

KAMS410011262017



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

PRESENT

**Smt. Gayatri. B.Com., LL.M. (IPR)
Addl. Civil Judge & JMFC, Krishnarajanagara.**

DATED 21ST DAY OF FEBRUARY 2023

O.S.No.324/2017

PLAINTIFFS: Sri.Ningaraju and another

-V/s-

DEFENDANTS : Smt. Kamma & Others

IN I.A. No. VI

APPLICANT/2ND DEFENDANT:-

**SRI. Umesh,
S/o late Siddegowda @
Gowdaiah,
aged about 38 years,
R/at Basavarajapura village,
Kasaba hobli,
K.R.Nagar taluk**

-V/s-

OPPONENT/PLAINTIFFS: Kamma and others

ORDER ON I.A. NO.VI FILED U/O.VII RULE 11[d] of C.P.C.

Applicant/2nd defendant has filed present application U/O.7 Rule 11[d] of C.P.C. seeking rejection of plaint.

2. Per contra, learned counsel for respondent/plaintiffs has filed detailed objections to the said application and prayed for dismissal of application in the interest of justice and equity.

3. Heard and perused.

4. The following points arise for this court's consideration.

1)Whether the applicant/2nd defendant has made out sufficient grounds to allow the present application?

2) What order?

5. This court findings on the above points for consideration are as under:

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

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

REASONS

6. **POINT NO.1:**

The applicant/2nd defendant has filed present application U/O.7 Rule 11 [d] of C.P.C. seeking rejection of plaint on the ground that previously on 19.06.1999 there was a partition took place in their family, as such by virtue of said partition through Panchayath Palupatti, the suit schedule properties katha's have been changed into the names of himself, plaintiffs and his father along with his mother. As per the said partition, they are in peaceful possession and enjoyment of the properties bequeathed by them towards their respective shares. Plaintiffs

having been known about the said fact have intentionally by ignoring and hiding the same have filed the present false suit against them claiming partition. This shows the guilty minds of plaintiffs. The applicant also submits that there is no cause of action arose for the plaintiffs to file the present suit against them in the said manner, as such the plaint of the plaintiff deserves to be rejected.

7. Per contra, learned counsel for respondent/ plaintiffs has filed detailed objections contending that, application filed by the applicant/ 2nd defendant is not maintainable either in law or on facts. The said application has been filed at belated stage and all the affidavit averments are false. He has also contended that intentionally defendants did not come forward to file their written statement, as such the matter was posted for recording of plaintiff side evidence. After plaintiff examining and leading their evidence, defendants have filed written statement and now they have come up with a false application seeking rejection of plaint. The respondent/ plaintiffs have contended that, plaintiff no.1 and 2nd plaintiff are brothers and defendant no.1 is mother, defendant no.2 is also a son of 1st defendant, defendant no.3 is the wife of 2nd defendant, defendant no.4 and 5 are the sisters of plaintiffs. The said Siddegowda @ Gowdaiah divided all his properties between his sons on 19.06.1999 through an unregistered Palu Parikath. As per the said document, the late Siddegowda @ Gowdaiah and the 1st defendant were entitled for share in the land bearing

Sy.No.193/2, measuring about 1 acre 4 guntas, situated at Basavarajapura village, Kasaba hobli, the land bearing Sy.No.49/5, measuring about 30 guntas, and land bearing Sy.No.53, measuring 0.15 guntas, situated at Basavarajapura village. These lands were left out only for the purpose of maintenance of late Siddegowda and in the said document there is no specific recital made mention as to the disposal of said properties, as such also the late Siddegowda during his lifetime executed a registered relinquishment deed in favour of 2nd defendant on 02.03.2017 in respect of item no.2, and the said Siddegowda died on 30.03.2017. The said fact was not known to the plaintiff, it came to their knowledge belatedly, as such a situation warranted them to file the present suit.

8. The present suit has been filed by the plaintiffs for the relief of partition and separate possession. Plaintiffs have already lead their evidence and due to the act of defendants not filing their written statement, matter was posted for arguments, at the fag end of matter defendants have appeared and filed applications seeking permission to file written statement along with instant application seeking rejection of plaint on the ground that plaintiffs have got no cause of action to file the present suit claiming that there was previous partition in their family. The fact alleged by the defendants requires evidence and it is a matter of evidence where it is to be decided as to the fact of prior partition by the defendants. Plaint cannot be rejected on the sole ground and defense of prior partition. In order to reject

a plain only plain averments are to be looked into. On careful perusal of plain with those of the documents produced by the plaintiffs, this court do not find any sufficient grounds and reasons to allow the present application. Hence, this court without further discussion proceeds to answer this point accordingly.

9. POINT NO.2:

In view of the above discussions and the reasons mentioned therein this court proceeds to pass the following:-

ORDER

I.A. No.6 filed by the applicant/2nd defendant U/O. 7 Rule 11[d] of C.P.C. is hereby dismissed on a cost of Rs.500/- payable to plaintiffs.

[Dictated to the Steno, transcribed by her. Corrected and then pronounced by me in the Open Court on this the 21st day of February 2023]

(Gayatri)
Addl. Civil Judge & JMFC.,
K.R.Nagar.