

KAMS300034132022



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
AND J.M.F.C AT HUNSUR**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Addl. Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 09th day of July, 2024.

OS No.117/2022

Plaintiff: Smt.Sujatha, D/o Late Karigowda,
W/o Ramesh.H.K., Aged about 48 years,
R/at Hosaru Village, Chunchanakatte
Hobli, K.R.Nagar Taluk,
Mandya District.

-Vs-

Defendants: 1. Seethamma, W/o Late Karigowda,
Aged about 70 years,
2. Veena, W/o Late Vijay,
Aged about 40 years,
3. Puja, D/o Late Vijay,
Aged about 25 years,
4. Sri.Lokesh, S/o Chandregowda,
Aged about 37 years,

5. Smt.Sheela, D/o Chandregowda,
Aged about 35 years,
6. Smt.Shayla, D/o Chandregeowda,
Aged about 33 years,
7. Smt.Neela, D/o Chandregowda,
Aged about 31 years,
8. Smt.Geetha, D/o Chandregowda,
Aged about 29 years,
8. Chethan H.K. S/o Late Kumar,
Aged about 29 years,

Defendants No.1 to 9 are residing at Honenahalli village, Gavadgere Hobli, Hunsur Taluk.

9. Prajwal H.P. S/o Puttaraju.H.R.,
Aged about 40 years, R/at Hirikayathanahalli
village, Gavadgere Hobli, Hunsur Taluk.

1.	Provision under which the application is filed	:	Under Order 7 Rule 11(a) and (d) R/w Section 151 of CPC
2.	Relief sought for	:	Rejection of the plaint
3.	The date on which the application is filed	:	16.01.2024
4.	Number of the application	:	IA No.II
5.	The date on which the objection is filed by the opponents	:	28.02.2024

6.	The date on which the orders passed on the said application :	09.07.2024
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ORDERS PASSED ON IA NO.II

The learned counsel for defendants No.2 and 3 filed the present application under Order 7 Rule 11(a) and (d) R/w Section 151 of CPC seeking for rejection of the plaint for want cause of action and barred by law.

2. The application is supported with the affidavit of defendant No.2 wherein she has stated that, originally the suit schedule property belongs to her father-in-law Karigowda and during his lifetime, her father-in-law and his male children got partitioned the family properties as per the registered partition deed dated 21.06.2005. In the said partition the husband of the 2nd defendant was allotted with 1 acre 10 guntas in Sy.No.180 of Maruru village, 25 guntas in Sy.No.170/4 of Maruru village which is the suit schedule item No.3 property and portion in suit schedule item No.4 property. As per the partition deed the name of her husband got mutated in the revenue records as per MR No.1/2005-2006. By virtue of the partition deed the above said properties became absolute properties of her husband. In the said partition the father of defendant No.9 acquired portion ie. 1 acre 10 guntas in Sy.No.180 of Maruru village, suit schedule item No.2 property and 3 guntas in suit schedule item No.4 property. The said

property is now in the absolute ownership and possession of the 9th defendant.

3. The 2nd defendant further alleged that, her husband was a drunkard and he died due to his health problems. After his death, the above said properties have been mutated in the name of herself and defendant 3 as per MRH No.49/2018-2019. It is also stated that, for the purpose of marriage of the 3rd defendant and to meet the family necessities she has sold suit schedule item No.3 property infavour of defendant No.10. The name of defendant No.10 got mutated in the revenue records. She has also stated that, the other family properties ie., the properties situated in Sy.No.25/39, 40 and 41B of Varanchi village totally measuring 1 acre 38 guntas have been acquired by her father-in-law Karigwoda as per the LNDCR No.186/1980-1981 dated 25.01.1981 and Karigowda was intending to allot share to his daughters in the said properties. The plaintiff is none other than the daughter of Karigowda. In order to meet the family necessities the father of the plaintiff, the plaintiff herself have instigated the husband of the 2nd defendant and they have sold total extent of 4 acre 38 guntas in favour of one Donald Peter Waz through a sale agreement dated 08.06.2016 for total consideration of Rs.16,00,000/-. It is also contended that, since the plaintiff, her father and husband of the 2nd defendant have not executed sale deed

infavour of Donald Peter Waz, he filed suit before this court in OS No.37/2018 which was compromised for Rs.21,00,000/- and the husband of the 2nd defendant not received any amount. In spite of the compromise the parties not executed sale deed infavour of Donald Peter Waz and as such Ex No.76/2018 is pending before this court. As such the plaintiff has got no cause of action to file this suit and her suit is barred by law. Hence, prayed to reject the plaint under Order 7 Rule 11 (a) and (d) of CPC by allowing the application.

4. On the other-hand the plaintiff filed objection contending that, the application is not maintainable under law or on facts. She filed the suit against the defendants seeking the relief of partition and separate possession of her ancestral as well as joint family properties. She has further contended that, there is no such partition between her father and the brothers. The defendants have created the documents. She has denied the allotment of share to her father and brothers as per the partition deed dated 21.06.2005. She has also denied entire case of the 2nd defendant. Further, she has contended that, all the properties are still standing in the name of her father. She has also denied about the sale agreement infavour of Donald Peter Waz for Rs.16,00,000/-. She has also contended that, the properties are not at all sold and it is her specific contention that, in order to defeat her share over the

suit schedule properties this application came to be filed. Hence, prayed to dismiss the application with costs.

