

(2015) 01 KAR CK 0212
In the Karnataka High Court
Case No : Regular First Appeal No. 2258/2006

Nagaraja

APPELLANT

Vs

Jayalakshamma

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 10, Order 23 Rule 1(a), Order 7 Rule 11, Order 7 Rule 11(1), Order 7 Rule 11(d)
Registration Act, 1908 — Section 17

Citation : (2015) 01 KAR CK 0212

Hon'ble Judges : H.G. Ramesh, J.

Bench : Single Bench

Advocate : Sunil S. Rao for T. Seshagiri Rao, for the Appellant

Final Decision : Dismissed

Judgement

H.G. Ramesh, J.—This appeal is by the plaintiffs against the judgment passed by the learned Civil Judge (Sr. Dn.) and JMFC, Devanahalli, in O.S. No. 1943/2006, on an application filed by the respondents under Order VII Rule 11 of CPC. The trial Court by the judgment dated 17th October 2006, allowed the application rejecting the plant filed by the plaintiffs-appellants herein.

2. Plaintiffs filed suit in O.S. No. 1943/2006 seeking for a direction to defendant No. 1/respondent No. 1 viz., Jayalakshamma, to formally convey the suit schedule property to the family of B.M. Anjanappa, consisting of plaintiffs and defendants on the basis of the document dated 8.3.1981 executed by Venkateshappa in favour of B.M. Anjanappa and to declare, the suit schedule property as the property of the joint family of B.M. Anjanappa of which the plaintiffs and the defendants are the members and to effect partition of the suit schedule property by metes and bounds holding that plaintiffs together are entitled for 6/8th share, defendant No. 1 to an extent of 1/8th share and defendant Nos. 2 to 5 together are entitled to an extent of 1/8th share as plaintiffs and defendant No. 1 are the children of B.M. Anjanappa, son of

Munishamappa and defendants 2 to 5 are the legal heirs of deceased Krishnappa who was one of the son of late B.M. Anjanappa.

3. According to the genealogical tree produced, one Munishamappa is the original propositus and B.M. Anjanappa is the son and Muni Akkayamma is the daughter of Munishamappa. B.M. Anjanappa had daughter by name Jayalakshmamma who had been given in marriage to Venkateshappa. The suit schedule property consists of Survey No. 30, measuring 4 acres 3 guntas, situated at Bagalur Village, Jala Hobli, Bangalore North Taluk, Bangalore, which was "purchased by the paternal grand-father of plaintiffs and defendant No. 1 through Sale Deed dated 13.11.1926. Out of 4 acres 3 guntas, 2 acres 1 1/2 guntas was allotted to the share of B.M. Anjanappa and 2 acres 1 1/2 guntas was allotted to the share of Muni Akkayamma. Venkateshamappa, son of Muni Akkayamma inherited the property after her death. He conveyed 2 acres in favour of B.M. Anjanappa for a sum of Rs. 10,000/- through Sale Deed dated 4.9.1961, who by that time had already held his share of 2 acres 1 1/2 guntas. B.M. Anjanappa had sold the property in favour of one Kempaiah S/o. Bachappa under a registered Sale Deed dated 30.4.1970. The said Kempaiah alienated the property in favour of Venkateshappa. On his death, property fell to the share of defendant No. 1- Jayalakshmamma-wife of Venkateshappa. Defendant No. 1 in turn, sold the property to some third parties i.e., respondents 5 to 10.

