



**IN THE COURT OF THE ADDL.SENIOR CIVIL JUDGE &
JMFC, GUBBI**

Present :

Sri.SHIVARAJ V SIDDESHWAR, Bsc., B.Ed., LL.B.,

Addl. Senior Civil Judge & JMFC, Gubbi

Dated this the 12th Day of August 2022

OS. No.65/2016

Plaintiff : Doddaiah
S/o Late Hanumaiah
Aged about 49 years,
R/o Hanumanth Nagar,
Kere Angala, Gubbi Town

V/s

Defendants: Rathnamma
W/o Late Umesh,
Aged about 38 years,
And others.

PARTIES IN IA NO.15.

Applicant : Doddaiah
S/o Late Hanumanthaiah
Aged about 77 years,
R/o Hanumantha Nagar,
Kere Angala, Gubbi Town
(Defendant No.43)

(By Sri. C.R.B. Advocate)

V/s



Respondent : Doddaiah
S/o Late Hanumaiah
Aged about 49 years,
R/o Hanumanth Nagar,
Kere Angala, Gubbi Town
(Plaintiff)
(BY. Sri T.M. Advocate)

ORDER ON I.A. No.15

The defendant No.43 filed IA No. 15 under Order 7 Rule 11 of, CPC, thereby prayed to reject the plaint on the ground that plaint does not disclose the cause of action.

2. In the affidavit filed with IA No.15 the defendant No.43 deposed that suit properties originally belong to one Chikkery Sanjeevaiah and he had 4 sons namely, Bheemaiah, Doddaiah, Chikkanna and Hanumanthaiah and they had constituted a Hindu Joint Family. Defendant No.43 further contended that on 04.02.1952 the sons of Chikkery Sanjeevaiah have got divided their ancestral properties through registered partition deed. Said Hanumanthaiah S/o Chikkery Sanjeevaiah is father of



defendant No.43 and after death of his father, defendant No.43 and his brothers are in joint possession of the properties fallen to the share of their father. Defendant No.43 further contended that, in para No.3 of the plaint the plaintiff has pleaded that, the sons of Chikkery Sanjeevaiah had divided the suit properties under the registered partition deed dated 04.02.1952 further it is pleaded that his grandfather namely Chikkanna S/o Chikkery Sanjeevaiah had got his share in the suit schedule properties and accordingly he was in possession and enjoyment of his share, the plaintiff has pleaded that, after the death of Chikkanna his son namely Hanumaiah the father of plaintiff was in possession and enjoyment of the properties that had fallen to share of his father along with his son namely plaintiff and defendant No.40. Defendant No.43 also contended that in the plaint it is also pleaded that after death of their grandfather and father the plaintiff and defendant No.38 to 40 are in possession and enjoyment



of the properties that had fallen to the share of their grandfather. The defendant No.43 further contended that since partition has already taken place and Katha and Pahani of suit properties are separately made out in the name of defendant No.1 to 46 the question of seeking partition against the defendants does not arise at all, as such there is no cause of action to file this suit. On these grounds the defendant No.43 prayed to reject the plaint on the ground that plaint does not disclose cause of action.

3. The plaintiff filed objection to IA No.15. In the objection plaintiff contended that in the plaint the plaintiff has pleaded cause of action to file the suit, the defendant No. 43 has filed false application to harass the plaintiff. On these grounds plaintiff prayed to reject the IA No.15.

4. On the basis of rival contentions taken up by the defendant No.43 and plaintiff, the following points arose for determination.

