

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JUNE, 2022

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 55337 OF 2018(GM-CPC)

BETWEEN:

1. SMT. REKHA

2. SRI B N MANU

3. SMT ANITHA

...PETITIONERS

(BY SRI.BASAVANNA.K.M, ADVOCATE FOR
SRI.M V HIEMATH, ADVOCATE)

AND:

1. SMT. LALITHAMMA

2. SMT DHANUJA V T

3. SRI THEJU

4. SRI DORESWAMY

5. SRI A A CHANDRAPPA

...RESPONDENTS

(BY SRI.RAVINDRA BABU.G, ADVOCATE FOR R2 & 3;

SRI.SHAILESH, ADVOCATE FOR SRI.C.GOWRISHANKAR, ADVOCATE FOR R4)

THIS PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 28.11.2018 ON I.A.13 PASSED BY THE HON'BLE SR. CIVIL JUDGE AND JMFC, PERIYAPATNA AT ANENX-G.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned writ petition is filed by the plaintiffs feeling aggrieved by the order of the learned Judge passed on I.A.No.13 filed under Order 6 Rule 17 of CPC.

2. The present petitioners have instituted a suit for partition and separate possession in O.S.No.32/2015 by specifically contending that suit schedule property are joint family ancestral properties. The petitioners claim that they are entitled for 1/5th share in the suit schedule properties. The petitioners have also sought relief of declaration to declare that the judgment and decree passed in O.S.No.61/1998 is not binding on their legitimate share.

Consequently, sale deed dated 26.04.2014 executed by defendant Nos.1 and 2 in favour of defendant No.6 is also challenged.

3. When the matter was set in for further cross-examination of plaintiffs, the present petitioners/plaintiffs have come up with this proposed amendment. By way of proposed amendment, plaintiffs intend to incorporate the pleadings relating to sale transactions done by defendant No.1 in favour of defendant No.5. The plaintiffs by way of proposed amendment want to further plead that judgment and decree passed in O.S.No.61/1998 is a collusive decree which was passed on a fraudulent registered sale agreement. The plaintiffs also intend to plead that there was no legal necessity for the defendant No.1 to enter into a transaction with defendant No.5 and further want to plead that defendant No.1 was addicted to vices.

4. The said contention is rejected by the learned Judge. While rejecting the application filed in I.A.No.13, the learned Judge was of the view that no sufficient cause is made out by the plaintiffs while seeking the amendment. The learned Judge has found fault with the plaintiffs for not seeking amendment before commencement of trial. The application filed in I.A.No.13 is rejected by recording a finding that plaintiffs cannot overcome the admissions elicited in cross-examination.

5. Heard learned counsel appearing for the petitioners and learned counsel appearing for the contesting respondents.

6. Admittedly, the present suit is one for partition and separate possession. When the matter was set in for further cross-examination, the plaintiffs by way of proposed amendment intend to incorporate para 5(a). In para 5(a), plaintiffs intend to plead additional pleadings relating to transactions between defendant Nos.1 and 5. The proposed

amendment does not change the fundamental character of the suit. It is trite law that all amendments are to be liberally allowed relegating the parties to substantiate their claim even in respect of proposed amendment. Though this Court would find some laxness on the part of plaintiffs in not seeking amendment before commencement of trial but, however, to advance justice, a reasonable opportunity needs to be given to plaintiffs.

7. In a partition suit, valuable property rights are involved. If a property is a joint family ancestral property, it goes without saying that the members of a joint family have a pre-existing right and therefore, the Court drawing a preliminary decree merely declares the pre-existing right. It is in this background, this Court is not inclined to adopt a hyper technical approach and decline the plaintiffs in proving their case by incorporating the proposed amendment. Mere allowing the amendment application in itself would not amount to granting the relief sought in the proposed amendment. The

burden still remains on the plaintiffs to establish the claim made in the proposed amendment.

8. This Court is also of the view that no serious prejudice will be caused to the respondents/defendants if the proposed amendment is allowed. The material on record would also indicate that it is only when a counter claim was filed by defendant No.4, the Court had to frame additional issues and therefore, the plaintiffs have sought to amend this plaint seeking leave to incorporate the proposed para 5(a). As against this proposed amendment, it is always open for the respondents/defendants to file additional written statement. It is always open for the respondents/defendants to lead rebuttal evidence insofar as proposed amendment is concerned. Therefore, I am of the view that the order under challenge is not at all sustainable.

9. Accordingly, I pass the following:

ORDER

- (i) The writ petition is allowed;
- (ii) The impugned order dated 28.11.2018 passed on I.A.No.13 in O.S.No.32/2015 is set aside and consequently, the application is allowed;
- (iii) The petitioners/plaintiffs are permitted to amend the plaint.
- (iv) The respondents/defendants are reserved with liberty to file additional written statement, if they chose to do so.

Sd/-
JUDGE

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