

C.R.P. 67
Form No.9 (Civil)
Title Sheet for
Judgement in Suits
(R.P.91)

Govt. of Karnataka

IN THE COURT OF THE XXII ADDL.CITY CIVIL JUDGE, BANGALORE.

PRESENT:-Sri.D.R.Venkata Sudarshan B.Com.,LL.B.,
XXII ADDL.CITY CIVIL JUDGE.

O.S.No.5352/2007

Plaintiffs

1.Smt.B.S.Lalitha,
d/o late Sri.B.M.Seenappa,
Aged about 62 years,
R/a No.10,8th Main,
CHBS Layout,Vijayanagar,
Bangalore – 560 040.

2.Smt.B.S.Vasanthi,
D/o late Sri.B.M.Seenappa,
Aged about 55 years,
R/a No.672/A, 11th Cross,
7th Block West, Jayanagar,
Bangalore.

3.Smt.B.S.Jayanthi,
D/o late Sri.B.M.Seenappa,
Aged about 50 years,
R/a No.98/41, 11th Main,
15th Cross, Padmanabhanagar,'
Bangalore – 560 070.
(By Sri..Majunatha M.S, Advocate)

Vs

O.S.No.5352/2007

Defendants:

1.Smt.Lakshmiddevamma,
W/o late Sri.B.M.Seenappa,
Aged about 81 years,
R/a No.88/9, 19th Main,
Padmanabhanagar,
Bvan – 560 070.

2. Sri.B.S.Subhas,
S/o late Sri.B.M.Seenappa,
Aged about 60 years,
Nagaraja Layout, Bull Temple Road,
Chamarajpet, Bangalore – 560 018.

3. Sri.B.S.Jaiprakash,
S/o late Sri.B.M.Seenappa,
Aged about 57 years,
R/a 88/9, 19th Main,
Padmanabhanagr,
Bangalore – 560 070.

4. Sri.B.S.Ramesh,
S/o late Sri.B.M.Seenappa,
Aged about 53 years,
R/a No.415, 4th Cross,
II Block, Jayanagar,
Bangalore – 560 011.

5. Sri.B.S.Ravindranath,
S/o late Sri.B.M.Seenappa,
Aged about 65 years,
R/a No.103, 10th Main,
Basaveshwaranagar,
Bangalore – 560 079.
(D.1 to 3, & 5 by Sri.J.N.Alasingar,
D.4by Sri. Jai Kumar, Advocates)

Date of the institution of the suit

11.7.2007

Nature of the suit

Partition and separate possession.

Date of the commencement of
Recording of evidence

Date on which the Judgment

29.11.2008.

was pronounced.

Total Duration

1 year, 4 months, 8 days.

(D.R.Venkata Sudarshan)
XXII Addl.City Civil Judge,
Bangalore.

**ORDER ON THE APPLICATION FILED BY THE DEFENDANTS
UNDER ORDER VII RULE 11 (d) C.P.C**

This is an application filed by the defendants 1 to 3 under Order VII Rule 11 (d) C.P.C praying this court to reject the plaint and dismiss the suit as not maintainable in view of the proviso to Sec.6 (A) of Hindu Succession (Amendment) Act, 2005 and also Sec.6A (d) of Hindu Succession (Karnataka Amendment) Act for the reasons detailed in the affidavit accompanying the said application.

2. The plaintiffs have filed objection to the said application.
3. The plaintiffs' and defendants' advocates have filed written arguments.
4. The points that arise for my determination are:-
 1. Whether the suit as brought is not maintainable for the reasons stated in the application filed by the defendants 1 to 3 under Order VII Rule 11 (d) C.P.C?

2. Whether the plaint is liable to be rejected?

3. What Order?

5. My finding on the above points are as follows:-

Point No.1:In the Affirmative

Point No.2:In the Affirmative.

Point No.3: As per final order for the following

REASONS

6. This is a suit filed by the plaintiff B.S. Latha and two others against Smt. Laxmidevamma and five others for partition and separate possession of 1/8th share each in the plaint schedule property.

7. The plaint schedule properties are:-

- a) Cash of Rs.1,00,000/-,
- b) Property bearing No.415/14 situated at Jayanagar.
- c) Properties situated at Avenue Road.
- d) Property situated R.K.Puram, Bangalore, bearing No.3.
- e) Property bearing Sy.No.31/1 of Talagattapura village, Bangalore South Taluk.

