

IN THE COURT OF PRL.CIVIL JUDGE & JMFC., AT SIRA

Dated this the 19th day of June 2019

PRESENT: Smt. ASHA K.S.

B.A. L., LL.B.,
Prl. Civil Judge & JMFC., Sira

O.S. NO. 335/2016

- PLAINTIFFS** :1. Puttamma,
D/o. Late Govindappa,
W/o. Mudlappa,
Aged about 50 years,
2. Hanumakka,
D/o. Late Govindappa,
W/o. Late Eranna,
Aged about 48 years,
Both are residents of
Gummanahalli
Gollarahatti,
Kasaba Hobli,
Sira Taluk,
3. Kempamma,
D/o. Late Govindappa,
W/o. Krishnappa,
Aged about 43 years,
R/o. K. Basavanahalli village,
Dodderi Hobli,
Madhugiri Taluk,
4. Gangamma,
D/o. Late Govindappa,
W/o. Thimmanna,
Aged about 42 years,
R/o. Koodalahalli village,
Nagenahalli Post,
Dharmapura Hobli,

Hiriyur Taluk,

5. Jayamma,
D/o. Late Govindappa,
W/o. Ugrappa,
Aged 38 years,
R/o. Devagondanahalli village,
Kasaba Hobli,
Sira Taluk,
**(By Sri. Venkatasubba Rao,
Advocate)**

/Vs/

- DEFENDANTS :** 1. Thimmakka,
W/o. Late Govindappa,
Aged about 70 years,
2. G. Kantharaju,
S/o. Late Govindappa,
Aged about 36 years,
3. Eranna,
S/o. Late Govindappa,
Aged 36 years,
All are Residents of
Gummanahalli
Gollarahatti,
Kasaba Hobli,
Sira Taluk,
**(Sri. P.B. S. Bhoopathi Gowda,
Advocate for D1 & 2,
Sri. Siddaraju B.,
Advocate for D-3)**

In I.A. No.3

APPLICANT : Thimmakka

/Vs/

OPPONENTS : Puttamma & others

ORDERS ON I.A. NO.3

This is an application filed by the Applicant/defendant No.1 U/O. 7 Rule 11 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. The plaintiffs and defendants No.2 and 3 are the children of defendant No.1 and Late Govindappa. The suit schedule property is the absolute property of defendant No.1. She acquired the said property in the family partition effected between herself and her brothers. As such, defendant No.1 became the absolute owner of the schedule property. The plaintiffs also admitted the acquisition of property by the defendant No.1. In such circumstances, the suit of the plaintiff is not maintainable.

3. On the other hand, the learned counsel for the plaintiff has filed objection contended that Whether the

schedule property is absolute property? Or Joint family property has to be considered after the trial. At this stage, court cannot decide the merits of the case. Defendant No.1 executed Registered sale deed in favour of defendant No.2. Taking advantage of the Gift Deed, defendant No.2 is trying to alienate the schedule property. 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 **Affirmative.**

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, the plaintiffs have stated that they and defendants No.2 and 3 are children of defendant No.1. The schedule property is ancestral property and all are in joint possession of the schedule property. On their consent, khatha of the schedule property was changed in the name of defendant No.1. In the mean while, defendant No.2 obtained a Registered Gift Deed in his favour by playing fraud. The plaintiffs are looking after the welfare of plaintiff.

8. The applicant/defendant contended that defendant No.1 is the absolute owner of the suit schedule property. She acquired ownership of schedule property in the family partition dated 17.10.2011 effected between herself and her brothers. On perusal of partition deed, it is noticed that it is the registered document. Defendant No.1 allotted share in her parental house. It shows that the schedule property is not ancestral property of plaintiff and defendants.

9. The plaintiffs not denied the acquisition of property by the defendant No.1. As per Sec. 14 (1) of Hindu Succession Act, any property possessed by female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. As per Sec. 14(3) of Hindu Succession Act, any property possessed by the Hindu female, irrespective of how it was acquired, becomes her absolute property. In the Judgment reported in **AIR 1977 SCR (3) 261, Smt. Thulasamma Vs Shesha reddy case**, Our Lordship held that, ***“Every kind of acquisition of property by a female Hindu became her absolute property”***. Hence, the above said authority is amply applicable case on hand.

10. The Act is very clear that any property acquired by the female Hindu became her absolute property. As stated above, the defendant No.1 acquired the schedule property from her father. Hence, it became her Streedhana property. Defendant No.1 executed Registered Gift Deed in favour of defendant No.2. It shows that as an absolute owner, she transferred her ownership in favour of her son. In such

circumstances, the plaintiffs or any body has no right to question the defendant No.1.

11. Defendant No.1 is not questioning the Gift Deed and in her written statement, she also admits the execution of Gift Deed. In such circumstances, plaintiffs cannot question the act of defendant No.1 in respect of Gift Deed. When the defendant No.1 herself admitted about the Gift Deed, question of alleging about the fraud does not arise.

12. To claim partition, there should be joint family properties or ancestral properties. In this case, there are no joint family or ancestral properties. There is no dispute in acquisition of property by the defendant No.1. In such circumstances, nothing is there to decide at the time of trial. When the things are very clear, question of examining further documents or evidence are not required.

13. As stated above, the plaintiffs are also admitting that, defendant No.1 acquired the schedule property from her father in the partition. Hence, the schedule property is the absolute property of defendant No.1 and she had every right to

execute Registered Gift Deed in favour of her son. The plaintiffs or anybody has no right to claim share in the schedule property. The applicant has made out ground to reject the plaint on the ground that, it is barred by Sec. 14 (1) of Hindu Succession Act. Accordingly this point is answered in the **Affirmative**.

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

ORDER

I.A.No.3 filed by Applicant/defendant
No.1 U/Or. 7 Rule 11 of CPC is hereby
allowed.

Consequently, the plaint is rejected.

No order as to cost.

(Dictated to the stenographer on computer, computerized and printout taken by her, then corrected and pronounced by me in the open court on **19.06.2019**)

(ASHA K.S.)
Prl. Civil Judge & JMFC.,
Sira

