

IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C.,
KRISHNARAJAPETE

PRESENT: SMT. POOJA SHETTI B.A., LL.B. (HONS).
CIVIL AND JMFC, K.R.PETE.

DATED THIS THE 23rd DAY OF NOVEMBER-2021

OS No.600/2019

Plaintiff:- Savitha H.N. W/o Pradeepa A.J.
S/o Late Narayana, aged about
28 years, R/at Anchanahalli village,
Sheelanere hobali, K.R.Pete
taluk, Mandya district.

(By Sri.D.R.M., Advocate)

V/S

Defendants:- 1. Sakamma W/o Late Narayana,
Aged about 50 years,

2. Ravi Kumar H.N. S/o Late
Narayana, aged about 21 years.

3. Jayamma W/o Late Kariaih,
Aged about 60 years,

All are R/ at Hosaholalu village,
Kasaba hobali, K.R.Pete taluk,
Mandya district.

4. Subbaiah S/o Holaiiah,
aged about 60 years,
R/at Kaigonahalli village,
Santebachahalli hobali,
K.E.Pete taluk, Mandya district.

(By Sri.S.S.P., Adv., D-1 and D-2,
Sri. B.G., Adv For D-3 and
D-4 is absent.)

I.A. NO.I

APPLICANT :- Savitha

V/S

OPPONENTS:- Sakamma and Others.

ORDER ON IA NO. I

1. This is an application filed by the plaintiff U/order XXXIX Rule 1 and 2 CPC with prayer to restrain the defendants from alienating suit schedule properties.

2. It is the submission of the applicant that, suit schedule properties are joint family properties of herself and defendant No.1 and 2. However defendants by colluding in order to defeat her right trying to dispose of suit schedule properties. Hence if her application is not allowed she will be put to irreparable loss. Hence the application.

3. On the other hand the defendant No.3 filed objection to IA No.I and contended that, the suit schedule properties where acquired by herself and deceased Narayan through partition and M.R. No. 9/1996-97. Accordingly Item No.1 of suit schedule property was in the name of deceased Narayan whereas Item No.2 was in the name of defendant No.3 and they were in peaceful possession of there

property. During the life time of said Narayan he was suffering from health issues. In order to meet his medical expenses he has sold 30 guntas of item No.1 to defendant No.4. Similarly in order to construct a house defendant No.3 has sold 5 guntas of item No.2 to four people on 24.01.2018, knowing all thees thing very well plaintiff and defendant No.1 and 2 have filed collusive suit. Hence, the suit is not maintainable and prays to reject the application.

4. Heard, both the counsels, perused the materials on record.

5. The following points arise for my consideration:

1. Whether the plaintiff has made out a prima facie case?

2. Whether balance of convenience lies in favour of plaintiff ?

3. Whether the plaintiff will be put to irreparable loss and injury, if the application is allowed?

4. What order ?

6. My answer to the above points are;

Point No.1 : In the Negative;

Point No.2 : does not survive
for consideration;

Point No.3 : does not survive
for consideration;

Point No.4 : As per the final order
for the following

REASONS

7. Point no. 1: The law is well settled that in order to ascertain whether there is prima-facie case the court must be satisfied that the applicant has raised bonafide dispute which needs investigation and decision on merits and there is probability of applicant being entitled to the relief claimed by him/her.

8. It is the contention of the plaintiff that, suit schedule properties are joint family properties of herself and defendant No.1 and 2. However defendants by colluding in order to defeat her right trying to dispose of suit schedule properties. In support of her application the plaintiff has produced two RTCs pertaining to Sy. No. 8/11 and 8/49. On perusal of these RTCs it can be seen that in Sy. No. 8/11, 1 acre 21 guntas stands in the name of late Narayana S/o Kariaiah and he has obtained the same through partition. Similarly property in Sy. No. 8/49 stands in the name of defendant No.3 which he has obtained through partition which is corroboration with contention of defendant No.3, where she claimed that the suit schedule properties were acquired by herself and deceased Narayan through partition and M.R. No. 9/1996-97. Accordingly Item

No.1 of suit schedule property was in the name of deceased Narayan whereas Item No.2 was in the name of defendant No.3 and they were in peaceful possession of there property.

9. Further plaintiff has also produced certified copy of sale deed dated 17.09.2018 wherein it has been stated that the sale schedule property was transferred to the name of Narayan by way of M.R. 8/2017-18. All these documents prima facie goes to show that property has been divided between deceased Narayan and defendant No.3. However the plaintiff is claiming that the suit schedule properties are joint family properties of herself and defendant No.1 and 2. The plaintiff fails to produce genealogical tree of her family. Further defendant No.1 and 2 being mother and brother of plaintiff remained exparte. Under such circumstances burden of proving that suit schedule properties are joint family properties of herself and defendant No.1 and 2 is upon the plaintiff and in the absence of prima faice case IA No.1 can not be allowed. In view above observation point No.1 answered in Negative.

10. Point No.2 and 3: In view of answering Point No.1 in negative, Point No.2 and 3 does not survive for consideration.

11. Point No.4: In view of above findings, I proceed to pass the following:

ORDER

IA No. I filed U/o XXXIX Rule 1 and 2 of CPC by plaintiff is hereby rejected

As IA No.1 is rejected, IA No.II does not survive for consideration.

For order on IA No.III.

Call again.

((Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the open Court on 23rd day of November-2021)

(Pooja Shetti)
Civil Judge & JMFC.,
K.R.Pete.