

IN THE COURT OF CIVIL JUDGE & JMFC, HARAPANAHALLI

**Present: SMT. SHOBHA B.G., M.A., LL.B.,
Civil Judge & JMFC, Harapanahalli.**

Dated : This the day of 4th December, 2020.

O.S. NO.179/2015

**Plaintiff/s : Kattimani @ Hadapada Gururaja and others
(Rept., by Sri. B.K.M., Advocate)**

-V/s-

**Defendant/s : Hadapada Halappa and others
(Rept., by Sri. C.H.B./C.R.B., Advocates)**

I.A. No. III to V

Applicant/s: Hadapada Halappa and others

V/s.

Respondent/s: Kattimani @ Hadapada Gururaja and others

ORDERS ON I.A.NO.III TO V

IA.No.III filed by the defendant No.1 U/O 7 Rule 11 of CPC with a prayer to dismiss the suit for the reason stated in the affidavit.

2. IA.No.IV filed by the defendant No.1 U/s 151 of CPC with a prayer to dismiss the suit for the reason stated in the affidavit.

3. IA.No.V filed by the defendant No.1 U/s 151 of CPC with a prayer to dismiss the suit for want of jurisdiction.

4. These three IAs are taken up together for discussion to avoid repetition as they require same set of pleadings and documents.

5. IA.No.III is accompanied with an affidavit sworn by the defendant No.1 wherein he has stated that on 25-03-1973 his brother Shivalingappa had divided the property and house, thereafter there was sale transaction and etc. Since there was already partition, again the plaintiff cannot seek partition. Therefore prayed to dismiss the suit with costs of Rs.25,000/-.

6. IA.No.IV is accompanied with an affidavit sworn by the defendant No.1 wherein he has stated that the father of plaintiffs' who is his brother by name Shivalingappa was managing their family affairs. On 25-03-1973 he has divided the properties, thereafter as per said partition they have been enjoying their respective to their respective shares. After partition said Shivalingappa was died, from that day till this day the plaintiffs did not raise objection, now they cannot file this suit. If they filed suit they have to file application for condoning delay. Without condoning delay this suit is not maintainable. Hence prayed to dismiss the suit with costs of Rs.25,000/-.

7. IA.No.V is accompanied with an affidavit sworn by the defendant No.1 wherein he has stated that the plaintiff has not valued the suit schedule property as per present market value. The suit schedule property is valued Rs.25,00,000/- at present. Hence this Court has no jurisdiction to try the suit. Therefore prayed to dismiss the suit and direct the plaintiff to institute the suit before jurisdiction Court.

8. IA.No.III to V have been resisted by the plaintiffs by filing objection separately wherein they have contended that the applications are not maintainable either in law or on facts. The contents of the affidavit accompanied with the applications are all false. Since the defendant No.1 has filed counter claim these applications are not maintainable. The plaintiffs and defendants have not partitioned their family properties prior to filing of the suit. The defendant No.1 has filed these applications with an intention to harass the plaintiffs. The applications are barred by law of limitation. They have denied the contents of the affidavit accompanied with the applications. Therefore prayed to dismiss the applications.

9. Heard the arguments. Perused the rival contention of the parties.

10. On the basis of the above facts, the following points that arise for my determination are;

1. Whether the defendant No.1 has made out sufficient grounds to allow the applications ?
2. What order ?

11. My answer to the above points is;

Point No.1 : In the negative;
Point No.2: As per the final order,
for the following;

REASONS

12. Point No.1:- On perusal of contention urged by both parties it appears that this suit is filed for the relief of partition and separate possession with respect to the suit schedule property. These applications are filed by the defendant No.1 with a prayer to dismiss the suit. According to him there was a already partition with respect to their property during the lifetime of father of plaintiffs by name Shivalingappa who is brother of defendant No.1 on 25-03-1973. When there was a partition again the plaintiffs cannot file suit for partition. They have not filed any application for condoning delay. Further stated that the plaintiffs have not valued the suit schedule property as per present market value. The present market value of

the suit schedule property is about Rs.25,00,000/-. According to the plaintiffs the defendant No.1 has filed these applications with an intention to harass them. There was no partition with respect to their family properties. However on considering the material placed before the Court it makes clear that the defendant No.1 filed IA.No.III under Order 7 Rule 11 of CPC, but he prayed for dismissal of suit. Order 7 Rule 11 of CPC provides for rejection of plaint only. The reason assigned by the defendant No.1 for dismissal of suit in 3 applications are not satisfactory. He has unnecessarily filed these applications without sufficient reason. Moreover though he has stated that the suit schedule property is valued more than Rs.25,00,000/-, in order to show the same, he has not produced any document. The party who is seeking partition he can file suit when the defendants refused to effect partition. The limitation is concerned it is a mixed question of law and facts. It can be adjudicated after ful-fledged trial. On the basis of limitation the suit cannot be dismissed at the earlier stage. Moreover the plaintiffs have denied that there was a partition during the life time of their father as stated by the defendant No.1. The provision of Order 7 Rule 11 of CPC provides rejection of plaint in the following cases:

1. *Where it does not disclose a cause of action.*
2. *Where the relief claimed is undervalued, 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.*
3. *Where the relief claimed is properly 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.*
4. *Where the suit appears from the statement in the plaint to be barred by any law.*
5. *Where it is not filed in duplicate.*
6. *Where the plaintiff fails comply with the provisions of Rule 9.*

In view of aforesaid provision and above discussion this Court is of the opinion that the defendant No.1 has not made out sufficient grounds to reject the plaint or dismiss the suit at this stage. Therefore the applications are liable to be dismissed. Accordingly point No.1 is answered in the **negative**.

13. Point No.2:- In view of above discussion, I proceed to pass the following;

ORDER

**IA.No.III filed by the defendant No.1 U/O 7
Rule 11 R/w section 151 of CPC is hereby
rejected.**

**IA.No.IV filed by the defendant No.1 U/s
151 of CPC is hereby rejected.**

**IA.No.V filed by the defendant No.1 U/s 151
of CPC is also rejected.**

(Dictated to the stenographer, after her transcription, revised, corrected and then pronounced by me in the open Court on this the 4th day of December, 2020)

(B.G. SHOBHA)
Civil Judge & JMFC.,
Harapanahalli.

(Order pronounced in the open Court
vide separate)

ORDER

IA.No.III filed by the defendant No.1
U/O 7 Rule 11 R/w section 151 of CPC is
hereby rejected.

IA.No.IV filed by the defendant No.1
U/s 151 of CPC is hereby rejected.

IA.No.V filed by the defendant No.1
U/s 151 of CPC is also rejected.

**Civil Judge & JMFC.,
Harapanahalli.**

