



**IN THE COURT OF THE SENIOR CIVIL JUDGE &  
J.M.F.C., AT CHANNAPATNA.**

**: PRESENT :**

**SMT.SHUBHA, B.A.L., L.L.B.,**  
Senior Civil Judge & JMFC.,  
Channapatna.

**DATED THIS THE 10<sup>th</sup> DAY OF NOVEMBER 2023**

**O.S.No.189/2022**

**PLAINTIFF:**

Smt.Suma M.K.

**(By Sri.S.L., Advocate)**

**V/S**

**DEFENDANTS:**

1. Sri.K.Venkatesh and Others.

**(Defendant Nos.1 to 3 are  
represented by Sri.M.B.,  
Advocate and Defendant  
No.4 is represented by  
D.G.P.)**

**IN I.A.NO.VII**

**APPLICANTS/DEFENDANTS 1 TO 3:**

1. Sri.K.Venkatesh and Others.



**V/S**

**OPPONENT/PLAINTIFF :**

Smt.Summa M.K.

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**ORDERS ON I.A. No.VII**

The above application i.e., I.A.No.VII is filed on behalf of the applicants/defendants 1 to 3 under Order VII Rule 11(d) of Civil Procedure Code praying this court to reject the plaint as suit is barred by law as far as it relates to item No.2 being the CL-2 license which stood in the name of deceased Smt.Sarojamma in the name and style as Raghavendra Wines, in the ends of justice.

2. The above application is supported with the affidavit of the Defendant No.2 for and on behalf of the Defendant Nos.1 and 3, wherein he has submitted that the suit filed by the plaintiff seeking partition and separate possession of suit schedule item No.1 and 2. That there is a Bar under Section 68-A and 68-B of the Karnataka Excise Act and the present suit as against the Excise Officers and that the suit in respect of the CL-2 license for partition



and separate possession is not maintainable as the license cannot be partitioned being only a privilege parted with by the State Government. Therefore, the suit as far as suit schedule Item No.2 – CL-2 License is concerned, is liable to be rejected. That the license was held by deceased Sarojamma during her life time. That the Plaintiff can succeed to the license only if the license is in operation but not otherwise. However, now by virtue of expiry of the license period, the license is not renewed due to the pendency of the suit and therefore as of now there is no license. Therefore, it is very clear that she cannot claim the partition in the license. The wine stores in the name and style of Raghavendra Wines cannot be partitioned as the same is impermissible under law.

3. The Defendants 1 to 3 have further submitted that the said suit schedule Item No.2 can be run on the basis of the license in form CL-2, that will be granted by the Government every year and the Plaintiff cannot exert any right, title or interest on the same as it is only a parting of the privilege by the State and therefore, the dealing liquor is res



extra commerciam as held by the Hon'ble Supreme Court of India and therefore, there cannot be claim of partition in the said suit schedule item No.2 being CL-2 license. That the said licesne being the pure grant in favour of the deceased Sarojamma, no one much less the Plaintiff can claim the partition in the said suit schedule Item No.2. Therefore, the suit in respect of the suit schedule Item No.2 being the CL-2 license is not maintainable and the plaint is liable to be rejected to the said extent. That the suit is barred bylaw as far as suit schedule item No.2 is concerned. Hence, the plaint is liable to be rejected to that extent. Therefore they prayed to allow the application.

4. On the other hand the Plaintiff has filed objections and submitted that the provisions of Karnataka Excise Act i.e., Section 68A, 68B are not applicable to this suit. The suit of the Plaintiff is not only in respect of said CL-2 License but it includes other partible properties. Hence, the application deserves to be dismissed.



5. The Plaintiff has further submitted that the Excise Officers are not parties to this suit and no relief is prayed against the Excise Officer. Therefore, the provisions of Karnataka Excise Act cannot be made applicable to this case. That the said Sarojamma died without leaving any testamentary disposition, that the suit schedule properties are joint family properties. As such the Plaintiff has filed this suit seeking partition. Hence, the above application filed by the Defendants 1 to 3 is not maintainable. Accordingly, the Plaintiff has prayed to dismiss the above application.

6. I have heard the arguments of learned advocate for the plaintiffs/applicants and opponents/defendants on I.A. No.VII. Now the points that arise for my consideration are:

**POINTS**

- 1) Whether there are any grounds to reject the plaint as far as it relates to Item No.2 – CL-2 License in view of Bar provided under Section 68B of The Karnataka Excise Act ?
- 2) What order ?



7. My findings to the above points are as follows:-

Point No.1 : In the Affirmative

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

### **REASONS**

8. **POINT NO.1 :-** The above application i.e., I.A.No.VII is filed on behalf of the applicants/defendants 1 to 3 under Order VII Rule 11(d) of Civil Procedure Code praying this court to reject the plaint as suit is barred by law as far as it relates to item No.2 being the CL-2 license which stood in the name of deceased Smt.Sarojamma in the name and style as Raghavendra Wines, in the ends of justice.