4. According to the plaintiffs, the joint family consists of themselves, defendant No. 1 and father of defendants 2 to 5 and the property purchased by B.M. Anjanappa was out of the income derived from the joint family properties. It is contended that B.M. Anjanappa started cultivating the said land along with other properties held by joint family. Defendant No. 1 was the eldest member of joint family and she had been given in marriage to Venkateshappa. After marriage Venkateshappa came to the family of B.M. Anjanappa and started looking after the affairs of joint family of B.M. Anjanappa. It is stated that B.M. Anjanappa had incurred some debts and in order to clear the debts and might be due to pressure, he had executed nominal Sale Deed dated 30.4.1970 in respect of 4 acres 3 guntas of land in Survey No. 30 in favour of one Kempaiah S/o. Bachappa of Bagalur Village, for a sum of Rs. 1,000/-. According to the plaintiffs, Anjanappa might have incurred some debts with Kempaiah and Kempaiah seems to have pressurized Anjanappa to execute a nominal sale deed in his favour as security for the loan advanced by him. It is further stated that, in order to clear the debt incurred with Kempaiah, Anjanappa borrowed some money from Venkateshappa, who was the husband of defendant No. 1 and Venkateshappa while advancing loan to B.M. Anjanappa, seems to have persuaded B.M. Anjanappa to convey the property in his name till the loan is cleared. B.M. Anjanappa budging to the pressure of Venkateshappa might have requested Kempaiah to convey the land bearing Survey No. 30, measuring 4 acres 3 guntas of Bagalur village in favour of Venkateshappa on 21.8.1972. According to the plaintiffs, as per the sale transaction, the said document is only in the form of security for due repayment of the money borrowed by B.M. Anjanappa from

Venkateshappa. It is also contended that B.M. Anjanappa in the year 1961 had purchased 2 acres 1 1/2 guntas of land for a sum of Rs. 10,000/- and that there could not be any reason for Kempaiah to convey the same in favour of Venkateshappa for a sum of Rs. 475/- in the year 1972, that too, for the whole extent of 4 acres 3 guntas. Under these circumstances, it is stated that the document dated 21.8.1972 is executed only as a security for repayment of the debt incurred by B.M. Anjanappa from Venkateshappa and not an outright sale and as such, the Sale Deed dated 21.8.1972 is only a nominal Sale Deed. It is stated that B.M. Anjanappa after purchasing the property in the name of Venkateshappa, directed Venkateshappa to convey 13 guntas of land in favour of one Raghavendra so as to clear his debts. Accordingly, Venkateshappa on 13.1.1981, conveyed 13 guntas of land in favour of Raghavendra for a sum of Rs. 2,000/-. After alienation of 13 guntas of land, remaining extent of 3 acres 30 guntas of Survey No. 30 of Bagalur Village, is the subject matter of suit.

5. The stand of the plaintiffs in the suit is that, defendant No. 1 is the wife of Venkateshappa and daughter of B.M. Anjanappa and right from the year 1961, B.M. Anjanappa was in possession of entire extent of land in Survey No. 30 though he had executed Sale Deed dated 30.4.1970 in favour of Kempaiah who did not come into possession of the property and as such, property remained with B.M. Anjanappa. Even Venkateshappa who had taken Sale Deed in his name by Kempaiah, did not come into possession of the property even after B.M. Anjanappa died in the year 1993 leaving behind plaintiff and defendants. Even Venkateshappa died on 29.11.1986 leaving behind defendant No. 1. After the death of B.M. Anjanappa, defendant No. 1 being the eldest member in the family started looking after the affairs of the joint family. According to the plaintiffs, after the document dated 8.3.1981, B.M. Anjanappa did not evince any interest to have a regular conveyance in his favour in respect of suit schedule property from Venkateshappa with an intention that it can be done at any point of time convenient to him. But Venkateshappa predeceased B.M. Anjanappa in the year 1986. On the death of B.M. Anjanappa during 1993, defendant No. 1 continued to be member of joint family of B.M. Anjanappa. As such, all the plaintiffs and defendants started cultivating the suit schedule property and none of the members of the family did evince any interest to have the regular conveyance from defendant No. 1 on the basis of the document dated 8.3.1981 since defendant No. 1 all along used to tell that the suit schedule property is the joint family property and it is divisible among all the members of the joint family. As per the promise made by defendant No. 1, all members of joint family kept quiet believing that she would effect partition. During the year 2006, when some of the members of the joint family requested defendant No. 1 to effect partition of the suit property, defendant No. 1 declined the same, rather defendant No. 1 has set up a claim that she is the absolute owner of the property and she will not give any share despite the agreement dated 8.3.1981 executed by her husband Venkateshappa in favour of B.M. Anjanappa stating that whatever amount that he had paid to Anjanappa as debt has been realized by him by selling 13 guntas