8. The facts of the plaintiff's case in brief are that the plaintiffs and the defendant No.2 to 5 are the children of Late B.M. Seenappa

and the 1st defendant and suit properties are the properties left behind by B.M. Seenappa, who died intestate on 6-3-1985. It is stated that the suit properties are the joint family properties of the plaintiffs and defendants and that the plaintiffs have share in it. It is also stated that the plaintiffs have come to know that the defendants have purchased the properties ignore the rights of the plaintiffs. The plaintiffs not only demanded the defendants also issued legal notice to the defendants calling upon them to partition the suit properties and all of them claim their shares. Since the defendants did not partition the properties, the present suit for partition is filed.

9. The defendants 1 to 3 have filed detailed joint written statement. The relevant paras of the written statement where are essential for disposal of the present application filed U/o VII Rule 11(d) CPC are called out below:

“It is further submitted that during 1985, prior to death, late B.M.Seenappa had given directions orally allocating the shares in the properties. As per those directions, the plaintiffs and the defendants divided the properties of late B.M.Seenappa and subsequently the defendants got divided the properties among themselves in the presence of panchayatdars on 6.9.1985. The defendants 2, 3, 4 and 5 are living separately from the date of the family partition. The fact of the family

partition and the defendants living separately after partition was very much in the knowledge of the plaintiffs and more particularly with effect from 25.10.1988. The plaintiffs 2 & 3 were given one site each, situated at Byatarayanapura, Bangalore by late B.M.Seenappa, as their share during 1981 itself just after the marriage of plaintiff No.3. Apart from this, defendant Nos.2 & 3 have spent hugely for the marriages of plaintiffs 2 & 3. Sufficient money was paid by late B.M.Seenappa to plaintiff No.1 for construction of her house. Late B.M.Seenappa, prior to this death had convinced the plaintiffs that the properties are to be divided among the sons, as the daughters have been sufficiently given their share in his properties and also huge money was spent by the defendants 2 & 3 for the marriages of plaintiffs 2 & 3. Further, the plaintiffs were also paid monies by the defendants on 15.10.1988, which was almost equivalent to the shares taken by the defendants, considering the monetary value of the properties as on that date. The receipt of these monies has been acknowledged by each of the three plaintiffs separately on a stamp paper. The plaintiffs have expressly stated that they are not entitled for any share in the ancestral properties and they have no objection for their brothers to divide the ancestral properties and dispose them of. It is also acknowledged by the plaintiffs that monies have been accepted, which was paid by the defendants to them out of natural love and affection for their welfare. It is surprising that the plaintiffs have deliberately and actively concealed this fact in the plaint

to derive unlawful gains to themselves.

It is further submitted that all the plaintiffs are married prior to 1991. The plaintiffs were also made aware that they were not entitled to any share in the ancestral properties as per the then existing law at the time of family partition. The defendants were magnanimous and extended the share in terms of money considering the value of the properties as on that date. After satisfying themselves, the pltw on 25.10.1988 endorsed the written family partition(Palupatti) and gave their no objection for the brothers to divide the properties among themselves. The plaintiffs have also endorsed by signing the Palupatti as consenting witnesses, thereby agreeing for the family partition. Thereafter the defendants have partitioned the properties and got the revenue documents transferred to their names. The plaintiffs having given no objection for division of properties among their brothers by accepting consideration amounts to relinquishment. Having relinquished the rights and also accepting financial considerations, the plaintiffs are estopped from claiming the property now.

Further, it is submitted that the partition deed that is being challenged by the plaintiffs was registered on 16.6.2000. As on that date, the plaintiffs were not entitled for any share in the ancestral properties as the plaintiffs are female members and also married prior to 1994, as per the law then existing on 16.6.2000. The suit schedule properties for which the plaintiffs are claiming a share by

way of partition is already a subject matter of a registered partition deed, registered as No.2423/2000-01 in Book No.I, Volume 1944, Pages 237 to 247 dated 16.6.2000 in the Office of Sub Registrar, Kengeri Bangalore. The properties are divided and the defendants have taken their shares and also parted with their portions by executing alienation documents. Hence, the suit is liable to be dismissed.”

10. The 4th defendant has filed separate Written statement reiterating the above statements found in the written statement of defendant No.1 to 3.

