

KAMS400002172020



IN THE COURT OF
SENIOR CIVIL JUDGE AND JMFC AT
KRISHNARAJANAGARA, MYSURU
Presided Over by Sujatha Madiwalappa
Sambrani

This the 17th day of August 2022

O.S./12/2020

PLAINTIFFS: Smt. S.R. Kamakshi & others

// Vs. //

DEFENDANTS: Smt. Susheela & others

: I.A.NO.2 :

APPLICANT: Smt. Sunandamma,
W/o.S.L. Ramakrishnegowda,
Aged about 65 years,
R/at Appajigowda Beedhi,
Saligrama, K.R.Nagar Taluk,
Mandya District.
.....8th defendant
(By Sri.C.L.M. Advocate)

Vs.

OPPONENTS: 1. Smt. Siddamma,
D/o late S.J. Ramegowda,
Aged about 59 years,
2. Smt. S.R.Shashikala,
D/o late S.J. Ramegowda,

Aged about 57 years,

3. Smt. S.R.Pushpa,
D/o late S.J. Ramegowda,
W/o. V.B. Siddaiah,
Aged about 52 years,

- All are R/at
Door No.265, Kaveri Main Road,
Raghavendra Nagar,
Mysuru.

(By Sri.V.S. Advocate)

..... Plaintiffs.

ORDER ON IA No.2

The learned counsel for the defendant No.8 has filed this application under Order 7 Rule 11 (d) R/w Section 151 of CPC., seeking dismissing the suit against the 8th defendant.

2. The said application is objected by the plaintiffs by filing objections.

3. Heard and perused the records.

4. The following point that would arise for my consideration is:

1. Whether the application filed by the defendant No.8 under Order 7 Rule 11 (d) R/w section 151 of CPC., seeking dismissing the suit against the 8th defendant, deserves to be allowed?

2. What order?

5. My findings on the above points are as follows:

Point No.1 : In the Affirmative

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

REASONS

POINT No.1:-

6. This is the suit for partition and separate possession in respect of suit schedule properties filed by the daughters against their mother and brothers seeking equal share in the suit schedule properties.

7. After filing the suit, suit summons were issued to the defendants. The defendant No.8 appeared before the court and contested the suit by filing the written statement. The defendant No.1, 2, 3 to 7 though appeared before the court but not contested the suit and not filed the written statement. The defendants No.9, 10 and 11 remained Exparte.

8. It is submitted that, after appearance of defendant NO.8 filed the written statement denying the case of the plaintiffs. The defendant No.8 has also filed this application seeking dismissal of the suit against her on the ground that, she has

purchased the lands in Sy.No. 43 measuring 4.4 guntas situated at Saligrama village, K.R.Nagar Taluk, Mysuru District from Sushella and other defendants No.1 to 7 under the registered sale deed dated 24.7.2003. Thereafter khatha has been changed in her name, which is now standing in her name. Since the date of purchase, she has been in peaceful possession, enjoyment and cultivation of the said property as absolute owner by paying kandayam. Over the said property neither the plaintiffs nor the defendants have the absolute right, title and interest. She is a bonafide purchaser of the said property. The defendants No.1 to 7 have sold the said property for their family legal necessities. As such the suit filed by the plaintiffs against the 8th defendant is not maintainable. In view of Section 6 of Hindu Succession (Amendment) Act, 2005 clearly states that, affect or invalidation any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December 2004. Therefore, the suit of the plaintiff liable to be dismissed on this ground. It is further submitted that, the plaintiffs have got no locus-standi to maintain the suit against her seeking partition of suit Item No.1, which is barred by law. Hence prayed to dismiss the suit against her.

9. On the other hand, the learned counsel for the plaintiffs has filed the objections stating that the application filed by the defendant No.8 is not maintainable under law and facts and the applicant has sworn to the false affidavit in order to harass the plaintiffs to get wrong gain. But the plaintiffs admitted that the 8th defendant has purchased the lands in Sy.No. 43 measuring 4.4 guntas from the defendants under registered sale deed dated 24.7.2003, but denied the sale of said property for the family legal necessities. It is further submitted that, during the sale of said property the applicant has not verified about the family members as well as the Genealogical family Tree and the defendant No.8 has not taken the signature of the plaintiffs in the said sale deed. Therefore, the defendant no.8 cannot be said as bonafide purchaser of the said property. At the time of sale of said property, the plaintiffs were majors and the defendants No.1 to 7 sold the said property without the knowledge of the plaintiffs and the defendants have not given any share in the sale proceeds. These defendants have hide the said fact to the defendant No.8. The plaintiffs are also having the legitimate right, title, interest and ownership over the said property since the it is a joint family and ancestral property. Hence prayed to dismiss the application.