of land in Survey No. 30 in favour of Raghavendra and that Anjanappa is not in any arrears of loan payable to him. However, it appears, some of the plaintiffs have filed suit in O.S. No. 1048/2006 at Devanahalli Court and the same came to be transferred to this Court and new number was assigned as O.S. No. 1392/2006. In this suit, an application came to be filed by the plaintiffs under Order 23 Rule 1(a) of CPC praying to withdraw the suit, with liberty to file fresh suit on the same cause of action and this Court permitted the plaintiffs to withdraw and file fresh suit and thereafter, the present suit in O.S. No. 1943/2006 was instituted.

6. In the said suit, defendant No. 1 filed an application under Order VII Rule 11 of CPC seeking rejection of the plaint filed by the plaintiffs stating that what has been stated in the plaint throughout is a cooked up story for the purpose of filing of suit, there exists no joint family status and this is only a speculative and collusive suit. In the affidavit, it is pleaded that the facts stated in the earlier suit i.e., in O.S. No. 1392/2006 and the facts stated in the present suit i.e., O.S. No. 1943/2006 are entirely different and that the suit schedule properties belong to joint family is not pleaded and plaintiffs and father of defendants 2 to 5 are not in possession of the suit schedule property. However, detail objection was filed by the plaintiffs as noted in the plaint averments.

7. According to defendant No. 1, the suit schedule property was alienated by B.M. Anjanappa in favour of Kempaiah S/o. Bachappa under registered Sale Deed dated 30.4.1970. Pursuant to which, B.M. Anjanappa has handed over possession of the suit schedule property. Kempaiah has obtained katha in his name. The said Kempaiah alienated the property in favour of her husband under registered Sale Deed dated 21.8.1972 and the katha was also changed in that regard. In the meanwhile, about 13 guntas of land out of total extent of 4 acres 30 guntas was sold in favour of Raghavendra towards discharge of debt on 13.1.1981. After the death of husband of defendant No. 1 on 29.11.1986, she became the absolute owner of the suit schedule property and plaintiffs and defendants 2 to 5 have no right to the suit schedule property. At no point of time plaintiffs and defendants 2 to 5 are in possession and enjoyment of the property. The property acquired by the husband of the 1st defendant is not available to the joint family. O.S. No. 1392/2006 is a collusive and speculative suit and accordingly, sought rejection of the plaint.

8. However, according to the plaintiffs, as they have definite cause of action for filing the suit, the plaint does not deserve to be rejected by the trial Court. The suit can be rejected by the trial Court if the relief of claim is undervalued or unless the parties fail to comply or pay the court fee fixed by the Court. Further, the question of suit being barred by limitation cannot be considered as a ground for rejection of the plaint without a trial. The cause of action for filing O.S. No. 1392/2006 and the present suit is not different. Plaintiffs have also stated that defendants have taken the above contention under a mistaken notion and the suit cannot be dismissed for non-joinder of necessary parties. With this, plaintiffs

have sought for dismissal of the application as being devoid of merits.