11. Now the present application filed by the defendants U/o VII Rule 11(d) CPC requesting the court to reject the plaint and dismiss the suit as not maintainable. The main grounds urged by the defendant 1 to 3 in their application are :

- (1) That the plaintiffs got married much prior to the year of 1991, therefore cannot be considered as co-parcenar U/s. 6-A of the Hindu Succession (Karnataka Amendment) Act.
- (2) That there was partition of the schedule properties among the defendants and the same is evidenced by a registered partition deed dtd:16-6-2000 i.e., long prior to 20-12-2004. Hence the Hindu Succession (Amendment)Act bars the present suit in view of the proviso to Sec.6(1) of the Act.

12. The plaintiffs who have filed objections to the said applications have contended that the inconsistent defence taken by the defendants in their written statement with regard to partition disentitled them from making such application. All other averments in the application are denied and prayed for dismissal of the application.

13. After perusing the application filed U/o.VII Rule 11 CPC by the defendants and also the objections filed by the plaintiffs, this court has framed the following issue on 23.09.2008:-

"Whether the suit as brought is not maintainable?"

This issue is virtually based on the application filed U/o.VII Rule 11(d) CPC. The advocate appearing for the defendants has submitted his written arguments and also relied on a decision of the Hon'ble Supreme Court reported in (2004) 3 Supreme Court Cases 137, in case of Sopan Sukhdeo Sable and others V/s Assistant Charity Commissioner and others. The advocate for the plaintiffs has also submitted his arguments on the said issue.

14. My finding on the above issue is as per final order for the following:

REASONS

15. This is a suit filed by Smt.B.S.Lalitha and two others against Smt.Lakshmiddevamma & four others for a Judgment and decree of partition and separate possession of the plaintiffs 1/8th share in the suit schedule properties. There is no dispute as to the relationship amongst the parties. The plaintiffs and defendants 2 to 5 are the children of late B.M.Seenappa and the 1st defendant. There is no dispute that the suit schedule properties are the properties of late B.M.Seenappa. The main contention of the defendants is that the suit as brought is not maintainable and the plaint has to be rejected for the reason of Order VII Rule 11(d) CPC. Order VII Rule 11 CPC is a special provision, which gives power to the court to reject the plaint, if any of the circumstances mentioned therein, exists. One of the said circumstance that is invoked in this case is order VII Rule 11(d) of CPC which reads as under:-

“Order VII Rule 11, **the rejection of the plaint**:- the plaint shall be rejected for the following reasons:

- a)
- b)
- c)
- d) Where the suit appears from the statement in the plaint to
be barred by any law”.

16. The contention of the defendants is that there was already a registered partition dated 16.06.2000 amongst the defendant Nos 1 to 5, whereby all the suit schedule properties have been divided by meats and bounds. It is also contended that defendants 1 to 5 have all exercised the right of ownership in respect of their respective shares and are in possession of the same. It is brought to the notice of the court that in view of the provisions of Section 6 of the Hindu Succession (Amendment) Act, 2005, the suit as brought is not maintainable. To put it in other words the suit has brought is barred in view of a proviso to Section 6 of Hindu Succession (Amendment) Act, 2005, herein after referred for short as (Act). For the purpose of brevity it is necessary to mention here the very provision of Section 6 of Hindu Succession Act as amended. The said provision reads as under:----

6: Devolution of interest in coparcenary property:-

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu Family governed by the Mitakshara law, the daughter of a coparcener shall,-

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

And any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener;

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property, which had taken place before the 20th day of December 2004.

(2)

(3)

(4)

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December 2004.

Explanation: For the purpose of this section "Partition" means any partition made by execution of a deed of partition duty registered under the Registration Act, 1908 (16 of 1908), partition affected by a decree of a Court).

What is clear from the reading of the above provision is on and from the commencement of the Hindu Succession (Amendment) Act, 2005, the daughter of a coparcener in a Joint Hindu family governed by the Mitakshara law, also become the co-parcener by birth in their own right and in the same manner as the son. The daughter will have the same right in coparcenary property as the son would have. Equally the daughters are subject to same liabilities as that of a son. This is a special status wherein deviating from the tenements of traditional Hindu law and the provisions of Hindu Succession Act, 1956 given a special status to the daughter of a co-parceners in a Joint Hindu family governed by the Mitakshara law. However, this special status given to a daughter is subject to a rider, which is prescribed by the proviso to Section 6. As per this provision, a daughter along with the rights and liabilities of a coparcener will not be available if the properties belonging to the Joint Family were already partitioned prior to 20th December 2004. The word 'Partition' has been further explained by way of explanation. The section 6 of the Act by stating that the partnership means only by means of an execution of deed of partition duly registered under the Registration Act, 1908. So from the over all reading of this Section 6 of the Act what follows is: *the benefits under the newly amended Section 6 of the Act would be available to a daughter of a coparcener only if partition had not taken place by*

