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O.S./50/2022

**IN THE COURT OF THE SENIOR CIVIL JUDGE, AT
PERIYAPATNA**

Present

Sri.A.SAMIULLA.

B.Sc, LL.B.,

Senior Civil Judge,

Periyapatna.

Dated: 7th Day of June 2023

OS.No.50 of 2022

Plaintiffs:

Sri.Kalamarigowda.

V/s

Defendants:

Sri.H.K.Mallesha & Ors.

IA.No.4

Applicant/D1

Sri.H.K.Mallesha.

V/s

Opponents/Plffs.

Sri.Kalamarigowda.

ORDER ON IA.No.4 U/O 7 RULE 11

R/W SECTION 151 CPC

Defendant-1 moved this application for

rejection of plaint.

2. Plaintiffs resisted the application by filing objection statement.
3. Heard arguments.
4. Following point arises for consideration;
Whether the defendants have made out a case to reject the plaint as prayed?
5. Answer to the above point is in **negative** for the following;

REASONS

6. At the outset; At the outset; suit is filed for declaration of title & for perpetual injunction & also to declare that; the decree passed in RA.No.48/13 arising out of OS.No.246/08 is void by asserting that; suit lands were granted to plaintiff by issuing saguvali chit on 01.02.03 subject to decision of WP.No.25130/2000 dated:30.04.01; his name was mutated under MR.No.10/02-03. He is in possession of suit lands prior to issue of saguvali chit. Defendant-1 has created documents in respect

of suit lands and mutated his name, which is questioned in RA.No.87/17 before the Assistant Commissioner, Hunsuru wherein MR.No.34/04-05 dated:20.05.05 was set aside and it is ordered to mutate his (plaintiff) name & accordingly his name was mutated under MR.No.H13/18-19 and MR.No.H14/18-19 dated:22.12.18. Defendants with an intention to gulp the suit land have filed RA.No.48/13 and obtained compromise decree to which neither the plaintiff nor his legal heirs are parties to it. Defendants are no way related to the plaintiff despite they filed OS.No.246/08 which ended in compromise in RA.No.48/13. Plaintiff has filed private complaint against defendants for the offence punishable u/Section 420 IPC for obtaining Khatha illegally. Defendants on the strength of created documents attempting to obstruct the

possession of plaintiff over suit land. Hence, suit is filed.

7. Defendants resisted the suit by filing written statement denying plaint averments in toto and inter alia contended that; originally suit lands belongs to their father H.M.Kariyappa @ Karigowda, who along with other 25 persons purchased the lands under sale deed dated:25.08.55. In consent deed effected between defendant-1 & his father; suit properties fell to the share of defendant-1 and on the basis of consent deed MR.No.34/04-05 was certified in respect of land bearing Sy.No.35 (1A 1G). Plaintiff never cultivated the lands bearing Sy.No.35 (28Gs) & Sy.No.39 (1A 1G) at any point of time. In between defendant-1 and his brothers a civil suit OS.No.248/08 was filed and in RA.No.48/13 they entered into compromise. In spite of having knowledge about all these facts plaintiff has

filed false suit to harass them. Among these grounds they prayed to dismiss the suit.

8. After exchange of pleadings and settlement of issues; trial was commenced. When the matter is set down for cross-examination of Pw.1, the defendant-1 filed the application at hand for the relief stated *supra* by contending that earlier suit OS.No.246/08 was filed in respect of suit survey number 39 (1A 1Gs) and Sy.No.35 (28Gs). Said suit was dismissed and same was impugned in RA.No.48/13, wherein the matter ended in compromise and on that basis compromise decree was drawn, as such the present suit is filed challenging compromise decree is not maintainable. Suit is also hit by the provisions of Section 11 of CPC.

9. Plaintiffs objected the application stating that in earlier litigations they are not parties and in said litigations the compromise decree was obtained by providing false information and also including the land in Sy.No.3/1 which belongs to plaintiffs; hence, said compromise decree is not binding on them, as such suit is maintainable. Hence, they prayed to reject the application.

