

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31<sup>ST</sup> DAY OF JULY, 2017

BEFORE

THE HON' BLE MR. JUSTICE B. VEERAPPA

WRIT PETITION No.23449/2017 (GM-CPC)

BETWEEN:

1. SRI RAJANNA,  
S/O LATE DODDAGANGAIAH,  
AGED ABOUT 58 YEARS,
2. SRI R. JANARDHAN,  
S/O RAJANNA,  
AGED ABOUT 33 YEARS,
3. SRI R. SHANKAR,  
S/O RAJANNA,  
AGED ABOUT 31 YEARS,

ALL ARE RESIDING AT  
NO.1, 13<sup>TH</sup> CROSS, SIDEDAHALLI,  
YESHWANTHAPUR HOBLI,  
BANGALORE NORTH TALUK,  
BANGALORE-560 073.

... PETITIONERS

(By Sri./Smt : S VISWESWARAIAH)

AND:

1. SRI Y. MANJUNATH,  
S/O YALLAPPA,  
AGED ABOUT 34 YEARS,
2. SRI YELLAPPA,  
S/O LATE DODDAGANGAPPA,  
AGED ABOUT 56 YEARS,

3. SMT. Y. CHANDRAKALA,  
W/O SHANKAR,  
D/O YELLAPPA,  
AGED ABOUT 32 YEARS

4. SRI Y. MADHUSUDHAN,  
S/O YELLAPPA,  
AGED ABOUT 20 YEARS,

NO.1 & 4 ARE RESIDING AT,  
NO.1 & 2, 13<sup>TH</sup> CROSS,  
SIDEDAHALLI, NAGASANDRA POST,  
BENGALURU-560 073.

... RESPONDENTS

.....

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER PASSED BY THE HON'BLE XX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, PASSED ON I.A.NO.II UNDER ORDER VII RULE-11(b) AND (d) READ WITH SECTION 151 OF CPC IN O.S.NO.7860/2014, DATED 20.4.2017 VIDE ANNEXURE-G TO THE WRIT PETITION BY ALLOWING THE WRIT PETITION.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

#### ORDER

The defendants 1 to 3 filed the present writ petition against the order dated 20.04.2017 made in O.S.No.7860/2014 on the file of the XX Addl. City Civil and Sessions Judge, Bengaluru City, Bengaluru, rejecting I.A.No.2 filed under Order VII Rule 11(b) and (d) r/w Section 151 of Code of Civil Procedure.

2. The plaintiff filed suit for partition and separate possession contending that the suit schedule property is the joint family property of plaintiff and defendants 1 to 6 and there was no partition in the joint family of plaintiff and defendants 1 to 4 and therefore, he is entitled to 1/3<sup>rd</sup> share in half of the suit schedule property.

3. The defendants 1 to 3 filed written statement, denied the plaint averments and contended that the very suit filed by the plaintiff for partition and separate possession is not maintainable and the suit is barred by law of limitation. It was further contended that neither the plaintiff nor defendants 4 to 6 are in physical possession of the suit schedule property since from 10.04.1983. On 10.04.1983, the defendants 1 and 4 partitioned the suit schedule property into two equal shares i.e., 6½ guntas each by metes and bounds and obtained the legal and necessary documents in their

favour. On the strength of the said documents, the 4<sup>th</sup> defendant sold his share in favour of one Gangamma, under a general power of attorney and the said Gangamma sold the property in favour of one Smt. Shivamma @ Rudramma under a registered sale deed dated 05.08.1999 and therefore, the suit is not maintainable and sought for dismissal of the suit.

4. When the matter was posted for plaintiff's evidence, at that stage, defendants 1 to 3 filed an application under Order VII Rule 11(b) and (d) r/w Section 151 of Code of Civil Procedure to reject the plaint, reiterating the averments made in the written statement. The said application was resisted by the plaintiff by filing objections contending that the plaintiff and defendants 1 to 4 are in joint possession of the suit schedule property and there was no partition in the family and therefore, he is entitled to his share etc.

5. The Trial Court considering the application and objections, by the impugned order dated 20.04.2017, rejected I.A.No.2 filed by defendants 1 to 3 under Order VII Rule 11(b) and (d) r/w Section 151 of Code of Civil Procedure. Hence the present writ petition is filed.

