

Order on application filed under Order VII Rule 11(a)
and (d) r/w Sec.151 of C.P.C.

The Defendant No.7 has filed application under Order VII Rule 11(a) and (b) r/w Sec.151 of C.P.C. seeking rejection of the plaint on the ground that the plaint does not disclose cause of action and the suit is barred under proviso to Section 6 of the Hindu Succession Act. The Plaintiffs who are married daughters of Sri Munichowdappa, have filed this suit for partition and separate possession. Sri Munichowdappa was allotted the suit schedule property by way of Grant of Neerganti Thoti Inam Land. He has sold the property under registered Sale Deed Dt.10.9.1992 to 6th Defendant, who in turn had formed sites and sold to Defendants No.7 to 10. The property was sold prior to 20.12.2004, which is hit by proviso to Sec.6(5) of the Hindu Succession Act, which reads that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004. The property is sold in the year 1992 itself as admitted by the

Plaintiff, hence there is no cause of action for filing of the suit, and prays to reject the plaint.

2. The Plaintiffs filed objection denying the averments made in the application and admit that they are the daughters of Munichowdappa and already married. They contend that the property is sold without their knowledge and consent and without settling their share to which they are legally entitled. There is no partition by metes and bounds. There is no limitation to file a suit for partition. The suit is very much maintainable, and prays to dismiss the application.

3. The perusal of the entire record discloses that when the matter was posted for arguments, the present application is filed by the Defendant No.7. Already the Plaintiff No.1 is examined as PW1 and got marked Ex.P1 to P19. In the plaint, the Plaintiffs allege that the property belongs to their father, which was granted by way of Neeragunti Thoti Inam Land and he died intestate leaving behind his wife Smt.Madamma and five children. Till today there is no partition between the family members. Their mother and three brothers have illegally sold the property on 10.9.1992 without allotting their share. Hence they have filed the present suit for partition, and declaration that the said Sale Deeds are not binding on their share.

4.The perusal of the documents produced by the Plaintiffs disclose that totally there are five children to Munichowdamma and Madamma which is evident from the Family Tree at Ex.P1. Ex.P10 is the Sale Deed which discloses that the mother and brothers of the Plaintiffs have sold the property to one B.G.Papanna Reddy who has

further sold it to the subsequent purchaser. Admittedly the property is not the ancestral property. In the plaint at para 4 it is stated that it was allotted by way of Grant to the father of the Plaintiffs Munichowdappa and he died intestate. As per Sec.8 of the Hindu Succession Act, if any male dies intestate, all his Class-I heirs have share in his property. But leaving behind the daughters, only the mother and brothers have sold the property to one B.G.Papanna Reddy. The proviso to sec.6 of the Hindu Succession Act applies if it is coparcenary property, which is not at all applicable to the case on hand. Already the matter is posted for arguments. The suit is not barred by any law. Para 16 of the plaint discloses that when the Plaintiffs noticed third parties visiting the schedule property in the month of October, 2013, the present suit is filed and prima facie cause of action is shown. Hence the application being devoid of merits, the same is hereby rejected.

For arguments.

Call on 26.10.2023.

(SINDHU POTADAR)
XXIV Addl. City Civil & Sessions Judge
holding C/C of XXXVIII Addl. City Civil
& Sessions Judge, Bangalore City.