

**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : Sri. Ganapathi Prashanth.M, B.A., LL.B.,
Senior Civil Judge, Nanjangud.

Dated : This the 16th day of February 2021.

O.S.No. 48/2013

Plaintiff/s : Mahadevamma

-V/s-

Defendant/s : Nanjaiah and others.

I.A. DATED 21.10.2020

Applicant/s : K.Siddu
defendant No.3

-V/s-

Opponent/s : Mahadevamma
plaintiff

I.A. DATED 18.01.2021

Applicant/s : Smt. Mahadevamma
plaintiff

-V/s-

Opponent/s : Nanjaiah and others
defendants

I.A. DATED 18.01.2021

Applicant/s : Smt. Mahadevu
Defendant No.1(a)

-V/s-

Opponent/s : Mahadevamma
Plaintiff

**ORDERS ON I.A. DATED 21.10.2020 UNDER SEC.151
OF CPC FILED BY DEFENDANT NO.3 & I.A.s DATED
18.01.2021 UNDER SEC.94(e) R/W SEC.151 OF CPC
FILED BY THE PLAINTIFF AND DEFENDANT NO.1(a)**

The defendant No.3 has filed I.A. dated 21.10.2020 U/s 151 of CPC seeking to permit to withdraw their 3/5th share in the compensation amount deposited by defendant No.5 in this court in respect of the suit schedule property.

The plaintiff had filed I.A dated 18.01.2021 U/s.94(e) and Section 151 CPC seeking to release 1/5th share of the total compensation amount pertaining to plaint 'A' schedule property and to permit to proceed further in relation to plaint 'B' and 'C' schedule properties.

The defendant No.1(a) filed I.A. dated 18.01.2021 seeking similar relief to release 1/5th of the compensation pertaining to plaint 'A' schedule property.

2. The plaintiff has filed objections to the I.A filed by defendant No.3 and defendant No.3 filed objections to

the I.A. filed by the plaintiff or defendant No.3 has not filed any objections to the I.A. filed by defendant No.1(a).

3. Heard both sides. Perused the pleadings and materials on record.

4. The points that arise for consideration is as follows:-

1. Whether the release of compensation amount can be granted in favour of defendant No.2 to 4?
2. Whether the release of compensation amount can be granted in favour of defendant No.1(a) and (b) ?
3. Whether the release of compensation amount can be granted in favour of plaintiff ?
4. What Order ?

5. The above points are answered as follows :

Point No.1 & 2 : In the affirmative

Point No.3 : In the negative

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

REASONS

6. Point No.1 to 3 :- This is a suit for partition seeking 1/5th share in the suit schedule properties in favour of the plaintiff. The defendant No.5 is said to have acquired suit 'C' schedule property at Rs.21,00,000/- per acre and thus total compensation in respect of plaint 'C' schedule property is said to be Rs.1,16,02,500/-. It is to be noted that this is a suit filed on 25.03.2013 and even after lapse of these many years the evidence of the plaintiff is yet to complete. Therefore, how much time might be required to complete the trial and decide the matter on merits being uncertain, it is claimed by the defendant No.3 that the admitted share of defendant No.2 to 4 viz, 1/5th each totally 3/5th be released in their favour by permitting them to receive the said portion of compensation amount.

7. The objections of the plaintiff is that the defendant No.2 to 4 are taking advantage and trying to divert the attention of the court and if the application is

dismissed no irreparable injury will be caused to the said defendants.

8. However, it is relevant to note that at this juncture itself that on the similar grounds the defendant No.1(a) and (b) claimed release of their 1/5th share, so also the plaintiff to release her 1/5th share.

9. The objections of the defendant No.3 to the said I.A. filed by the plaintiff is that the claim made by the plaintiff is disputed and therefore, such release cannot be granted in favour of the plaintiff. Further, the defendants have not raised any objections to the I.A. filed by defendant No.1(a).

10. From the perusal of the pleadings, it is to be noted that admittedly the defendant No.2 to 4 are having 1/5th each share in the plaint 'C' schedule property. Therefore, no further adjudication is required to apportion

their $\frac{1}{5}$ th each share, viz, totally $\frac{3}{5}$ th share out of the compensation amount, except an arithmetical calculation. Therefore, if the said $\frac{3}{5}$ th portion of the compensation amount is released in favour of defendant No.2 to 4, the plaintiff will not be suffer irreparable injury, if the $\frac{1}{5}$ th portion of the compensation amount will be still available to meet the claim of the plaintiff. Similarly $\frac{1}{5}$ th of the amount can be ordered to be released in favour of defendant No.1 L.Rs., as their claim is not resisted by any of the parties herein. However, in so far as the claim made by the plaintiff is concerned the said portion being dispute it would not be proper to permit the plaintiff to withdraw the $\frac{1}{5}$ th of the compensation amount. However, what remains after releasing the $\frac{4}{5}$ th of the compensation amount will be available to the plaintiff if she succeeds in the suit by proving her quantum of share as alleged in the plaint. Therefore, point No.1 and 2 are answered in the Affirmative and Point No.3 is answered in the Negative. Hence, the following:-

ORDER

The I.A. dated 21.10.2020 filed by the defendant No.3 U/s 151 of CPC is hereby allowed.

The defendant No.2 to 4 are permitted to receive 1/5th each of the compensation amount totally 3/5th portion of the compensation amount in respect of 'C' schedule property.

The I.A. dated 18.01.2021 filed by the defendant No.1(a) U/s 94(e) R/w section 151 of CPC is hereby allowed.

The defendant No.1(a) & (b) are permitted to receive 1/5th of the compensation amount in respect of 'C' schedule property.

The I.A. dated 18.01.2021 filed by the plaintiff U/s 94(e) R/w section 151 of CPC is hereby dismissed.

The above order is made on the condition that the respective parties shall execute the indemnity bond with surety for the quantum of amount claimed by them, alongwith the surety for the likesum, agreeing to indemnify the State in case anyone else successfully proves any claim in respect of the said acquired land in future date.

It is clarified that the claim of the entitlement of the plaintiff that remaining 1/5th portion of the compensation amount will be decided after full fledged trial.

(Dictated to the Stenographer, transcribed by her, corrected, initialed and then pronounced by me in open Court on this the 16th day of February 2021).

(Ganapathi Prashanth.M)
Senior Civil Judge, Nanjangud.

**Order pronounced in the open court
vide separate order**

ORDER

The I.A. dated 21.10.2020 filed by the defendant No.3 U/s 151 of CPC is hereby allowed.

The defendant No.2 to 4 are permitted to receive 1/5th each of the compensation amount totally 3/5th portion of the compensation amount in respect of 'C' schedule property.

The I.A. dated 18.01.2021 filed by the defendant No.1(a) U/s 94(e) R/w section 151 of CPC is hereby allowed.

The defendant No.1(a) and (b) are permitted to receive 1/5th of the compensation amount in respect of 'C' schedule property.

The I.A. dated 18.01.2021 filed by the plaintiff U/s 94(e) R/w section 151 of CPC is hereby dismissed.

The above order is made on the condition that the respective parties shall execute the indemnity bond with surety for the quantum of amount

claimed by them, alongwith the surety for the likesum, agreeing to indemnify the State in case anyone else successfully proves any claim in respect of the said acquired land in future date.

It is clarified that the claim of the entitlement of the plaintiff on remaining 1/5th portion of the compensation amount will be decided after full fledged trial.

Senior Civil Judge, Nanjangud.