

KAKP210008502019



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC, AT
KUSHTAGI.**

**PRESENT:-SMT. SARASWATHI DEVI
B.Com., L.L.B(Spl)**

DATED THIS THE 28th DAY OF NOVEMBER-2022

O.S.No.607/2019.

Applicants/Plaintiffs:-

1. Chandrakant S/o Bharmappa Mantri,
Aged:54 years, Occ;Medical Practitioner,
R/o Mittalkod,
Now at Tq;Kushtagi, Dist:Koppal.
2. Renuka W/o Ramesha Mantri,
Aged about:50 Years, Occ:Agril,
R/o: Mittalakoda,
Now at : Jigalur, Tq:Ron.
3. Basavaraj S/o Ramesha Mantri,
Age:28 Yrs, Occ:Agri,
R/o: Mittalakoda,
Now at : Jigalur, Tq:Ron.

(By Sri.P.H.Adina Advocate)

--V/s--

Respondents/Defendants:-

1. Umadevi W/o Kapaleppa
(D/o Bharamappa),
Age: 63 Yrs, Occ:Agri,
R/o: Mittalakoda, Now at : Jigalur, Tq:Ron.
2. Shavamma D/o Kapaleppa,
Age: 30 Yrs, Occ:Household,
R/o: Mittalakoda, Tq:Kushtagi.
3. Erawwa @ Iramma D/o Bharamappa Mantri
(W/o Chandappa Vatti),
Age:55 Yrs, Occ:Agri,
R/o Mittalkod, Tq;Kushtagi.
Dist:Koppal.
4. Chandappa S/o Kallappa,
Age:65 Yrs, Occ:Agril,
R/o Mittalkod, Tq;Kushtagi.
Dist:Koppal.
5. Jyoti D/o Ramesha Mantri,
Age:65 Yrs, Occ:Agril,
R/o Mittalkod Now at:Kuppigudda,
Tq;Lingsugur.
6. Yallappa S/o Hanamappa Totlappanavar,
Age:major, Occ:Agril,
R/o:Gudur. Tq:Ilakal, Dist:Bagalkot.

(Deft No.1 dead

Deft No.2 to 4 By Sri.Omkareswara E. Advocate)

// ORDERS ON IA No.IX and X //

1. That when the suit was posted for framing issues, the
plaintiffs have filed the IA No.IX U/o 6 Rule 17 CPC,

to amend the plaint and the defendant No.1 to 4 have filed IA No.X, U/o 7 Rule 11(d) of C.P.C to reject the plaint. The applications are accompanied by the affidavits of the plaintiff No.1 and the defendant No.4. The defendants have not filed any objections to IA No.9. The plaintiffs have filed objection to IA No.X.

2. Heard the arguments both sides. Perused the records.

The following points arise for my consideration:

- i. Whether the amendment as proposed by the plaintiffs can be allowed?
- ii. Whether the plaint is liable to be rejected as being barred by law?

3. My answer to above points are as under:

Point No.i : In the affirmative.

Point No.ii : In the negative.

// Reasons //

4. The plaintiffs have filed this suit for partition and separate possession of their share in the suit schedule properties. The plaintiffs claim to be the children and

grandchildren of Challawwa, the sister of the defendant No.4. The defendant No.1 and 2 are the wife and daughter of late brother of the defendant No.4. The defendant No.3 is the sister of the plaintiff No.1 and the defendant No.5 is the daughter of the plaintiff No.2. The defendants have appeared and have contested the claim of the plaintiffs. However they do not deny the relationship of the plaintiffs and the defendants. But they have stated that already partition has taken place between Challawwa and Kapaleppa long back. That in that partition the land Sy.No.16 Hissa 4 measuring 7 acres 34 guntas was given to the share of Challawwa. That on her death her husband has already sold that land. Therefore the plaintiffs are not entitled to claim any share in the suit properties.

5. **POINT NO.i:** Under IA No.IX, the plaintiffs are seeking to add other properties which are also said to be the joint family properties. In his affidavit the plaintiff No.1

has stated that at the time of filing the suit, due to inadvertence, all the family properties were not included. That the houses bearing No.133 and 226/A and B are also joint family properties. Now the said houses are also to be included as suit properties. The defendants have submitted no objections, to allow the said application.

6. The learned counsel for the plaintiffs has submitted that, by way of proposed amendment no admission is being taken away nor the cause of action and nature of the suit is changed. The amendment is only by way of adding other family properties wherein the plaintiffs are having share. Only because the amendment is sought after written statement is filed is not a ground to reject the application.