means of a registered at any time prior 20th December 2005. Basing on this proposition of law, the learned advocate appearing for the defendants has argued that in the present case admittedly there is a registered partition deed which is dated 16th June 2000, as per which the properties belonging to the family have been partitioned and divided by means and bounds amongst defendants 1 to 5. Therefore it is contended that the suit as brought by the plaintiffs who are the daughters of late B.M.Seenappa is not maintainable and therefore the plaint has to be rejected.

17. In a decision reported in (2004) 3 Supreme Court Cases 137 relied on by the learned counsel for the defendants, the following principles have been laid down:

- 1) The provision of Order VII Rule 11 CPC could be pressed into service at any such of the proceedings.
- 2) While considering the application U/o.VII Rule 11 CPC, it is only the averments in the plaint are germane; and no contention taken by in the written statement.

If a meaningful and formal reading of the plaint makes it manifestly clear that the suit as brought is vexatious or merit less, then the court will have to invoke the provisions of Section 7 and reject the plaint. From the perusal of the principles laid down in the decision of

the Hon'ble Supreme Court what follows is the averments in the plaint are mainly to be considered to find out whether the suit as brought is maintainable or whether the plaint has to be rejected.

18. If we scrutinize the materials available on record that is in particular the plaint, we find that the plaintiffs are not disputing, denying the partition that had taken place amongst the defendants.

In Para 5 of the plaint at page No.3, it is stated that:-

“On coming to know the illegal partition deed between the defendants, the plaintiffs got issued a notice dated 25.4.2007 calling upon them to partition the schedule properties.”

Even in the affidavit filed by the 1st plaintiff in support of the application filed under Order XXXIX Rule 1 & 2 C.P.C it is stated that:-

“Recently we came to know that the defendants have partitioned the properties between themselves, excluding us and without our knowledge.”

The same thing is found in the copy of the legal notice issued on behalf of the plaintiffs.

So, from the perusal of the above averments, it is clear that the plaintiffs were very much aware of the partition that has taken place in the family of the defendants.

19. The plaintiffs themselves have produced the xerox of the certified copy of the partition deed dated 16.6.2000 along with other documents on 28.6.2000. The perusal of this document shows that on 16.6.2000 the defendants 1 to 5 have entered into partition of the properties belonged to the family amongst defendants 1 to 5. The perusal of this document which is produced by the plaintiffs themselves show that all the plaint schedule properties have been partitioned by metes and bounds amongst the defendants on 16.6.2000 itself. To be more precise, the Item No.1 of the plaint schedule was allotted to 1st defendant – Smt.Lakshmi Devamma. Item No.2 has been allotted to 4th defendant – Rmesh. Item Nos.3 & 4 of the plaint schedule were allotted to 5th defendant – B.S.Ravindranath. In so far as Item No.5 as described in the plaint is land in Sy.No. 31 measuring 9 acres 4 guntas situated at Talagattapura village, Uttarahalli hobli, Bangalore. The perusal of the partition deed dated 16.6.2000 shows that this land has been got converted for non-agricultural use as per order in BDS.ALN.SR

(S)594-96-97 dated 30.5.1997. Sites have been formed. Those sites have been distributed amongst the defendants as under:-

Site Nos.2, 6 to 8, 11 and 12 allotted to 2nd defendant – B.S.Subhas;

Item Nos.1, 5, 13 & 14 allotted to 3rd defendant – B.S.Jaiprakash; and

Site Nos.3, 4, 9, 10 and 15 allotted to 4th defendant – B.S.Ramesh.