10. It is worth to note that; Rule 11 of Order 7 of the Code envisages that; plaint can be rejected on six grounds (a to f) enumerated therein. Among them Order 7 Rule 11(d) deals with rejection of plaint where the suit appears from the statement in the plaint to be barred by any law. Here, defendants filed the present application invoking provision Order 7 Rule 11 CPC without mentioning the ground under which they sought rejection of

plaint. However, the substance of application indicates that they are seeking rejection of plaint under ground 'd' i.e., suit is barred by law. In this backdrop the scrutiny of plaint averments in whole is warranted to ascertain whether suit is barred by any law or not.

11. Before adverting to unveil the truth regarding the contentions raised by the parties to lis it is just and necessary to highlight some of the well settled principles regarding rejection of plaint under Order 7 Rule 11 CPC.

i) For the purpose of decision on application under Order 7 Rule 11 (d) of CPC, the averments in plaint are important; plea taken by the defendant in the written statement would be wholly irrelevant.

ii) When the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, the application

for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised.

iii) Power of the Court under Order 7 Rule 11 can be exercised both at the threshold of the proceedings and in the absence of any statutory restriction, at any stage of subsequent proceedings.

12. Coming back to the facts at hand; defendants argued that; earlier litigation was ended in compromise, as such the present suit challenging said compromise is not maintainable and also the suit is hit by the principles of res-judicata. Per contra plaintiffs argued that the suit is maintainable.

13. It is worth to note that; indisputably the plaintiffs herein are not parties in the earlier litigations. As per Order 23 Rule 3 (A) CPC; no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not

lawful. Said provision makes it crystal clear that the parties to compromise cannot challenge the same by filing a separate suit. It is well settled that; if a party to a suit who enters into a compromise in terms of which a consent decree is made, wants to challenge it on the ground that it is not lawful, the remedy available to him, is either to file an application in the very suit to recall the consent decree on the ground that compromise is not lawful or is vitiated by fraud, or to file an appeal under Order 43 Rule 1(A) CPC contending that the compromise was not lawful and that it ought not to have been recorded. A compromise decree is based on the agreement arrived at between the parties, which gets a seal of approval from the Court. A stranger to the suit is obviously a stranger to the agreement of compromise. He cannot file an

application either in the suit or in the appeal proceedings to challenge a compromise decree as he is not a party to the suit. Therefore, the bar under Rule 3(A) of Order 23 cannot be extended to him. The provision must confine only to the parties to the suit, who are parties to the agreement to the compromise. Hence, a stranger to a compromise decree cannot file an application in a suit or an appeal to challenge a compromise, as not being lawful, but must file a separate suit for the purpose. The above said proposition is forthcoming in the very decision i.e., **2017 SCC Online Bom 3564**, Smt.Anubai Bhiva Turuke v/s Bhagwan Shiva Turuke relied by the defendants.

In the case at hand as stated *supra* the present plaintiffs are not parties in the previous litigation as

well as to the compromise entered therein. Hence, suit filed by them is maintainable.

14. Next question arises for consideration is whether suit is hit by the principles of res-judicata. It is well known that; in order to constitute res-judicata it is not enough that the parties are the same, the same matter should have been tried and substantially in issue in both the suits, but the other important condition that the matter must have been heard and finally decided in the former suit. Here, in the case on hand the present plaintiffs are not parties in the former suit and said suit had not been heard and finally decided on merits but it ended in compromise. By this it can be said that the ingredients of Section 11 of CPC are not applicable to the present case. Hence, suit is maintainable.

15. Discussion *supra* coupled with the proposition laid in the above decision the only irresistible conclusion that can be drawn is that the suit at hand is maintainable. Hence, above point is answered in negative and proceeds to pass the following;

ORDER

IA.No.4 filed by the defendant-1 u/O 7 Rule 11 r/w
Section 151 CPC is rejected.

No order as to costs.

(Dictated to the Stenographer directly typed by her, corrected and initialed by me and then pronounced in the open Court on 07.06.23)

sd/-

(A.SAMIULLA)
Senior Civil Judge
Periyapatna.