

(2014) 04 KAR CK 0009

In the Karnataka High Court

Case No : Writ Petition No. 104008 of 2014 [GM-CPC]

Mahammedsab

APPELLANT

Vs

Hajrathbi

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Citation : (2014) 04 KAR CK 0009

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : V.M. Sheelavant, Advocate for the Appellant; P.L. Sathyamurthy, Advocate for R1, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—This writ petition is directed against the order dated 22.02.2014 in O.S. No. 81/2011 on the file of the III Addl. Senior Civil Judge, Hubli, whereby, the Court below has rejected the application filed by the petitioners/defendant Nos. 2 to 4 to decide the issue relating to maintainability of the suit as a preliminary issue.

2. The respondent Nos. 1 to 8 are plaintiff Nos. 1 to 8 in the aforesaid suit. The petitioners are defendant Nos. 2 and 4 and respondent No. 9 is defendant No. 1. Suit filed by the plaintiffs is for partition and separate possession of the suit schedule property. In the said case, the petitioners herein filed their written statement contending that the property belongs to defendant No. 1. During his lifetime the plaintiffs being his wife and children cannot seek partition of the property. They filed the above application to decide the issue relating to the maintainability of the suit as a preliminary issue.

3. As noticed above, the Court below has dismissed the said application. Having heard the learned counsel for the parties, I do not find any merit in this case. In order to establish the issue relating to the maintainability of the suit, the parties have to let-in evidence. After appreciation of the evidence, the Court below has

to decide this issue as well. It is unnecessary to hold a mini trial to decide the said issue as this issue can also be decided along with other issues. Therefore, the Court below has rightly dismissed the application. Writ petition is dismissed. No costs.