

## **ORDERS ON I.A.NO.VII**

The learned DGP filed present I.A.No.VII on behalf of defendant No.15 u/O.VII Rule 11 r/w.Sec.151 of CPC praying to reject the plaint and entire suit is not maintainable on the ground that barred by law and suit is not maintainable in the interest of justice and equity.

2. In support of I.A.No.VII the learned DGP filed memorandum of facts stating that, defendant No.15 is already filed written statement and specifically taken the contention that, suit is not maintainable as same is barred by law. In fact the subject matter of the suit property for partition has already acquired by the Government long back and fully satisfied the decree, if any interested person having any interest in respect of suit property should have filed application u/Sec.30 of Land

Acquisition Act before Land Acquisition officer and not by way of this suit. Further submitted that, this Court has no jurisdiction to try and decide the present suit. Hence, on the basis of written statement the suit may be dismissed and plaint may be rejected as barred by law in the interest of justice and equity.

3. On the other hand, learned counsel for plaintiffs filed objection to I.A.No.VII. The sum and substance of objection filed to I.A.No.VII by the plaintiffs counsel is as under:

- The application filed by the defendant No.15 is not maintainable under law and facts of the case.
- The applicant i.e. defendant No.15 is not made out any grounds to reject the plaint.
- The defendant No.15 not followed the mandatory provisions of Karnataka Civil Rules of Practice.
- The plaintiffs have filed present suit against the defendant No.1 to 15 and subsequently impleaded defendant No.16 to 18 in the suit.

- The present suit filed by the plaintiff against the defendant No.1 to 13 for partition of suit Sl.No.1 to 4 property and further added property at Sl.No.5 to 6 after impleading the defendant No.16 to 18 in the suit.

- It is also further submitted that, there is no prayer against defendant No.14 and 15 and they are only formal parties i.e. Sl.No.1 to 4 of suit property acquired by the Government for the purpose of use of Police Department. Hence, there is no any prayer against the defendant No.14 and 15.

- The defendant No.15 has already filed written statement on 19.1.2016 and the Hon'ble Court framed issues and suit is posted for evidence of plaintiffs side. The plaintiffs have also examined P.W.1.

- The defendant No.1 and others in the present suit have filed Ex.Petition No.290/2009 against the Government for payment of compensation amount with respect to land acquired by SLAO for the benefit of defendant No.14 and 15.

- The defendant No.13 also filed one more suit bearing O.S.No.212/2011 against the defendant No.1 to 13 before Civil Judge, Karwar, and same is pending for hearing.

- The defendant No.1 to 7 also filed one more suit bearing O.S.No.24/2015 in respect of Sl.No.1 to 4 of suit property before this Court.

- The application filed by the defendant No.15 in the suit i.e. I.A.No.II is not maintainable.

- Further it is submitted that, the case is posted for cross-examination of P.W.1 and elaborate evidence and appreciation of material fact is made out in the pleadings.

Hence, prayed to dismiss the I.A.No.VII.

4. The defendant No.7 and 8 filed objection to I.A.No.VII stating that, the contention of the application and memorandum of facts filed along with application are all false, frivolous, vexatious and same is denied by the defendants. It is further submitted that, the application is not maintainable, at this stage, the applicants have not made out any grounds mentioned in the Order VII Rule 11 of CPC to made out the grounds to reject the plaint. The application devoid to merit. Further it

is submitted that, the rival pleadings made out in the plaint require elaborate evidence and appreciation of the material facts. The Hon'ble Court has already framed issues and that matter is now for cross-examination of P.W.1. Under these circumstances the present I.A.No.VII is not maintainable on the eye of law. Hence, prayed to dismiss the application.

5. Heard the arguments. Perused the materials available on record.

6. Admittedly, the present suit filed by the plaintiffs against the defendants for following reliefs:

- A) Declaring that the plaintiffs are entitled for partition of the suit schedule lands to the extent of 1/6th share each, and the defendants are also entitle both 1/6th share jointly and severally.
- B) It is submitted that, the Tahasildar, Karwar, may kindly be directed to effect the partition of 1/6th share in respect of the suit schedule lands (if reconveyed by the defendants

14 and 15) by metes and bounds and to put the possession of as per their respective shares under section 54 of CPC in the ends of justice and equity.

