

**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE & JMFC.,
AT: MAGADI**

Present:

**Sri.Hanumanth Satwik.,LL.M.,
Addl. Senior Civil Judge & JMFC., Magadi**

Dated : This the 20TH day of October 2020

O.S.No.116/2016

Plaintiff : Smt. Venkatamma,
W/o late Bettaiah,
Aged about 60 years,
R/at Donenahalli Village,
Bidadi Hobli,
Ramanagara Taluk & District.

(By **Sri. B.V.K.**, Advocate)

--V/s--

Defendants : 1 Sri. Galappa,
Father name not known
Aged about 70 years,
R/at Mayasandra Village,
Thavarekere Hobli,
Bengaluru South Taluk.

2 Sri Munikrishnappa,
S/o late Channapillaiah,
Aged about 41 years,
R/at Donenahalli Village,
Tavarekere Hobli,
Bengaluru South Taluk.

3 The Special Land Acquisition Officer,
Kaveri Bhavan, K.G.Circle,
Bengaluru – 560 009.

4 Smt. Arasamma,
W/o late Kemoaiah,
R/at Mayasandra Village,
Chikkanahalli Post,
Tavarekere Hobli,
Bengaluru South Taluk.

(Defendant no.1 By **Sri. S.H.**, Advocate)
(Defendant no. 2 By **Sri. A.N.**, Advocate)
(Defendant no. 3 By **Sri. K.R.M.**, Advocate)

ORDER ON IA NO.V

The present suit is for partition and separate possession. The plaintiff further prays for declaration to declare that the sale deed dated 23-04-1972 is null and void and not binding on her. The plaintiff has also sought for permanent injunction.

2. The present application has been filed by defendant no.4 U/o VII rule 11 (a) of C.P.C. praying this court to reject the plaint. The defendant submits that the plaint does not show the boundaries of the suit schedule property. The plaintiff filled the boundaries to the suit schedule property while filing amended plaint, without obtaining prior permission of this court and without specific orders from this court in this regard. Subsequent, to the filing of amended plaint, the plaintiff as an after thought, filed application

U/o.VI rule 17 of CPC seeking amendment of plaint, so as to include the boundaries to the suit schedule property and for corrections to the cause title of the plaint. At the time of filing the suit, the boundaries to the suit schedule property was not mentioned. This circumstance, show that the plaintiff has no cause of action to file the suit. When there is no proper schedule to the plaint, then it is deemed that the plaintiff does not have arguable case. There is no meaningful plaint without proper schedule. Reading paragraph no.6 of the plaint shows that the plaintiff approached the court only to receive the award amount. The plaintiff approached this court after the lapse of more than 45 years. He is the absolute owner and possessor of the suit schedule property. The plaint does not disclose the cause of action. In this regard defendant no.4 prays as above.

3. The plaintiff filed objection to the application. The plaintiff in the objection denied the application averments. The plaintiff contended that she inserted the boundaries to the suit schedule property in the amended plaint inadvertently. At the time of filing

the suit, the boundaries to the property was left blank due to typographical error. Such typographical error happened due to over sight. Non mentioning of the boundaries to the property does not indicate that the plaint does not disclose cause of action. She inserted boundaries to the suit schedule properties in the amended plaint due to technical lacuna, which can be cured. She has also sought for amendment of plaint. She and her children are in exclusive possession of the suit schedule property. Without evidence the present matter cannot be decided. She mentioned the cause of action in the plaint. The defendant adopted dilatory method to drag the proceedings. In this regard the plaintiff prays to reject the application.

4. Heard arguments of learned counsel for defendant no.4 and plaintiff.

5. Considering the contentions of both counsels, following points arise for my consideration.

1. Whether defendant no.4 has made out grounds to reject the plaint as sought for?

2. What order?

6. My findings for the above points 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 the case of defendant no.4 that the plaintiff while filing the suit did not mention the boundaries of the suit schedule property. However, while filing the amended plaint, the plaintiff inserted boundaries to the suit schedule property without specific orders of this court. Further, the reading of plaint show that the plaintiff approached the court only to claim award amount. The plaintiff approached the court after the lapse of more than 45 years. In this regard, I have perused the plaint. The plaint discloses that one Channaiah S/o. late Chaluvappa was the propositus. During his life time he purchased the property bearing Sy.no.36 measuring 5 acres 36 guntas. The said Channaiah has four sons, namely Chaluvaiah, Motaiah, Iyyannappa and Narasimhaiah. The said Chaluvaiah has two sons by name Channapillaiah and Bettaiah. She is the wife of Bettaiah and