9. The Plaintiff has filed the above suit seeking partition in respect of property left by Smt.Sarojamma. The contention of the Plaintiff in the suit is that the suit schedule item No.1 property was a joint family property stood in the name of propositus Krishna C. and after the death of said Krishna the property was mutated in the name of Sarojamma. That herself and Defendants were in joint possession and enjoyment of the item



No.1 of the suit schedule property. That the Excise License as mentioned in item No.2 was also issued in the name of Sarojamma for and on behalf of the joint family. The Plaintiff has submitted that the said Raghavendra Wines Store is also a joint family business, when such being the case, after the death of Sarojamma, the Defendant Nos.1 to 3 colluding with each other, prohibited the Plaintiff from participating in the cremation and they tried to get the records in their names with respect to item No.2 of the suit schedule property, as such she has complained to the Excise Department.

10. The Plaintiff has further submitted that, during the life time of Sarojamma there was no partition in respect of the joint family properties. As such she is entitled for equal share along with Defendants in respect of item No.1 as well as item No.2 property. The Plaintiff has filed I.A.No.II under Order XXXIX Rule 1 and 2 of Civil Procedure Code. This court upon perusal of the documents produced by the Plaintiff, satisfied about the prima-facie joint possession and enjoyment in respect of



the joint family properties, as such granted temporary injunction in favour of the Plaintiff.

11. The Defendants 1 to 3 have contended in the above application that, the item No.2 property being a CL-2 License cannot be partitioned being only a privilege parted with by the State Government. In support of their contention, the learned Advocate for the Defendants 1 to 3 relied on decision reported in I.L.R. - 1998 - Kar. - 4113 (K.L.Balakrishna Rao vs. The State of Karnataka and Others), wherein it is held that:

**" Section 68B barred the jurisdiction of Civil Courts in respect of any matters which are to be determined by Excise Authorities, Section 68-C took away the powers of the Civil Courts to grant injunction in respect of recovery of Excise dues, 68-D directed the payment of any sum due to the Government irrespective of the fact that a Writ or Suit or any other Proceeding is pending. And Section 3 of the Amendment Act provided that all Suits or any other proceedings in respect of the matters referred to in Section 68-B, pending before any Court shall abate - Petitioner challenged the vires of**



***these provisions on the ground of being violative of the guarantees of equality conferred by Article 14 and also on the ground that the Excise Authorities have been made Judges of their own cause. HELD – Revenue Recovery Acts creating Special Tribunals and procedure for the expeditious recovery of revenue are in the public interest and do not violate Article 14. Right to move the Civil Court is not a Fundamental Right. It is open to the legislature to bar jurisdiction of a Civil Court with respect to a particular class of suits of civil nature if it is not contrary to the guarantee and the rights conferred by the Constitution.”***

12. As per the above decision, if there is any dispute with regard to issuance of Excise License or anything with regard to Excise License, the same shall be dealt with by the Deputy Commissioner or any Excise Officer authorized to do so.

13. The learned Advocate for the Defendants have also furnished the judgment of **Hon'ble High Court of Karnataka in R.S.A.No.100044/2014 (K.Nagaraj vs. Satish Babu and Others)**, wherein also, the rejection of plaint by the Trial



Court by recording a findings with regard to Bar of Jurisdiction under Section 68B of the Excise Act is upheld by the Hon'ble High Court. The Hon'ble High Court of Karnataka has observed that since there is a statutory bar under Section 68B of the Act, the Trial Court has rightly dismissed the suit.

14. Both the above decisions are clearly applicable to this case.

15. In this case, the Item No.2 property Excise License, is out of the jurisdiction of the Civil Court. This court is not having any jurisdiction to make a partition with regard to the Excise License, in view of the Bar provided under Section 68B of Karnataka Excise Act. As per Order VII Rule 11 of Civil Procedure Code, the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. In this case, in the plaint schedule, item No.2 is described as Raghavendra Wines Store (Old License No.EXE/IML/CPT/01CL2/2017-18) stands in the name of deceased Sarojamma. Therefore, from the statement made in the plaint itself, is very clear



that item No.2 is a Excise License. Therefore, there cannot be any partition in respect of the Excise License. It is only a privilege to the License holder and issuance of License is between the Deputy Commissioner and the person who applies for a License. Therefore, the Civil Court cannot interfere in the matter of Excise License. As per Section 9 of Civil Procedure Code, the Civil Court has to try all civil suits unless it is barred. But the suit of the Plaintiff in respect of item No.2 is barred under Section 68B, 68C & 68D of Karnataka Excise Act. Therefore, the plaint presented by the Plaintiff as far as it relates to Item No.2 stands rejected. However, with regard to Item No.1 is concerned, the suit of the Plaintiff will be continued. Hence, I have answered above **Point in the Affirmative**.

16. **POINT NO.2:-** In view of my findings given on Point No.1 and for the reasons discussed herein above paragraphs, I proceed to pass the following:-



## **ORDER**

The I.A. No.VII is filed on behalf of the Defendant Nos.1 to 3 under Order VII Rule 11(a) and (d) with Section 151 of Civil Procedure Code is hereby allowed.

The plaint presented by the Plaintiff as far as it relates to Item No.2, CL-2 License is rejected.

Therefore, the suit of the Plaintiff in respect of Item No.2 is dismissed.

However, the suit of the Plaintiff will be proceeded with as far as it relates to Item No.1 property.

No order as costs.

(Dictated to the Typist Copyist on computer, then corrected, initialed and pronounced by me in the open court on this the **10<sup>th</sup> day of November 2023**)

(SHUBHA)  
**Senior Civil Judge & JMFC.,  
Channapatna.**