6. I have heard the learned counsel for the petitioners/ defendants 1 to 3.

7. Sri S. Visweswaraiah, learned counsel for the petitioners vehemently contended that the impugned order passed by the Trial Court rejecting the application filed by the petitioners/defendants 1 to 3 under Order VII Rule 11(b) and (d) r/w Section 151 of Code of Civil Procedure, is erroneous and contrary to the material on record. He further contended that there was prior partition between the plaintiff and defendant No.4 on 10.04.1983 and there was severance of status and the joint family ceased and further the share that was allotted to the fourth defendant was sold by his GPA

holder in favour of one Smt. Shivamma through a registered sale deed and therefore, no property is available for partition. The said aspect of the matter was not considered by the Trial Court. Learned counsel further contended that the suit is barred by law since the plaintiff has valued the suit under 35(2) instead of 35(1) of the Karnataka Court Fee and Suits Valuation Act, and admittedly, the plaintiff is not in possession of the suit schedule property as per the documents relied on by him and therefore, the suit is not maintainable. It was further contended that the Trial Court proceeded to dismiss the application mainly on the ground that while considering the provisions of Order VII Rule 11(b) and (d) of Code of Civil Procedure, only the plaint averments can be looked into, ignoring the fact that the very suit is barred by limitation based plaint averments itself. Therefore, sought to quash the impugned order. In support of his contention, learned counsel sought to rely on the dictum of this Court in the case of

***Shanthappa and others vs. Channabasavaiah and others*** reported in ***2009(3) AIR Kar R 130***.

8. Having heard the learned counsel for the petitioners, it is undisputed fact that the plaintiff filed suit for partition and separate possession contending that the suit schedule property is the joint family property of the plaintiff and defendants; and there was no partition and plaintiff is entitled to 1/3<sup>rd</sup> share in half share of the suit schedule property. The defendants denied the said assertion by filing written statement and contended that already there was a partition and plaintiff was never in possession of the property. It is also not in dispute that when the matter was posted for plaintiff's evidence, defendants 1 to 3 filed the instant application to reject the plaint, reiterating the averments made in the written statement. Same was opposed by the plaintiff.

9. The Trial Court considering the entire material on record, by the impugned order, recorded a specific finding that, the suit is admittedly filed by the plaintiff against the defendants for partition and separate possession. It is very significant to note that in order to appreciate the provisions under Order VII Rule 11 of Code of Civil Procedure for rejection of the plaint, only the plaint averments can be looked into, but, not the written statement or the defence taken by the defendants.

10. The Trial Court further has observed that, the plaintiff has categorically stated in the plaint that, since the suit schedule property is the joint family property of the plaintiff and the defendants, and even the revenue documents stand jointly in the name of the defendants 1 and 4, they are in lawful possession and enjoyment of the suit schedule property. The defendant No.1 being the kartha of the family consisting of the plaintiff and



the defendants, has specifically contended that the partition deed dated 10.04.1983 and GPA executed in favour of Gangamma and the sale deed in favour of Shivamma are all false. The plaintiff has categorically contended that, the partition deed dated 10.04.1983, GPA and the sale deed are sham and fabricated documents. Under such circumstances, the defence of the defendants cannot be taken into consideration. The contention taken by the defendants that there was partition on 10.04.1983 and also there was GPA in favour of Smt. Gangamma and the sale deed in favour of Shivamma will have to be proved by the defendants during full fledged trial. Therefore, the Trial Court was of the considered opinion that the plaint cannot be rejected.

11. Considering the rulings relied upon by the defendants reported in *2015(2) AKR 354* in the case of *H.B.SHivakumar vs. L.C. Hanumanthappa, AIR 2015*

*Madras 281* in the case of *Dr.L.Ramachandran and another vs. Ramesh and others* and *2009(3) AIR Kar R 130* in the case of *Shanthappa and others vs. Channabasavaiah and others*, the Trial Court observed that, in order to know whether the suit is barred by limitation is a mixed question of law and to know whether the court fee paid is insufficient also requires to be considered in full dressed trial. Therefore, the ruling relied upon by the defendants are not applicable to the present facts of the case. Accordingly rejected the application.

12. Admittedly, in the present case, it is for the plaintiff to prove that there was no partition and the suit schedule property is the joint family property. It is for the defendants to prove that there was a partition on 10.04.1983 and suit filed by the plaintiff is not maintainable. The decision relied upon by the learned counsel for the petitioners in the case of *Shanthappa*

and others (supra), it was a case where no suit was filed within twelve years inspite of being aware of exclusion, suit by plaintiff was barred by limitation. The said case has no application to the facts and circumstances of the present case, since in the present case, the specific contention of the plaintiff is that the plaintiff and the defendants are the members of joint family and they are in joint possession of the property and there was no partition in the family.

13. It is well settled principles of law that plaint can be rejected only on the basis of the plaint averments as contemplated under Order VII Rule 11 of Code of Civil Procedure and not on the basis of the averments made in the written statement or the application filed or documents produced by the defendants in support of the defence.

14. For the reasons stated above, the impugned order passed by the Trial Court rejecting the application filed

by the defendants under Order VII Rule 11(b) and (d) r/w Section 151 of Code of Civil Procedure, is in accordance with law. Petitioners have not made out any ground to interfere with the impugned order in exercise of the powers under Article 227 of the Constitution of India. Writ Petition is rejected.

**Sd/-  
JUDGE**

kcm