

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC, PERIYAPATNA**

Dated: this the 5th day of July, 2016

Present

Sri Arjun S.Mallur, B.A.L, LL.B.,
Senior Civil Judge and JMFC

OS.10/2016

PLAINTIFF : Sri. T.Vasantharaje Urs

V/s

DEFENDANTS : Sri. T.Gopalaraje Urs & others

IA.No.II

APPLICANTS : Sri. T.Gopalaraje Urs and others
(By Sri S.Shivannegowda, Adv.,)

V/s

RESPONDENT : Sri. T.Vasantharaje Urs
(By Sri C.K.Manjunath, Adv.,)

ORDERS ON IA.NO.II

I.A.No.II is filed by the defendants under Order 7 Rule 11(A) R/W Sec.151 of CPC seeking for rejection of the plaint contending that the plaintiff and the defendants are the children of Late. Devaraje Urs who died in the year 1950 and after the death of Devaraje Urs there was a Oral Partition between the plaintiff and his brothers and as per the Oral Partition the ancestral properties have been divided by metes

and bounds and Khata have also been changed in the name of respective sharers. The plaintiff and defendants have become absolute owners of the Suit Schedule Properties fallen to their respective shares. It is further contended that under the said partition land bearing Survey No.44/2A measuring 1 acre 38 guntas situated at Naganahally Village, Bettadapura Hobli, Periyapatna Taluk and out of the said land about 18½ guntas has fallen to the share of the plaintiff and plaintiff and his son by name T.V.Srikantheraje Urs have jointly sold the said property for their legal necessities in favour of one Kallegowda S/o Late. Barse Kallegowda residents of D.G.Koppalu Village under a Registered Sale Deed dated 20-05-1996. It is contended that in the said Sale Deed at page No.3 there is a recital which discloses that the plaintiff and his son are selling the property which had fallen to their shares on which they have got independent Khata. It is submitted that the recital found in the Sale Deed clearly discloses that the Ancestral Properties have been divided under a Oral Partition and therefore there is no Cause of Action for the present suit and sought for rejecting the plaint.

2. The plaintiff has filed objections to the application contending that at no point to time the plaintiff has executed any Sale Deed in respect of any of the Suit Schedule Property much less alleged Sale Deed dated 20-05-1996. It is contended that there is no Oral Partition as contended in the application

that has taken place in the family and without there being any evidence, it cannot be concluded that there was prior partition of the family of the plaintiff and defendants and sought for rejecting the application.

3. Heard the learned counsel for appearing plaintiff as well as defendants and perused the material on record.

4. The points for consideration is as under:

1. Whether the defendants have made out grounds for rejecting the plaint as provided under Order 7 Rule 11(A) R/W Sec.151 of CPC?

2. What order?

5. My answer on the above point is as under:

Point No.1 : “*Negative*”

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

REASONS

6. **Point No.1**: The plaintiff has filed this suit against the defendant No.1 to 5 for partition and separate possession of her $\frac{1}{4}$ th share in all the Suit Schedule Properties described at Item No.1 to 26 in the Schedule of the Plaint. Along with the application the plaintiff has filed an IA.No.I under Order 39 Rule 1 and 2 R/W Sec.151 of CPC seeking for Ad-interim

Temporary Injunction against the defendants from alienating the Suit Schedule Properties in any manner. This court vide order dated 11-04-2016 has passed an order of Ad-interim Exparte Injunction restraining the defendants from alienating the Suit Schedule Properties. The interim order is extended from time to time till today.

7. On service of notice on IA.No.I, Interim order and the suit summons the defendants have appeared before the court through their counsel and filed their Written Statement, denying the plaint averments toto inter-alia contending that there has been prior partition in the family and all the Ancestral Properties have been divided by metes and bounds. The defendants have also taken several other defences. Along with Written Statement the defendants have filed the present application under Order 7 Rule 11(A) R/W Sec.151 of CPC seeking rejection of the plaint alleging that there is no Cause of Action for the suit.

8. It is specific case of the defendant that under a Oral Partition which took place subsequent to the death of Devaraje Urs all the Ancestral Properties have been mutually divided between the children and in that Oral Partition the land bearing Survey No.44/2A total measuring 1 acre 38 guntas has fallen to the share of the plaintiff. It is the specific contention of the defendant that the plaintiff and his son by

name T.V.Srikantheraje Urs for their legal necessities have sold that said 18½ guntas of land to one Kallegowda S/o Late. Barse Kallegowda under the Registered Sale Deed dated 20-05-1996 and in the Sale Deed there is a specific recital to the effect that they are selling the property which has fallen to their share having the Khata in their name. The learned counsel for the defendant contended that the said recitals are sufficient enough to conclude that there has been prior partition in the Suit Schedule Properties and therefore no Cause of Action arises for the suit. Per contra, the learned counsel for the plaintiff would contend that the plaintiff has strongly denied the execution of any Sale Deed dated 20-05-1996 and the plaintiff also denies any Oral Partition having taken place in the ancestral properties subsequent to the death of his father. The learned counsel for the plaintiff would contend that whether there is exists Oral Partition and whether the plaintiff has executed the Registered Sale Deed dated 20-05-1996 has to be decided during trial before the court they are and not at this stage. He would contend that subsequent to the death of Devaraje Urs, the plaintiff was repeatedly asked for division of the ancestral properties which has been refused by the defendants and on 01-01-2016 the plaintiff has made final demand for partition of the ancestral properties which was refused by the defendants and therefore Cause of Action arose on 01-01-2016. The defendants in support of their application have produced the copy of

Registered Sale Deed dated 20-05-1996. On going through the same though it is true that there is a recital that the plaintiff and his son are selling the property which has fallen to their share that itself would not be sufficient to conclude that there was a Oral Partition among the joint family members and all the Suit Schedule Properties have been divided by metes and bounds and each of the children are enjoying their separate share over the Suit Schedule Properties. The plaintiff has specifically denied any oral partition having taken place and he also denies the execution of the alleged Sale Deed dated 20-05-1996. Under such circumstances the trial has been conducted in order to ascertain whether there was Oral Partition and subsequent division of properties by Metes and Bounds and whether the plaintiff has sold his share of the properties. Therefore unless and until evidence is led by the parties it would not be proper to infer that the prior partition has already taken place at this stage. Hence considering the above aspects I am of the considered opinion that at this stage no grounds have made out by the defendants for rejection of the plaint for want of Cause of Action for the suit contemplated under Order 7 Rule 11(A) R/W Sec.151 of CPC. Accordingly I answer **Point No.1** in the “**Negative**”.

9. **Point No.2**: For the aforesaid reasons I pass the following-

ORDER

I.A.No.II filed by the defendants
under Order 7 Rule 11(A) R/W Sec.151 of
CPC is hereby rejected.

No order as to costs.

[Dictated to the stenographer directly on computer, same is corrected and
then pronounced by me in the open Court on this the 5th day of July 2016.]

(Arjun S.Mallur)
Senior Civil Judge and JMFC.,
Periyapatna.

Order pronounced in the open court
(Vide separate order)

ORDER

I.A.No.II filed by the defendants
under Order 7 Rule 11(A) R/W
Sec.151 of CPC is hereby rejected.

No order as to costs.

(Arjun S.Mallur)
Senior Civil Judge and
JMFC.,
Periyapatna.