defendant no.2 is the son of Channapillaiah. The four sons of Channaiah got partition the entire joint family properties. In the partition Chaluvaiah got $1/4^{\text{th}}$ share and he was allotted 1 acre 17 guntas in the land bearing Sy.no.36 as his share. She has share in the suit schedule property with defendant no.2. Defendant no.3 has issued notification U/Sec.4(1) of The Land Acquisition Act. She came to know about illegal entry with respect to 1 acre 17 guntas of land. On enquiry it was found that the revenue authorities entered the name of defendant no.1 on the basis of the sale deed dated:23-04-1972. The said Sale deed is alleged to have been executed by Channaiah. She has share in the suit schedule property to an extent of $28\frac{1}{2}$ guntas. She and defendant no.2 are in possession of the said property. The alleged sale deed is void document. Having regard to the plaint averments, I am of the view that the reading of the plaint in its entirety shows that there exist cause of action.

8. Defendant no.4 contends that while filing the plaint, the suit schedule property did not consist of boundaries. The plaintiff subsequently inserted the boundaries without obtaining

necessary orders from this court. The plaint without boundaries to the suit schedule property shows that there is no arguable case. Be it stated, the plaint which was filed did not consist of boundaries. However, the suit schedule property shows that it is bearing Sy.no.36/1 and measuring 1 acre. Further, identification of the property with the existing particulars, is the subject matter of trial which can be decided on taking evidence and during the course of trial. In this regard, I am supported by the decision of Hon'ble High Court of Karnataka between Sri Bhimappa S/o Mahaveer Koli vs Smt Choonawwa D/o Shabanna (RFA no.363 of 2008), wherein Hon'ble court held thus;

“Anyhow, the defendants have taken up a specific stand that, no proper identification is made out in regard to the schedule mentioned in the plaint. It is a matter of trial and it cannot be gone into by means of a preliminary issue”.

In the case at hand, the plaintiff furnished the survey number and extent of the suit schedule property. Such being the case in view of the law laid down by the Hon'ble High Court, I am of the view

that whether with the existing particulars of the suit schedule property, the suit schedule property can be identified or not can be decided by taking evidence. Such being the case I am of the view that failure on the part of the plaintiff to mention boundaries to the suit schedule property is not fatal to the plaintiff and on that ground the plaint cannot be rejected.

9. The defendant further contended that the plaintiff instituted the present case only to claim award amount. The present suit has been filed after the lapse of more than 45 years. He is the owner and possessor of the suit schedule property. Be it stated, it is settled principle of law that while deciding an application for rejection of plaint only the plaint averments has to be looked into. In view of the settled position of law, I am of the view that the contentions of the defendant are the subject matter of trial and cannot be gone into at this stage of the case.

10. The learned counsel for defendant no.4 relied on the decisions of Hon'ble High Court of Karnataka between Krishna Murthy Setty V/s Karnataka Housing Board cited in ILR 1989

KAR 3479 and between Smt. Munilakshamma and others V/s Smt. Venkatamma and others in RFA no.561 of 2017. I have perused the decisions relied on by the learned counsel for defendant no.4. In the case at hand reading in the plaint shows that there exist cause of action. Further, the contentions which have been taken by defendant no.4 are the subject matter of trial. So also, the fact and circumstances present in the case at hand are different from the facts present in the decisions relied on by the learned counsel. In this circumstances with due respect to the decisions of the Hon'ble High Court relied upon by the learned counsel for defendant no.4, I am of the view that they are not applicable to the facts of the present case. As such, the decisions cited by the learned counsel, in the opinion of this court, are of no avail to him.

11. In the case at hand reading of the plaint in its entirety shows that there is a cause of action. Additionally, failure on the part of the plaintiff to mention boundaries to the suit schedule property is not a ground for rejection of plaint. Further the contentions of

defendant no.4 in the application are the subject matter of trial. In this circumstances considering the application, objection and the plaint averments, I am of the view that defendant no.4 failed to show that the plaint warrants rejection. Consequently, point no.1 is answered in the negative.

12. **Point no.2**:- In view of reasons on point no.1, I proceed to pass the following,

ORDER

**IA No.V filed U/o VII rule 11(a) of C.P.C. by
defendant no.4 is hereby rejected on cost of
Rs.100/-.**

(Dictated to the stenographer, typed by him corrected by me and then pronounced in the open court on this the 20th day of October 2020.)

**(Hanumanth Satwik)
Addl. Senior Civil Judge & JMFC.,
Magadi.**