

KATK810005172018



IN THE COURT OF ADDL. CIVIL JUDGE & JMFC.,

AT: SIRA

Dated this the 25th day of August 2021

PRESENT : Smt. Geeta
B.A., LL.B.(Hons),L.L.M.,
Addl. Civil Judge & JMFC., Sira.

O.S. No.104/2018

PLAINTIFF : Kotekallappa,
S/o Odorangappa,
Aged about 65 years,
R/o Kalehalli,
Kallambella hobli,
Sira Taluk.
(By Sri.S.K.G.,Advocate)
/Vs/

DEFENDANTS: 1. V.K.Raju,
S/o Veeranna,
Aged about 62 years,
R/o Kalehalli,
Kallambella hobli,
Sira Taluk.

2. Tahasildar,
Sira Taluk,
Sira.
3. Revenue Inspector,
Kallambella Circle,
Sira Taluk,
Sira.
4. Tajuka Surveyor,
Taluk Office,
Sira Taluk,
Sira.
(Def No.1 By Sri.H.G.,Adv.)
(Def No.2-4 By Sri.A.G.P.,Adv.)

ORDER ON IA

This is an application filed by the defendant no.1 under 7 rule 11 R/w sec.151 of CPC and u/s 11 of Karnataka Court Fees and Suit Valuation Act, 1958 and prayed to reject the plaint as the suit is undervalued.

2. The defendants sworn to an affidavit stated that, the plaintiff has filed this suit against him for the relief of permanent injunction restraining the defendants or anybody acting on their behalf from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. It is

further stated that, the plaintiff was acquired the suit schedule property by way of sale deed in the year 1977 and the same is in dispute in O.S.No.10/2019 which is pending before the Hon'ble Senior Civil Judge and J.M.F.C., Sira. The said suit is filed for the relief of partition and wherein an ad-interim exparte injunction has been granted with respect to suit schedule property. It is stated that, the plaintiff alone is not the owner of the suit schedule property and the plaintiff has suppressed material facts. It is stated that, the parties to the said suit are required to be made as parties in this suit. Therefore the suit of the plaintiff may be dismissed for mis joinder of parties.

3. It is further stated that, the cause of action specified in the plaint is not clear and same does not disclose the particular date, on which day the said cause of action was arose. The said cause of action in this suit is expressed as one week back, without even specifying the said date on which the cause of action had arose.

4. It is further stated that, the valuation paid before the court is insufficient as the property valued

up to more than 5 lakhs. Whereas the total valuation of the property including trees as averred in the plaint shows that the property valuation is more than 5 lakhs and the court fee to be paid to this court is insufficient. Therefore the pecuniary jurisdiction to try this case is with Senior Division not with this court. With these averments the defendant no.1 prayed to reject the plaint.

5. The plaintiff filed objection and contended that, the application is not maintainable in law as well as on facts of the case and it deserves to be dismissed in limine. It is stated that, the suit filed before the Senior Civil Judge Court at Sira in O.S.No.10/2019 and this suit are entirely different facts and parties are different. The plaintiff is one of the party in that suit. It is further stated that, the plaintiff has paid sufficient court fee as per the mandatory provision under sec.25 of Karnataka Court Fee and Suit Valuation Act. With these averments the plaintiff prayed to reject the application.

6. The defendant has filed written argument along with one citation and heard the plaintiff counsel.

7. The following points that would arise for my consideration are as under;

1. Whether the defendant no.1 has made out grounds to allow the application?
2. What Order?

8. My answer to the above points as under –

Point No.1– In Negative

Point No.2– As per the final order for the following;

Reasons:

9. **Point No.1:** This is a suit filed by the plaintiff against the defendants for the relief of permanent injunction restraining the defendants or their agents or anybody acting their behalf from interfering with plaintiff's peaceful possession and enjoyment of the suit schedule property towards Northern side of the same. The defendants appeared

in this case and filed the written statement, issues have been framed and the case is posted for plaintiff's evidence. At this stage defendant no.1 came up with this application u/o 7 Rule 11 of CPC. The plaintiff has filed objection to the application.

10. It is contended by the defendant no.1 that, there is a suit pending in O.S.No.10/2019 before the Hon'ble Senior Civil Judge and JMFC., Sira and the plaintiff is a party in that suit and the suit schedule property in this suit is also one of the property in that suit, the plaintiff has not made parties in that suit as parties in this suit. Therefore the suit of the plaintiff is bad for non joinder of necessary parties.

11. In support of his contention the defendant no.1 has produced the certified copy of order sheet and plaint. On perusal of these documents, it is noticed that, O.S No.10/2019 is filed against the

plaintiff for the relief of partition and separate possession along with some other persons. In that suit the suit schedule property in this suit is one of the property. In this case the plaintiff is claiming for the permanent injunction against this defendant. Therefore the parties in that suit are not necessary party in this suit. In this suit the plaintiff is claiming only the permanent injunction with respect to one of the property in that suit. Therefore the parties in that suit are not necessary parties in this suit.

12. It is further contended by the defendant no.1 that, the plaintiff has not stated the specific date, when the cause of action was arose. Perused the 6th para of the plaint, wherein the plaintiff has stated that, about one week back when the defendant is trying to interfere with plaintiff's peaceful possession and enjoyment of the suit schedule property by way of cutting and removing the valuable

trees, on that date cause of action was arose and plaintiff filed this suit. This statement of the plaintiff is sufficient that he has stated the cause of action it is not necessary to mention the particular date in the plaint.

13. The defendant has relied on judgment reported in **Karnataka Bank Vs. T.Gopal Krishna Rao reported in ILR 1994 KAR 230**, wherein it is held that, the real cause of action has been set out in the plaint or illusory has been made out. Clever drafting is not permitted under law and clear right to sue shall be made out. Plaint is to be rejected since it does not disclose the cause of action and apparently it is barred by law.

14. Perused the entire judgment, it is noticed that the facts and circumstances of that case and this case are totally different, therefore that judgment

is not applicable to this case. That judgment is with respect to service matters. Further in the said judgment the Hon'ble High Court of Karnataka held that, if the real cause of action is not mentioned in the plaint then plaint can be rejected. In the instant case, the plaintiff has sufficiently stated in his plaint, when the cause of action was arose and what is the cause of action to file this suit. Therefore this contention of the defendant is not applicable.

15. It is further contended by the defendant no.1 that, the suit of the plaintiff is not properly valued. It is stated by the defendant no.1 that, the suit schedule property including all trees as averred in the plaint is values more than 5 lakh rupees. Therefore this court has no jurisdiction to decide this suit. The defendant no.1 has not produced a single document to prove his contention, mere stating that, this court has no pecuniary jurisdiction to decide this

suit is not sufficient to reject the plaint. Therefore the defendant has not made out sufficient grounds to reject the plaint. Hence I answer point No.1 in **Negative.**

16. Point No.2:- In view of discussion on point no.1 and for the reasons stated therein, I proceed to pass the following;

Order

The application filed by the defendant No.1 U/o 7 Rule 11 R/w sec.151 of CPC and U/s 11 of Karnataka Court Fees and Suit Valuation Act 1958 is hereby rejected with cost of Rs.200/-

For plaintiff evidence.

(Smt.Geeta)
Addl. Civil Judge & JMFC.,
Sira.

**Order pronounced in the open
court (Vide separate Order)**

The application filed by the defendant No.1 U/o 7 Rule 11 R/w sec.151 of CPC and U/s 11 of Karnataka Court Fees and Suit Valuation Act 1958 is hereby rejected with cost of Rs.200/-.

For plaintiff evidence.

**Addl. Civil Judge & JMFC.,
Sira.**