About all these things, the defendants do not dispute and they admit it. It is true that the averments in the written statement are not to be looked into at this stage. Even otherwise, the plaint averments, averments in the affidavit filed in support of the I.A., the legal notice issued prior to the institution of the suit, all show that the plaintiffs themselves are stating about the partition. They have not disputed the genuineness or correctness of the documents. They only contend that the partition deed was entered into by the defendants without the knowledge of the plaintiffs. Whatever it may be, the fact remains that the plaintiffs do not dispute the registered partition deed dated 16.6.2000 which is long prior to 20.12.2004 that is to the date prescribed by way of proviso to Sec.6 of the Hindu Succession Act as amended in 2005. As already stated above, the benefit of newly amended Sec.6 of the Hindu Succession

(Amendment) Act 2005 as regards the daughter of a coparcener becoming a coparcener by birth, is not available if the partition of the family properties had taken place by means of registered partition prior to 20th December, 2004. Therefore, it cannot be said that the plaintiffs have cause of action to file the suit and the suit is clearly barred by the provisions of Sec.6 R/W Proviso and Explanation of the newly amended Hindu Succession Act, 2005.

20. The other leg of arguments advanced by the defendants is that the plaintiffs being the daughters of late B.M.Seenappa got married prior to 1994 and therefore they cannot even claim benefit under Sec.6 A of Hindu Succession Act (Karnataka Amendment Act). There is some force in the argument of the learned advocate appearing for the defendants. At the outset it has to be stated that the plaintiffs have not stated in their plaint about the dates of their marriages. But if we go by their age, we find that the plaintiffs are aged 62 years, 55 years and 50 years respectively. So, necessarily they must have got married much prior to 1994 (more than 13 years ago, as the suit is of the year 2007). If that be so, the daughters of a coparcener cannot become coparcener under Sec.6 of the Karnataka Amendment Act. In this context, we may usefully refer to the decision of the Hon'ble High Court of Karnataka reported

in I.L.R 2001 (4) Karnataka, Page 5221, (Tukaram Dhoniba Padatare & Others .vs. Smt.Savithri and others),wherein it is held as under:-

“Section 6A, (As introduced by Karnataka Amendment Act of 1994); Daughter as a coparcener:- The daughter incurs the disqualification from being a coparcener is the factum of her marriage prior to 1994. The word “or” found in Section 6A (d) is disjunctive, meaning thereby, that a daughter does not become a coparcener under two separate and distinct circumstances - one the factum of her marriage taking place prior to 1994 even if her marriage had taken place subsequent to 1994 but partition occurring prior to 1994. In either of the events, she does not become a coparcener” “

In yet another decision reported in I.L.R 2003 (2) Kar. Page – 1491 (Smt.Gourawwa & Others .vs. Basappa and another), it has been held as follows:-

“Section 6A: Right of daughters –Married daughters are not entitled for share in the property if their marriage was solemnised prior to the coming into force of Karnataka Amendment Act, 23/1994. In the instant case, as the

appellants did not establish the date of their marriage, as such they are not entitled to share in the property(**smt.Gourawwa & others .vs. Basappa & another ILR 2003 (2) Kar.1491; 2003 (4) KCCR 2873; 2003 (3) KLJ 263**)”

Thus, in the light of the above discussions, this court is of the view that the plaint as brought is barred under both the statutes and consequently, there is no cause of action also. Consequently, I hold that the plaint has to be rejected as not maintainable. Accordingly, I answer Point No.1 in the Negative and Point No. 2 in the Affirmative and against the plaintiff.

21. **POINT NO.3:-**For the aforesaid discussions, I hold that the plaint is liable to be rejected. In the result, I pass the following

ORDER

The application filed by the defendants under Order VII Rule 11 (d) C.P.C is allowed. Consequently, the plaint is rejected and the suit is dismissed as not maintainable.

No order as to costs.

Draw decree accordingly.

Dictated to the Judgment Writer, transcribed by her, corrected and then pronounced by me in open court this the 29th day of November, 2008.

(D.R.Venkata Sudarshan)
XXII Addl. City Civil Judge,
Bangalore.

Appendix

Plaintiffs Witnesses:

Defendants Witnesses:

Plaintiffs Exhibits:

Defendants Exhibits:

(D.R.Venkata Sudarshan)
XXII Addl. City Civil Judge,
Bangalore.

29.11.2008

P-MSM

D.1 to 3 & 5 – JNA

D.4-JK.

Order on the application filed by the defendants
Under Order VII Rule 11 (d) C.P.C pronounced in open court.
(Vide separate Judgment)

The application filed by the defendants under
Order VII Rule 11 (d) C.P.C is allowed.
Consequently, the plaint is rejected and the
suit is dismissed as not maintainable.

No order as to costs.

Draw decree accordingly.

XXII Addl.City Civil Judge.