- C) It is further prayed that the compensation amount already paid and to be paid in respect of the acquired suit lands by the Government i.e. the defendants 14 and 15 to each of the plaintiffs 1/6th share.
- D) Any such other relief or reliefs including the costs of the suit may kindly be granted to the plaintiffs.
- E) That the plaintiffs prays that the permission may kindly be granted to them to amend the plaint, if any new facts come to the knowledge of the plaintiffs in the ends of justice and equity.
- F) Declaring that the plaintiffs have entitle for partition of the suit schedule 5 and 6 properties by metes and bounds to the extent of 1/6th share over the same and the Tahasildar, Karwar, may affect the partition and put the plaintiffs into possession of the 1/6th share of the plaintiffs in respect of schedule 5 and 6 properties under Section 54 of CPC in the ends of justice and equity.

7. The suit schedule properties shown in the present suit is as under:

**Sl.No. Survey No. Area Village Taluka**

- |    |       |        |                |
|----|-------|--------|----------------|
| 1. | 4/1   | 2-4-0  | Kodibag Karwar |
| 2. | 4/2   | 0-15-0 | Kodibag Karwar |
| 3. | 4/3   | 1-8-0  | Kodibag Karwar |
| 4. | 4/4   | 1-16-0 | Kodibag Karwar |
| 5. | 193/3 | 0-15-0 | Kodibag Karwar |
| 6. | 193/4 | 0-5-0  | Kodibag Karwar |

Bounded by boundary stones.

8. Admittedly, the present suit filed by the plaintiffs against the defendants for relief of partition with respect to suit schedule properties. It is also admitted fact that, the suit item No.1 to 4 is already acquired by the Government for the purpose of Police Department.

9. On going through the pleadings following are the admitted facts;

**ADMITTED FACTS**

1. It is admitted fact that, the suit schedule Sl.No.1 to 4 properties are acquired by Government for Police Department.

2. It is also admitted fact that, the Government acquired the

Sl.No.1 to 4 properties under 4(1) notification.

3. It is also admitted fact that, the Ex.Pet.No.290/2009 is pending which is filed for the execution of award in respect of acquired land.

4. It is also admitted fact that, the defendant NO.1 to 13 have filed one more suit bearing O.S.No.212/2011 before Civil Judge, Karwar.

5. It is also admitted fact that, the defendant No.1 to 7 filed another suit bearing O.S.No.24/2015 before this Court.

10. The learned DGP argued that, the suit Sl.No.1 to 4 properties are already acquired by the Police Department. The para No.8, 10 and 11 of the plaint averments itself indicates that, item No.1 to 4 properties are already acquired by the Government and the question of joint family property does not arise at all. Further there is a execution petition No.290/2009 filed by the defendant No.1 to 3 is pending before this Court in pursuance of award and question of partition is does not arise at all. The

plaintiffs not filed any suit for possession of land since from the date of acquisition.

11. Coming to the merits of the I.A.No.VII is concerned it is undisputed fact that, the suit Sl.No.1 to 4 is already acquired by the Government and plaintiffs not filed any suit for possession of the land since the suit schedule property Sl.No.1 to 4 is already acquired by the Government under 4(1) notification and such notification already published in the Gazette and opportunity is given to the plaintiffs and defendants. No person has come forward to oppose the notification or filed any claim petition. Further the Police Department has constructed building in the acquired land and defendant No.15 is in possession and enjoyment of the land and the partition of the acquired land is does not arise at all and the concept of joint family

property and joint possession does not arise. Since the suit property Sl.No.1 to 4 in the hands of defendant No.15 after the acquisition. Further with respect to Sl.No.5 and 6 property the learned counsel for plaintiffs filed RTC with respect to Sl.No.5 which disclose that, the name of Kiran Ganapati Bhandari and Radhakrishna Kalgutkar with respect to 2 gunta, but they are not parties in the suit. Further the RTC also disclosed the name of Shyam Pundalik Kalgutkar and Sarswati Ganapati Kalgutkar, but the plaint averments does not disclose how they are related to plaintiffs and defendants. This shows that, the plaintiffs intentionally added Sl.No.5 and 6 properties in the suit by filing I.A.No.I. Finally, at cost of repetition the suit schedule Sl.No.1 to 4 properties are already acquired by Government and no property is available for partition and the existence of joint family property does

not arise at all. Further the prayer of plaintiffs is that, declaring that plaintiffs are entitled for partition of suit schedule properties to the extent of 1/6th share each (if reconveyed by the defendant No.14 and 15). There is no any prayer in the suit for possession of the land from the defendant No.14 and 15. With this observation, I proceed to pass the following:

**ORDER**

Resultantly, I.A.No.VII filed by the defendant No.15 u/O.VII Rule 11 r/w.Sec.151 of CPC is hereby allowed.

Consequently, the plaint is rejected as barred by law and suit of the plaintiffs is dismissed as not maintainable.

No order as to costs.

Addl. Sr. Civil Judge .,  
Karwar.

