009 after lapse of 25 years

therefore suit is barred by limitation. Plaintiff has no cause of action to file this suit. Plaintiff has filed this false suit by suppressing the materials facts. Hence, prays to reject the plaint.

3) On the other hand, plaintiffs have filed detailed objection by denying all the averments of application and specifically contended that, defendant no.7 to 15 are not family members of the plaintiffs and defendant No.1 to 6. Suit schedule property is the joint family property of the Plaintiffs and defendant no.1 to 6. Plaintiff is having share in the suit schedule property defendant no.7 to 15 have filed false application. Hence, prays to reject the application.

4) On the basis of the above contentions the points that would arise for my consideration are as under:

- 1) Whether the plaint does not disclose the cause of action?
- 2) Whether the suit appears from the statement of plaint to be barred by law?

3) What order?

5) I have heard arguments and perused the materials available on record.

6) My findings to the above points are as follows:

Point No.1 : In the **Negative**

Point No.2 : In the **Negative**

Point No.3 : As per final order,
for the following :-

REASONS

7) **Point No.1 and 2:** These two points are inter linked to each other. hence I have taken up these two points together for common discussion to avoid repetition facts and for better appreciation of facts.

8) The plaintiff has filed this suit against the defendants for partition and separate possession seeking his share in the suit schedule property.

9) It is the contention of defendant no.7 to 15 that, suit schedule property is not joint family property and ancestral property. Defendant no.1 and 2 have purchased the suit schedule property out of their own income. Defendant no.1 and 2 have sold the suit property during 1984, from 25 years plaintiff has not challenged the sale deed. Hence suit is barred by limitation. Further there is no cause of action for the plaintiff to file this suit.

10) On the other hand it is contention of plaintiffs that, defendant no.7 to 15 are not family members of the plaintiffs and defendant No.1 to 6. Suit schedule property is the joint family property of the Plaintiffs and defendant no.1 to 6. Plaintiff is having share in the suit schedule property defendant no.7 to 15 have filed false application.

11) Plaintiff has filed this suit for partition and separate possession seeking his share in Sy.No.102 measuring 13 acres 17 guntas of land

included out of katha land 2 acres 15 guntas. It is contention of the plaintiffs that, suit schedule property is the joint family property of plaintiff and defendants No.1 and 2. Without knowledge of the plaintiff and defendant no.3 and 4 have executed the alleged deed in the year 1984 in favour of defendant no.2 with respect of suit schedule property. Subsequently defendant no.2 has made registered sale deed dated 27-06-1984 in respect of portion of land to the extent of 4 acres in the suit schedule property in favour of defendant no.5 i.e, wife of defendant no.2. The above transactions came to the knowledge of the plaintiff recently i.e., during April-2009 through is elder brother i.e., defendant no.1. During the trial this court only it can be ascertained whether the suit schedule property is joint family property or self acquired property, from the plaint averments it shows that the cause of action to file the suit arose on 13-08-2008, when plaintiff has demanded his share in the suit schedule property. There is no limitation from filing the suit

partition with respect to joint family property or ancestral properties.

Hon'ble Apex Court and Hon'ble Various High Courts by cateena of decisions held that an application under order 7 rule 11 of CPC can be adjudicated only on the basis of pleadings in the plaint and defense set up by defendants cannot be ground for adjudicating applications prepared under order 7 rule 11 of CPC. In the present case on the hand it is the defense of defendant no.7 to 15 that suit schedule property is the self acquired property of defendant no.1 and 2, the said aspect has to proved by them during the trial. Hence this court is the opinion that, application filed by the defendants No.7 to 15 under Order 7 Rule 11 (a) & (d) is not maintainable. Hence, **I answered points No.1 and 2 in the Negative.**

12) **Point No. 3:-** In view of the above discussions on on Points No.1 and 2, I proceed to pass the following:

ORDER

IA No.31 filed by the defendant
No.7 to 15 U/o 7 Rule 11 (a) and
(d) of CPC is hereby dismissed.

For cross examination of
PW.1 and for addl. Issues if any.

(Dictated to the steno, transcribed on computer, typed by him corrected and then pronounced by me in open court on this **09th day of January 2024**).

(AJIT DEVARAMANI)
Addl. CJ and JMFC, Bangarpet.