

ORDERS

Heard the learned Counsel for the plaintiffs. Perused the materials on record.

2. On perusal of the records it reveals that, the instant suit is filed by the plaintiffs seeking relief of partition and also declaration that the judgment and decree passed by the Hon'ble Addl. Civil Judge, Kumta in O.S.No.73/1986, O.S.No.24/1997 and O.S.No.20/1997 dated 31-3-2008 is not binding upon the plaintiffs and also sought declaration that, the final decree passed in F.D.P.No.7/2009 by the Hon'ble Prl. Civil Judge, Kumta dated 19-6-2015 is not binding upon the plaintiffs and the same may be declared as null and void and also sought relief of declaration that Sale Deed dated 4-10-1996 is not binding upon the plaintiffs.

3. It is the specific case of the plaintiffs that, the propositus of their family is one Pundalik Salgaonkar who died in the year 1964 and he had two sons by name Janardhan and Manjunath and the said

Janardhan had 3 sons by name Pundalik, Krishna, Upendra. The plaintiffs have narrated the genealogical tree at page no.2 of the plaint and it is further contended by the plaintiffs that, suit item nos.1 and 2 are the properties granted by the Land Tribunal in favour of Pundalik, Krishna and Upendra in which branch of Pundalik comprising plaintiffs have got 1/3rd share and branch of Krishna have got 1/3rd share and branch of Upendra have got 1/3rd share. The plaint 'B' schedule property is a vacant space and the buildings built on 'A' schedule property in which plaintiffs are also having 1/3rd share. According to the plaintiffs, in November, 2016 the plaintiffs came to know about possession warrant issued by the Hon'ble Civil Court, Kumta in Execution No.86/2016 and then the plaintiffs shocked to come to know that 3 suits in O.S.No.73/1986, O.S.No.24/1997 and O.S.No.20/1997 were filed and clubbed together and they were disposed off on 31-3-2008 itself. Further, they also came to know that, final decree proceedings in F.D.P.No.7/2009 and Execution Petition No.86/2016 were filed to give effect to the said final decree and all these exercise has been taken place behind the back of the plaintiffs. The plaintiffs have alleged that, the defendants in the above suits colluded with the adverse party with an ulterior motive of grabbing the properties of the plaintiffs and the plaintiffs have also contended that, several fraudulent transactions were taken place behind their back and all these transactions are not binding upon them.

4. It is also contended that, the Hon'ble Civil Court, Kumta has no pecuniary jurisdiction to try those suits and the plaintiffs have also

filed Writ Petition No. 109694/2016 before the Hon'ble High Court of Karnataka and questioned the order of issuance of possession warrant and initially the Hon'ble High Court of Karnataka has granted order of stay and subsequently, Writ Petition was disposed off with a direction to decide the application filed by the present plaintiffs as per law. The plaintiffs have alleged that, the defendants are attempting to evict the plaintiffs from the suit schedule property and they are creating disturbance and hence, they have constrained to file the present suit.

5. Along with the suit, the plaintiffs have filed I.A.No.I under Order 39 Rule 1 and 2 r/w Section 151 of CPC seeking stay of further proceedings of Execution No.86/2016 pending on the file of Hon'ble Prl. Civil Judge, Kumta. The plaintiffs have also furnished documents which includes copy of Form No.10, Mutation Register Extract, copy of Judgment and Decree passed in O.S.No.73/1986, O.S.No.24/1997, O.S.No.20/1997 and copy of Final Decree Order, copy of Interim Stay granted in W.P.No.109694/2016 and Order passed in W.P.No.109694/2016 and copy of Family Tree of the plaintiffs and Case History of Execution No.86/2016. Through this I.A.No.I, the plaintiffs sought for an order to restrain the further proceedings in Execution No.86/2016 which is pending before the Hon'ble Prl. Civil Judge, Kumta. The Court is of the opinion that, the interim relief as sought in instant I.A.No.I cannot be granted in a suit filed by the plaintiffs before this Court. Further, the Court is of the opinion that, the plaintiffs have not made out existence of prima facie case in their favour at this stage.

Further, the aspect of maintainability of the suit in the present form can be taken into consideration at an appropriate stage of the case. Hence, the Court is of the opinion that, before passing any kind of interim Order on I.A.No.I, the defendants need to be heard. Hence, the Court proceed to pass the following :-

ORDER

Issue emergent suit summons and notices on I.A.No.I to the defendant nos.1, 2, 3 by R.P.A.D. and issue emergent suit summons and notices on I.A.No.I to the defendant nos.4, 5, 6, 7, 8(a) to 8(d) and defendant no.9 through process of Court.

Call on 27-5-2022.

Senior Civil Judge, Kumta.

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