10. On perusal of the entire records it appears that the plaintiffs being the daughters have filed this suit for partition and separate possession stating that the suit schedule properties are the joint family and ancestral properties of plaintiffs and defendants No.1 to 7. It also appears that the defendant No.8 is only challenging the suit with respect to suit item No. 1 which appears to be purchased by defendant No.8 from the defendants No.1 to 4 and 7 along with one Smt. S.B. Usha W/o Chandrahas who sold this property through the registered document of sale dated 24.7.2003. Thereafter Smt. S.B Usha W/o Chandrahas has also executed a registered release deed in favor of defendant No.3/ S.R.Prakash and others which is duly registered before the Sub-Registrar on 1.7.2003.

11. Now it is the contention of the defendant No.8 that, in view of the Hindu Succession (Amendment) Act, 2005, as per Section 6, 'affect or invalidation any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December 2004'. In this case, as per the pleadings of the plaintiffs, the suit item No. 1 was sold by defendants No. 1 to 4 and 7 along with Smt. S.B.Usha through the registered sale deed dated

24.7.2003 which is prior to the date of enforcement of Hindu Succession (Amendment) Act, 2005 i.e., 20th December 2004. Therefore, the alienation made by the defendants No.1 to 4 and 7 with respect to suit item No.1 is invalidated. Hence prayed to dismiss the suit of the plaintiffs against the defendant No.8 with respect suit Item No.1.

12. In this regard the learned counsel for the defendant NO.8 has relied upon the decision reported in **HCR 2021 Kant. 541 in between Shivalingamma (Smt.) and others Vs Chikkeeramma (Smt.) and Another**, wherein it is held that:

10. at this stage, it is relevant to refer to proviso to Section 6(1) of the Hindu Succession (Amendment) Act, 2005, which reads as under:

6. Devolution of interest in coparcenary property-- (1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-

(a) by birth become a coparcener in her own right in the same manner as the son;
(b) have the same rights in the coparcenary property as she would have had if she had been a son;

*(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son;
and any reference to a Hindu Mitakshara coparcenar shall be deemed to include a reference to a daughter of a coparcenar:
Provided that nothing contained in this subsection shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.*

11. In viw of the proviso to Section 6(1) of the Hindu Succession Act, 1956 after the amenment Act of 2005, nothing contained therein shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

14. By careful reading of the averments made in the plaint, it clearly depicts that the suit schedule property was alienated by father of the plaintiffs on 24.11.1993 and the suit came to be filed on 15.12.2016. the alienations made prior to 20.12.2004 are not affected in view of the

proviso to Section 6(1) of the Hindu Succession (Amendment) Act. Admittedly, the suit schedule property was alienated prior to 20.12.2004 i.e., prior to the cut off date and therefore, the said alienation is not affected. Hence, as on the date of filing the suit, the suit schedule property was not available for partition. Therefore, no cause of action arisen for the suit which was filed in the year 2016. the plaintiffs have not made out a case that the cause of action arose to the plaintiffs for filing the suit. Therefore, question of filing the suit for partition would not arise, in view of the proviso to Section 6(1) of the Hindu Succession (Amendment) Act, 2005.

16. For the reasons stated above and in view of the principles enunciated in the dictum of the Hon'ble Supreme Court stated supra, the impugned judgement U/O. 7 Rule 11(a) and (d) R/w section 151 of CPC and rejecting the plaint as barred by law under the proviso to Section 6 of the Hindu Succession (Amendment) Act, 2005, is just and proper. The appellants have not made out any ground to interfere

with the impugned judgement and decree passed by the trial court”

13. Admittedly, the suit item No. 1 was alienated on 24.07.2003 which is prior to the date of amendment i.e. 20th December 2004, prior to the cut off date and therefore, the said alienation is not affected. Hence, as on the date of filing the suit, the suit Item No.1 was not available for partition. Therefore, there is no no cause of action arisen for the suit which was filed in the year 2020. The plaintiffs have not made out a case that the cause of action arose to the plaintiffs for filing the suit especially with respect to suit item No. 1. Therefore, question of filing the suit for partition with respect suit item No. 1 would not arise, in view of the proviso to Section 6(1) of the Hindu Succession (Amendment) Act, 2005. The decision relied by the Learned counsel for the defendant No.8 rightly applicable to present set of facts. Accordingly, the application filed by the defendant No.8 deserves to be allowed. Hence, Point No.1 is answered in the **Affirmative.**

POINT No.2:-

14. For the reasons stated above, I pass the following:

ORDER

I.A. No.2 filed by the defendant No.8 under Order 7 Rule 11(d) R/w Section 151 of CPC., is allowed.

In view of the above order, the suit of the plaintiff against defendant No.8 with respect to suit item No.1 is dismissed.

*(Dictated to the stenographer, transcribed, typed and printout taken by her and added some paragraph directly on computer and corrected, signed and then pronounced by me in the open court, on **17TH August 2022**)*

(Sujata M. Sambrani)
Sr. Civil Judge & J.M.F.C.
K.R.Nagar.