7. U/o 6 Rule 17 of CPC the court has powers at any stage of the suit to permit either party to alter or

amend the pleadings. However such amendment must be necessary for the purpose of determining the real questions in controversy between the parties. No such amendment can be allowed after the trial has commenced unless the court comes to the conclusion that inspite of due diligence, the party could not raise the matter before commencement of trial.

8. In the case the plaintiffs have sought to include other properties. No doubt the trial of the suit has commenced but that alone is not a ground to refuse amendment which is necessary for the fair and final adjudication of the issues involved in the suit. Moreover, by way of proposed amendment the nature of the suit which is for partition is not changed. However, in the case on hand when the defendants will have every right to file additional written statement, no prejudice will be caused if the amendment is allowed. Therefore, as the proposed amendments are necessary

for the purpose of determining the real questions in controversy between the parties the I.A.No.IX deserves to be allowed. Hence in view of the above discussions, I answer the point No.i in the affirmative.

9. **POINT NO.II:** Under IA No.X the defendants state that the very suit filed by the plaintiffs is barred by law. Therefore they have prayed to reject the plaint by invoking the provisions of Order VII Rule 11(d) of CPC. The plaintiffs have filed objection stating that no grounds are made out to reject the plaint, at this stage. That whether the suit is barred by law is a matter which has to be decided during the trial. Therefore they have prayed to dismiss IA No.X.

10. That U/o 7 Rule 11(d) of CPC, the court can reject the plaint where the suit appears from the statement in the plaint, to be barred by any law. It is settled principle of law that while considering the

rejection of the plaint under Rule 11, the court is not required to look into any defence setup by defendants.

11. The learned counsel for the defendants has argued that the plaintiffs are claiming their rights under late Challawwa. However Challawwa died in the year 1970. The land Sy.No.16 Hissa-4 was allotted to her share. After her death her husband who had inherited the said land, has sold it to others. Since Challawwa died prior amendment to Section 6 of Hindu Succession Act, she was not a coparcener. Therefore the present plaintiffs are not entitled to claim share in the suit properties. Thus the suit is barred by law and plaint is to be rejected.

12. The learned counsel for the plaintiffs has argued that since the plaintiffs are the children and grandchildren of Challawwa, they are having right to seek their share by way of partition in the suit

properties. The defendants to delay the disposal of the suit, have filed false petition. Even otherwise the claim of the defendants can be decided only during the trial. Therefore the IA No.X is not tenable in law and is to be rejected.

13. As above stated the plaintiffs claiming to be the children and grandchildren of late Challavva, have filed this suit for partition. They claim the suit properties to be the joint family properties of Challavva and her brothers and sister. They also contend that no partition has taken place in their family. Whereas according to the contesting defendants already Challavva had received her share in the family properties, which was sold by her husband. Thus they contend that the present suit filed by her children who are not the coparceners is not maintainable in law. In support of their claim the defendants alleged to have produced records to show that Challawwa had received the land

Sy.No.16 Hissa-4 which was sold by her husband. But no such records are produced in this case.

14. The defendants have sought for rejection of the plaint on the main ground of the suit being barred by law. However on the plain reading of the plaint averments, the plaintiffs claim to have share in the suit properties which were earlier belonging to their maternal grandfather Kallappa. They further claim their mother Challawwa was having equal share in the suit properties and on her death they have succeeded to her share.

15. While considering an application for rejection of plaint the court cannot look into the defence raised by the defendants in their written statement. It can only look into the plaint averments. Therefore, at this stage whether the suit of the plaintiffs is barred by law or not, cannot be decided without going to the merits of

the suit. That in order to consider the merits of the suit, the defence set up by the defendants has to be looked into. Therefore at this stage the plaint cannot be rejected on the plaint reading of the plaint averments on the ground of it being barred by law. However these aspects are kept open for consideration at the time of passing the main judgment. Accordingly the point under consideration is answered in the negative. Therefore, I proceed to pass the following:

// ORDER //

The I.A.No.IX filed by the plaintiffs U/o 6 Rule 17 of CPC is allowed on cost of **Rs.500/-**. The plaintiffs are permitted to amend the plaint as sought in the application.

The I.A. No.X filed by the defendant No.1 to 4 U/o 7 Rule 11 (d) of C.P.C. is hereby rejected.

(Dictated to steno directly on computer typed by him corrected, initiated by me and then pronounced by me in the open Court, on this the 28th November-2022).

(Saraswathi Devi)
Senior Civil Judge, Kushtagi.