1. Whether the plaint does not disclose cause of action to file the suit ?



5. Heard arguments from both side. Perused the materials available on record.

6. My answer to the above point is in the Negative for the following:

REASONS

7. **Point No.1:-** Plaintiff has filed this suit for the relief of partition and separate possession. According to plaintiff, Propositus Sanjeevaiah @ Chikkery Sanjeevaiah @ Chikka Sanjeevaiah had 4 sons namely, Bheemaiah, Doddaiiah, Chikkanna and Hanumanthaiah and they are no more. Plaintiff further submits that, the said Bheemaiah S/o Sanjeevaiah had four sons by name Hanumanthaiah, Ramaiha, Thimmaiah i.e., defendant No. 11 and Muddaiah i.e., defendant No.12. Now Hanumanthaiah S/o Bheemaiah has died leaving behind his LRs i.e., defendants No.1 to 5. Ramaiah S/o Bheemaiah also died leaving behind his LRs i.e., defendants No. 6 to 10. Doddaiiah S/o Sanjeevaiah had



four sons by name Bheemaiah, Ramaiah, Muddaiah and Hanumanthaiah. Bheemaiah S/o Doddaiah has died leaving behind his LRs i.e., defendants No. 13 to 17. Ramaiah S/o Doddaiah also died leaving behind his two sons i.e., defendants No. 18 and 19. Muddaiah S/o Doddaiah also died leaving behind his LRs i.e., defendants No.20 to 31. Hanumanthaiah S/o Doddaiah also died leaving behind his LRs i.e., defendants No. 32 to 37. Chikkanna S/o Sanjeevaiah had two sons by name Hanumaiah and Ramadasaiah. The said Hanumaiah S/o Chikkanna is father of plaintiff and defendant No.39 and husband of defendant No.38 Ramadasaiah S/o Chikkanna also died leaving behind his son i.e., defendant No.40. Hanumanthaiah S/o Sanjeevaiah was died leaving behind his sons i.e., defendants No. 41 to 46. The plaintiff further submits that during lifetime of grandfather of plaintiff by name Chikkanna and father of defendant No. 41 to 46 by name Hanumanthaiah and sons of Bheemaiah and sons of



Doddaiah they have got divided their ancestral and joint family property through the registered partition deed date 04.02.1952 and as per the said partition deed grandfather of plaintiff has got his share, accordingly he was in possession and enjoyment over the suit schedule property. After death of grandfather, the father of plaintiff and father of defendant No. 40 have continued in joint possession and enjoyment over the share allotted to the grandfather of plaintiff and after their death, the plaintiff, defendant No. 38, 39 and 40 have continued in joint possession and enjoyment over the share allotted to the grandfather of plaintiff namely Chikkanna S/o Sanjeevaiah. The plaintiff further submits that defendant No. 1 to 46 by colluding with defendant No. 47 to 60 have created the documents and changed the katha of some items of suit properties in to the name of defendant No. 47 to 60. The defendant No. 47 to 60 are stranger to the suit schedule property as such, they have no right, title and possession over the suit



properties. The plaintiff further submits that the plaintiff requested the defendants to allot his legitimate share in the suit properties but the defendants No.1 to 46 have refused to do so. The plaintiff further submits that cause of action to file the suit arose at about one week back when the defendants No.1 to 46 refused to allot the share to the plaintiff. On these grounds the plaintiff has filed this suit.

8. The learned counsel for the defendant No.43 argued that plaintiff does not disclose cause of action as such, prayed to reject the plaint. Learned counsel for the plaintiff argued that, plaintiff has pleaded the cause of action to file the suit, the defendant No.43 has filed the present application to drag on the proceedings. On these grounds the learned counsel for the plaintiff prayed to reject the IA No.15. In support of their argument learned counsel for the plaintiff produced decision of Hon'ble Apex Court in 4665/2021 dated 09.08.2021 between SRIHARI HANUMADAS TOTALA V/s HEMANTH VITTAL KAMAT AND OTHERS. I have



perused the principles laid down in the decisions cited by the learned counsel for the plaintiff. I am of the opinion that principles laid down in the above referred decisions and facts of the present case are different. As such, principles laid down in the above referred decision are not applicable to the facts of the present case.