5. Thereafter, heard arguments addressed by learned counsels for defendants No.2 and 3 and the plaintiff and perused the case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

POINTS

1. Whether defendants No.2 and 3 have made out sufficient grounds to reject the plaint for want of cause of action and barred by any law ?
2. What order?
6. The findings on the above points are as hereunder:

Point No.1: In the Negative

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

REASONS

7. **Point No.1:** The plaintiff by name Sujatha filed this suit against the defendants seeking the relief of partition and separate possession of her legitimate share ie., 1/5th share share in the suit schedule properties. The 1st defendant is mother of the plaintiff. Defendants No.2 and 3 are the wife and daughter of brother of the plaintiff. Defendant No.4 is the husband and defendants No.5 to 8 are the children of sister of

the plaintiff. Defendant No.9 is the son of one more brother of plaintiff and defendant No.10 is the purchase of item No.3 of the suit schedule property.

8. The plaintiff in her plaint para No.2 described about the relationship between herself and the defendants. She has contended that, the suit schedule properties are ancestral and joint family properties of herself and the defendants. It is her specific case that, she is in joint possession and enjoyment of the suit schedule property. It is her specific case that, she has claimed her 1/5th share with the defendants which was declined. As such she has maintained this suit. Upon service of summons defendants No.2 and 3 appeared and filed their written statement. Further defendant No.10 also appeared through his counsel and filed the written statement. As per the written statement averments the relationship is admitted by defendants No.2 and 3. As per defendants No.2 and 3 there is already a partition between Karigowda and his sons Vijayakumar and Kumar in the year 2005 by virtue of a registered partition deed dated 12.06.2005.

9. As per defendants No.2 and 3 the suit schedule item No.1 property has been divided into two portions and allotted to Vijayakumar and Kumar. Item No.2 property was also allotted to Kumar. An extent of 3 guntas in item No.4 was allotted to Kumar and remaining 1 acre 27 guntas was allotted

the husband of the 2nd defendant. As per defendants No.2 and 3 suit schedule item No.3 property has been allotted to the share of Vijayakumar and upon his death the said property was mutated in the name of defendants No.2 and 3. As per defendants No.2 and 3 for the purpose of legal necessity and to perform marriage of the 3rd defendant the suit schedule item No.3 property was sold infavour of the 10th defendant.

10. In the written statement defendants No.2 and 3 taken up specific contention that, an extent of 4 acre 38 guntas in different survey numbers at Varanchi village have been fallen to the share of daughters of Karigowda in a oral partition. Defendants No.2 and 3 specifically contended that, the Varanchi property has been acquired by the father of the plaintiff and he had orally partitioned it between his daughters. They have further contended that, since husband of the 2nd defendant was a drunkard, the plaintiff and her father have colluded together and sold the Varanchi properties in favour of one Donald Peter Waz and later he filed a suit which ended in a compromise and even after compromise the plaintiff, her father and brothers have not executed regular sale deed in favour of Donald Peter Waz and as such he filed execution petition which is pending.

11. It is pertinent to note that, the plaintiff filed the documents which are marked as per Ex.P1 to Ex.P5. Ex.P1 is

the family Tree of plaintiff and the defendants and it is no at all in dispute. Ex.P2 is the RTC of suit schedule item No.1 property and as per this document an extent of 1 acre 10 guntas each are standing in the name of defendants No.2 and 3 and defendant No.9. Ex.P3 is the RTC of suit schedule item No.2 property which is standing in the name of defendant No.9. Ex.P4 is the RTC of suit schedule item No.3 property standing in the name of defendants No.2 and 3. Ex.P5 is the RTC of suit schedule item No.4 property IN which 3 guntas is standing in the name of defendants No.9 and remaining 1 acre 7 guntas is standing in the name of defendants No.2 and 3. All the above referred documents clearly shows that, the plaintiff has got an arguable case. It is pertinent to note that, plaintiff is the daughter of Karigwoda. As per amended Section 6 of Hindu Succession Act the plaintiff has got equal share in the ancestral property with that of a son. It is an admitted fact that, the plaintiff is not at all a party to the sale deed executed infavour of 10th defendant. The learned counsel for defendants No.2 and 3 produced the copy of plaint in OS No.37/2018. The contentions taken up by defendants No.2 and 3 in the said suit and this suit are to be determined after conclusion of trial only. Whether the plaintiff was given a share in the property situated at Varanchi village or not is to be determined after full-fledged trial. It is the settled principles of law that the

cause of action is a bundle of facts. On going through the entire plaint averments the plaintiff has made out a case for trial. Defendants No.2 and 3 have no made out any grounds for rejecting the plaint on the ground of lack of cause of action and barred by any law. Accordingly, point No.1 is answered in the Negative.

12. **Point No.2:** In view of the reasons discussed above, this court proceeds to pass the following:

ORDER

IA No.II filed by defendants No.2 and 3 under Order 7 Rule 11(a) and (d) R/w Section 151 of CPC is hereby rejected with costs of Rs.300/-.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 09th day of July, 2024.)

(Anitha)
Senior Civil Judge and JMFC.,
Hangal.