



Dated this the 25th day of October 2021

O.S. NO. 251/2017

/Vs/

DEFENDANTS :1. Ramakrishnappa,
Aged about 67 years,

2. Mukundappa,
Aged about 60 years,
Both are children of
S/o. Late Venkatappa
and residents of

Shivanaiahna palya,
Gowdagere Hobli,
Sira Taluk.

**(Sri. P.B. S. Bhoopathi Gowda,
Advocate for D1
D2- absent)**

In I.A. No.3

APPLICANT : Ramakrishnappa

/Vs/

OPPONENT : Srinivasappa

ORDERS ON I.A. NO.3

This is an application filed by the Applicant/defendant No.1 U/O. 7 Rule 11(d) of CPC praying to reject the plaint.

2. In support of an application, the applicant/defendant No.1 has sworn to an affidavit that the plaintiff has filed the above suit for Partition and separate possession. In para No.4 of plaint, plaintiff has stated that on 26.05.1980, he purchased 3 acres of land in Sy. No. 384/5. This aspect clearly shows that there is no merits in the suit. Only to

harass the defendant, the plaintiff has filed frivolous suit. The suit is devoid of merits and barred by law of limitation. Hence, prays to reject the plaint.

3. On the other hand, the plaintiff has filed objection and contended that it is suit for partition and separate possession. The plaintiff and defendants are children of Venkataiah and Krishnamma, they are brothers. The plaintiff and defendants are performing pooja and other works in Gundanjaneya temple, Sira. They purchased the property out of income derived from joint family. The plaintiff and defendants are having equal right in the schedule property and there was no partition in their family. Only to protract the proceedings, the defendants have filed this frivolous application. There are no merits in the application. Hence, prays to dismissal of I.A.

4. Heard the arguments of learned counsel for plaintiff and defendants and perused the materials placed on record.

5. The following points that would arise for my consideration:

1. Whether the defendant No.1 has made out ground to reject the plaint of the plaintiff?
2. What order ?

6. My findings on 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: This suit is filed by the plaintiffs for the relief of partition and separate possession. In the plaint, he has stated that, he and defendants are Archaks in Gudanjaneya temple and also doing other business. They are joint family members and they purchased three acres in Sy. No. 384/5 on 26.05.1980 jointly in the name of defendant No.1.

8. The defendant/applicant contended that, in the plaint itself, the plaintiff has stated that the property purchased in the name of defendant no.1 in the year 1980 and 1981. This aspects clearly shows that the suit is barred by limitation. On that ground, he prays to reject the plaint.

9. On perusal of record, it is noticed that the plaintiff and defendants are the children of Late Venkatappa and Krishnamma. Defendants also not denied the relationship. According to plaintiff, the schedule property is joint family property. Whether it is joint family property or self acquired property of defendant No.1 has to decide at the time of trial. It is true that, the plaintiff has stated that in the year 1980 and 1981, the property purchased in the name of defendant No.1. In the same para of plaint, it is also stated that property purchased jointly out of joint family funds. They also stated that plaintiff and defendants purchased the property. All these aspects show that, the plaintiff is claiming right in the joint family property. Whether defendant No.1 has purchased

the property out of his own income or not has to decide at the time of trial. At this stage, it cannot be decide that, suit is barred by limitation.

10. Limitation aspect is mixed question of law and facts. This aspect cannot be decide before trial. In the plaint, plaintiff has no where stated that suit is barred by limitation. To decide application U/Or. VII Rule 11, court has to consider plaint averments and not written statement or other contentions raised by the defendant. As stated above, the plaintiff has not stated that, suit is barred by limitation. The issue involved in this case is, whether the property purchased through joint income or own income of defendant No.1. This aspect cannot be decide at this stage. To resolve this issue, detail enquiry is required and it is also required to grant an opportunity to the plaintiff to prove his case.

Or. VII Rule 11 says that, The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action

(b) Where the relief claimed is under valued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is property valued but the plaint is written upon paper insufficiently stamped, and the plaintiff on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provisions of Rule 9.

The applicant has not made out ground to reject the plaint on the ground that, it is barred by limitation. The limitation aspect has to consider at the time of trial. Accordingly this point is answered in the **Negative**.

11. POINT NO.2: In view of my findings on Point No.1 in the **Negative**, I proceed to pass the following;

ORDER

I.A.No.3 filed by Applicant/defendant No.1

U/Or. 7 Rule 11 (d) of CPC is hereby rejected.

(Dictated to the stenographer on computer, computerized and printout taken by her, then corrected and pronounced by me in the open court on **25.10.2021**)

(ASHA K.S.)

Prl. Civil Judge & JMFC.,
Sira