9. At this stage it is appropriate to refer a decision of Hon'ble Apex Court in Civil Appeal No. 1848/2022 between **Sri BISWANTH BANIK AND ANOTHERS V/s SMT SULANGA BOSE AND OTHERS DATED 14.03.2022** at para No. 6 and 7.1, the Hon'ble Apex held as under:

“At the outset, it is required to be noted that the trial court rejected the application under Order VII Rule 11 CPC and refused to reject the plaint. However, the High Court by the impugned judgment and order has set aside the order passed by the trial court and allowed the application under Order VII Rule 11 CPC and has rejected the plaint on the ground that the suit is barred by limitation



as well as the suit for a declaration simpliciter under Section 53A of the Transfer of Property Act would not be maintainable.

7. Now, so far as the issue whether the suit can be said to be barred by limitation or not, at this stage, what is required to be considered is the averments in the plaint. Only in a case where on the face of it, it is seen that the suit is barred by limitation, then and then only a plaint can be rejected under Order VII Rule 11(d) CPC on the ground of limitation. **At this stage what is required to be considered is the averments in the plaint. For the aforesaid purpose, the Court has to consider and read the averments in the plaint as a whole. As observed and held by this Court in the case of Ram Prakash Gupta (supra), rejection of a plaint under Order VII Rule 11(d) CPC by reading only few lines and passages and ignoring the other relevant parts of the plaint is impermissible.** In the said decision, in



paragraph 21, it is observed and held as under :-

“21. As observed earlier, before passing an order in an application filed for rejection of the plaint under Order 7 Rule 11(d), it is but proper to verify the entire plaint averments. The above mentioned materials clearly show that the decree passed in Suit No. 183 of 1974 came to the knowledge of the plaintiff in the year 1986, when Suit No. 424 of 1989 titled Assema Architect v.s RamPrakash was filed in which a copy of the earlier decree was placed on record and thereafter he took steps at the earliest and filed the suit for declaration and in the alternative for possession. It is not in dispute that as per Article 59 of the Limitation Act, 1963, a suit ought to have been filed within a period of three years from the date of the



knowledge. The knowledge mentioned in the plaint cannot be termed as inadequate and incomplete as observed by the High Court. While deciding the application under Order 7 Rule 11, few lines or passage should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import. We are of the view that both the trial court as well as the High Court failed to advert to the relevant averments as stated in the plaint."

7.1 From the aforesaid decision and even otherwise as held by this Court in a catena of decisions, while considering an application under Order VII Rule 11 CPC, the Court has to go through the entire plaint averments and cannot reject the plaint by reading only few



lines/passages and ignoring the other relevant parts of the plaint.

10. It is important to note here that for rejection of plaint only contents of plaint has to be seen and not anything else. Further, the averments contained in plaint read as whole. A meticulous perusal of the plaint averments it show that the plaintiff has admitted that partition between the propositus Sanjeevaiah @ Chikkery Sanjeevaiah and his 4 sons has taken place on 04.02.1952 and the propositus Sanjeevaiah had got his share in the said partition and he was in possession and enjoyment over the suit schedule properties and after his death father of plaintiff and father of defendant No.40 were in joint possession over the share allotted to the grandfather of plaintiff and now the defendant No. 38, 39 and 40 are in joint possession over the suit schedule properties allotted to grandfather of plaintiff. At Para No.7 of the plaint the plaintiff has pleaded that the cause of action to file the suit arose at about one week back



when the defendants No. 1 to 46 have refused to allot the share of plaintiff. A perusal of entire plaint averments it is clear that plaintiff has cause of action to file the suit. Under these circumstances in my humble opinion the IA No.15 filed by the defendant No.43 deserves to be rejected as not maintainable. Hence, above point is answered in the negative. I therefore pass the following:

ORDER

IA No.15 filed by the defendant
No.43 U/o 7 Rule 11 of, CPC is
rejected with costs of Rs. 500/-

(Dictated to the Stenographer directly on computer, typed and print out taken by her and then corrected, signed and then pronounced by me in the open court on this the 12th day of August 2022).

Sd/-
(Shivaraj V Siddeshwar)
Addl. Senior Civil Judge &
JMFC, Gubbi.