



IN THE COURT OF I ADDL. CIVIL JUDGE & JMFC.,
AT: KALABURAGI.

PRESENT

Sri. KESHA.V.K., B.A. LL.B.,
I Addl. Civil Judge & JMFC.,
Kalaburagi.

Dated this 20th day of March 2024

O.S.No.321/2022

Plaintiff: Sri.Sharanappa and others
(By Sri. Ravindra H. Babaleshwar, Advocate)

V/s

Defendants: Sri. Revansiddappa and others.
(D.1 to 4 by Sri. N.S.Y, Advocate)
(D.5 by Sri.V.S.J, Advocate)
(D.6 by Sri.Mahesh T.R, Advocate)

PARTIES IN I.A.NO.IV

Applicant/Defendant No.5:- Sri. Revansiddappa and others

V/s

Opponent/Plaintiff: Sri.Sharanappa and others

ORDERS ON APPLICATION UNDER ORDER VII
RULE 11 OF CPC

The defendants have filed the above said application in which it is sought relief that this suit is hit by law of limitation, hence kindly be pleased to reject the plaint for the reasons mentioned in the annexed affidavit.

2. Briefly, the defendant's case is as follows:-

In the annexed affidavit it is stated that since the plaintiffs have filed the suit against the defendants seeking for the relief of declaration, partition and separate possession and injunction in respect of the suit property. As such, admittedly the suit schedule properties are the ancestral and joint family properties of the defendant No.1 and defendant No.5 as well as his mother same have been inherited by the defendant No.1 from his ancestors. Further it is stated that, the



defendant No.1 married to one Mahadevi as his first wife and the defendant No.5 is the son of said Mahadevi, during the lifetime of the first wife the defendant No.1 married to another one by name Subhadrabai as his second wife and both have blessed the plaintiffs as their children. Such being the matter, the plaintiffs have absolutely no right, title or interest over the suit properties because the reason they have already filed OS No.167/2011 before the court and same has been withdrawn at their instance on 01.08.2016, now once again they have come up with this suit seeking the same relief and hence the present suit is not at all maintainable and they are not bonafide in filing of instant suit seeking relief as claimed in the present suit. Further it is stated that, during the lifetime of defendant No.1, the plaintiffs cannot entitled to get any relief over the suit schedule property. Since, the defendant No.5 has filed suit for relief of partition and separate possession in OS 58/1991 that suit was came to be compromised in which the item No.1 of the suit property has been allotted to his share and he has becomes the absolute owner and possessor to that property, now the said property is standing in the name of the defendant No.5. that apart in the said suit the present plaintiffs and defendant No.1 also being parties to the said compromise petition in which the mother of the minor children has got represented as natural guardian mother. Under such circumstances the plaintiffs are not bonafide in filing the suit and seeking the relief and the plaintiffs are having habit of filing suit after suit on a false and baseless grounds so that in view of the above said facts this suit is not maintainable and plaint is liable to be rejected.

3. Per contra the plaintiffs have field objection to the instant application, in which they have completely denied the averments made in the annexed affidavit except the admissions as the suit schedule properties are ancestral and joint family properties of plaintiffs and defendants. Further, it is specifically contended that, the defendant No.5 has not filed his written statement, suit summons of the defendant No.6 is not served till today and without written statement of the defendant



No.5 in this instant stage application is not maintainable and this court not allow the above said application, then the plaintiff will be put to irreparable loss and injury and application filed by the defendant No.5 is not at all maintainable simply in order to harass to these plaintiffs he has filed this instant application and same is liable to be rejected.

4. Heard both side arguments and perused the documents available on record.

5. In view of above the following points that would arise for my consideration on I.A.No.IV are as follows:-

1. Whether, the application filed by the defendants is deserve to be allowed?

2. What Order?

6. My answers to the above points is as follows:-

Point No.1 : In the **Negative**
Point No.2 : As per final order
for the following:-

REASONS

7. **Point No.1:-** In order to establish defendant's case, the defendant No.5 has not produced any documents in support of his case, but the plaintiffs have produced various documents in order to disprove the case of the defendants, among them they have produced certified copy of compromised decree passed in OS No.58/1991, certified copy of plaint is relation to OS No.58/1991, certified copy of written statement, certified copy of entire order sheet, certified copy of the plaint pertains to OS No.167/2011, mutations, RTC extracts in relation to the suit schedule properties and order sheet in respect to OS No.167/2011, herein on careful perusal of these documents which clearly establishes that, undoubtedly one by name Shantmallesh who is none other than defendant No.5 has filed OS No.58/1991 against the defendants therein lateron it has came to be ended with compromise, in which the plaintiffs also represented as parties to the suit and they have filed written statement, subsequently OS bearing No.167/2011 also filed but herein it is taken into note that both suits have been filed seeking for the relief



of partition, declaration and separate possession, now the plaintiffs have filed seeking for the relief of declaration, partition, separate possession and consequential relief of permanent injunction, as such in the inception itself upon considering the documentary testimonials firstly the relief claimed in the previous suits is different than the reliefs claimed in the instant suit, secondly, OS bearing No.167/2011 has been appears to be withdrawn as to the reason they may going to question the compromise decree passed in earlier suit on that reason it has been withdrawn. By virtue of all these reasons, now come to the case on hand is concerned on what basis this suit has been affects law of limitation is not justified by the defendant No.5, of course the plaintiffs herein have represented in OS bearing No.58/1991 but here the question which raises for the adjudication is that the plaintiffs herein have denied the relationship that they are not at all children of second wife and hence it needs trail so as to know and resolve that aspect whether they are first wife children or second wife children, finally as far as limitation is concerned in the partition suits it cannot be decide that as and when the cause of action arises unless trail conducted, by holding these reasons only at this stage this court come to the conclusion that at this per-matured stage those aspects cannot be decide, therefore application filed by the defendant No.5 does not arise for consideration. Hence, I answer point No.1 in the **Negative**.

8. **Point No.2**:- In view of the findings on point No.1, I proceed to pass the following:-

ORDER

Application filed by the defendant No.5
under Order VII rule 11 R/w Section 151 of
CPC is hereby rejected.

(Dictated to the Stenographer, transcribed revised, corrected by me, signed and then pronounced in open court on this the 20th day of March 2024)

I Addl. CJudge and JMFC., Kalaburagi.