

KAMS410013682020



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

PRESENT

**Sri. Chandan S, B.Com., LL.B
Prl. Civil Judge & JMFC, Krishnarajanagara.**

Dated 02nd day of December 2024

O.S./257/2020

**Plaintiffs : Sri. Thimmegowda and another
-V/s-**

Defendants : Sri. Swamygowda and others

I.A. No.10

**Applicant : Sri. Swamygowda
---1st defendant
-V/s-**

**Opponents : Sri. Thimmegowda and another
--- Plaintiffs**

**ORDER ON I.A. NO.4 FILED U/O 7 R-11(a & d) R/W SEC. 151
OF C.P.C.**

The applicant/defendant No.1 preferred this application seeking to reject the plaint of the plaintiff as not maintainable.

2. Further the 1st defendant Swamygowda has filed his affidavit stating that, the plaintiffs instituted the suit against the defendants. Further as per the partition and division in the joint family, the schedule property was fallen to the share of one Hucchegowda father of the applicant as per M.R. No.1/76-77.

Further, Sy.No.23/1 measuring 2 acres 1 gunta of land and an extent of 1 acre in Sy.No. 22/3 were fallen to the share of his father. As per the partition and division his father was in peaceful possession enjoyment over the said property and thereafter his children's continued the possession over the said property without any interference from anybody till date. Further according to the applicant his father mortgaged the suit property on 04.03.1971 in favour of one Kempegowda who was resident of Saligrama Village to an extent of 1 acre 30.12 guntas of land for a period of 5 years and the same was registered and remaining 10.04 guntas was vest with his father and after the said completion of the mortgage period, his father has taken the possession and continued his possession in the said property till his death, after his demise he is cultivating in the said property along with the defendant No.2 to 5 who are in actual possession. Further according to the applicant, there is no joint family status between the family of the plaintiffs and defendants as per the partition under M.R. No.1/76-77 undivided joint family properties were divided between the parties. However, the plaintiff without having any right over the suit schedule property and also without describing the cause of action has presented this suit after the lapse of 40 years with an intent to grab the schedule property. Hence, the suit is not maintainable.

3. However the said pleadings of the application, opposed by the plaintiffs herein and he has filed his statement of objections militating the averments contemplated in the application.

Wherein the objections of the plaintiffs denotes that, the plaintiffs have specifically mentioned the cause of action in the plaint para No.6. Further, the defendant No.1 unnecessarily brought this false and frivolous application when the case was posted for cross-examination of PW-1. Further all the alleged defence in the written statement and also affidavit are the matter concerning the merit to be decided meritoriously. Further, according to the plaintiffs under the provision of CPC, the 1st defendant has not mentioned in which law, the suit is barred and not maintainable. Further, the plaintiff has specifically mentioned the cause of action, the application is filed to drag on the proceedings. Hence, prays for dismissal of the application.

4. Heard the counsel for the applicant and also the learned counsel appearing for the plaintiff in respect of the averments stated in the affidavit and also objections and also verified the pleadings of the affidavit and objection produced before this court.

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

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

2) What order?

6. 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

7. POINT NO.1:

It is according to the applicant the suit is one for partition against the defendants under the guise and grounds that, the schedule property is ancestral in nature and also the property of the joint family and the plaintiffs are claiming partition and separate possession over the schedule property. The defendants appeared before this court through their counsel upon service of summons and filed their detailed written statement. Thereafter, issues were framed and the plaintiff has already lead his evidence in chief. When the matter was posted for cross-examination, the instant application was moved by the applicant/1st defendant stating that, the suit is not maintainable since the same is barred without any recitals regarding the cause of action.

8. On verifying the order sheet, the same is reflects and prima-facie suggested that, the application is moved when the defendant was asked to cross-examine the PW-1 imposing cost, even after enough and ample opportunities provided to the defendants to cross-examine the PW-1. Further, the recitals contemplated in the application which is very much discloses that, it is as per the applicant the partition is already taken place. As per the division his father was allotted 2 acres 1 guntas of land in Sy.No.23/1. Out of which an extent of 1 acre 30.12 guntas of land was mortgaged in favour of one Kempegowda for a period of 5 years and the same was redeemed after completion of the mortgage period of 5 years. Further since it is the applicant view that,

already partition is effected among the family members, the suit has been launched in order to grab and knock the schedule property of the defendants. Further, the prime important grounds urged before this court, the suit is suffering from cause of action. However, the same was denied specifically refuting each and every averments mentioned in the statement of objection of the plaintiffs.

9. On verifying the recitals and pleadings of the plaint, at page No.4 para No.6, it is specifically awarded that, the cause of action to prefer this suit has been arose for the plaintiffs on 29.09.2020 on the date when the Assistant Commissioner had issued endorsement directing the plaintiffs to approach the Civil Court. Accordingly, from the very plain and patent leading of the said paragraphs it is clearly visible and could be noticed that, it is for the plaintiff to approach the Civil Court as per the endorsement of the Assistant Commissioner which is issued on 29.09.2020. Which according to the plaintiffs, the same is the cause of action to approach this court to lodge the suit against the defendants. Hence this court is of the view that, the said cause of action which is stated and envisaged under the plaint pleadings is sufficient and on verifying the order sheet, it clearly reflects that, though the applicant was provided with ample sufficient opportunities to cross-examine the PW-1, without further proceedings in the matter and conducting cross-examination when this court fixed particular date for cross-examination, without cross-examination as per the directions of this court, the

instant application was moved and it is very much clear from the pleadings of the application, the intent of the very applicant is to linger the proceedings of the suit. Further, notably the suit is filed for partition. Further, the recitals of the status and nature of the properties is a matter of trial i.e., to be decided and adjudicated and determined during the full fledged trial after considering the evidence of the parties that may be adduced during the course of trial.

10. However at this very movement, this court certainly cannot come to the conclusion that, the suit is to be considered or not maintainable on the very application of the applicant/defendant No.1. Hence the said application is merit less and the same is to be dismissed. Hence, this court without further discussion proceeds to answer **point No.1** in the **Negative**.

11. POINT NO.2:

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

ORDER

I.A. No.4 filed by the applicant/1st defendant U/o 7 R-11(a & d) R/w Sec. 151 of C.P.C. is hereby dismissed as sans merit.

[Dictated to the Steno, transcribed by her. Corrected and then pronounced by me in the Open Court on this the 02nd day of December 2024]

(Chandan.S)
Prl. Civil Judge & JMFC.,
K.R.Nagar.