9. It transpires from the material on record that the original propositus Munishamappa had two children by name B.M. Anjanappa and Muni Akkayamma. Each of them got half share in the suit schedule property. B.M. Anjanappa had a daughter by name Jayalakshamma. She was given in marriage to Venkateshappa. B.M. Anjanappa sold the property in favour of Kempaiah. This Kempaiah is said to be a third person. Kempaiah sold the property to Venkateshappa who is the son-in-law of B.M. Anjanappa. On the death of Venkateshappa, property went into the hands of Jayalakshamma-defendant No. 1, who is one of the daughter of B.M. Anjanappa and she in turn, sold the property to defendants 6 to 10. In the meanwhile, 13 guntas, out of 4 acres 3 guntas, was sold in favour of one Raghavendra on 13.1.1981 towards discharge of debt of B.M. Anjanappa. It appears, the stand of the defendant No. 1 is that, B.M. Anjanappa had no property in his hand to be made available for partition in favour of plaintiffs and also there is said to be consent at the relevant point of time when property was sold in favour of Kempaiah. Now the property is not even in the hands of Kempaiah also. Thus, Venkateshappa had purchased the property and the same is inherited by defendant No. 1, which property in turn is purchased by respondents 6 to 10. She has also pleaded that there exists no joint family as alleged in the plaint by the plaintiffs consisting of plaintiffs and defendants 2 to 5. The facts stated in O.S. No. 1392/2006 are different from the facts stated in the present suit. Plaintiffs have filed a collusive and speculative suit in order to knock off the property from the hands of defendant No. 1. It is also stated in the affidavit that, suit schedule property was originally alienated by B.M. Anjanappa in favour of Kempaiah S/o. Bachappa under registered Sale Deed dated 30th April 1970, pursuant to which, katha was obtained in the name of Kempaiah by exercising his ownership. This Kempaiah subsequently sold the land in favour of Jayalakshamma's husband Venkateshappa and after the death of Venkateshappa, she inherited the property. During the life time of Venkateshappa, an extent of 13 guntas was sold in favour of one Raghavendra under registered Sale Deed dated 13.1.1981 and he was put in possession and her husband died on 29th November 1996. Till then, the entire suit schedule property, including 13 guntas, was in possession of her husband. After the death of her husband, she being the legal heir, succeeded to the suit schedule property and also got katha in her name and she was cultivating the land by raising loan and paying taxes. Plaintiffs and defendants 2 to 5 have nothing to do with the property and they are trying to interfere with the possession. She has further stated that, after her marriage with Venkateshappa, she became the member of family of her husband and her husband had never become the family member of B.M. Anjanappa. On this score, application under Order VII Rule 11 of CPC was filed by defendant No. 1 for dismissal of the plaint.

10. The learned counsel for the plaintiffs-appellants argued that defendant No. 1-Jayalakshamma was also residing along with plaintiffs and defendants 2 to 5. As she is the daughter of B.M. Anjanappa, she became the member of joint

family and as such the property in the hands of Jayalakshamma, after leaving 13 guntas which was sold in favour of one Raghavendra, shall be made available to plaintiffs and defendants 2 to 5. The trial Court without application of mind, has dismissed the suit while entertaining the application filed under Order VII Rule 11 of CPC. On the point of maintainability of the application under Order VII Rule 11 of CPC, learned counsel for the plaintiffs has relied upon the judgment of the Apex Court in the case of Church of North India Vs. Lavajibhai Ratanjibhai and Others, and contended that the Court may not be justified in determining the question one way or the other, only having regard to the relief claimed dehors the factual averments made in the plaint. The rules of pleadings postulate that a plaint must contain material facts. When the plaint read as a whole does not disclose material facts giving rise to a cause of action which can be entertained by a civil Court, it may be rejected in terms of Order 7 Rule 11 of CPC. For the purpose of determination of question as to whether the suit is barred, the averments made in the plaint are germane. He also relied upon another decision of the Apex Court in the case of Kamala and Others Vs. K.T. Eshwara Sa and Others, wherein it is held that Order 7 Rule 11 of CPC has limited application. An application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. For the purpose of invoking Order 7 Rule 11(d) of CPC, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the Court at that stage. All issues shall not be the subject matter of an order under the said provision. The question involving mixed question of law and fact which may require not only examination of the plaint, but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing.

11. The learned counsel also relied upon the decision of the Apex Court in the case of Mayar (H.K.) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express and Others, , and contended that under Order 7 Rule 11 of CPC, the Court has jurisdiction to reject the plaint where it does not disclose a cause of action, where the relief claimed is undervalued and the valuation is not corrected within the time as fixed by the Court, where insufficient court fee is paid and the additional court fee is not supplied within the period given by the Court and where the suit appears from the statement in the plaint to be barred by any law.

12. The learned counsel for the plaintiffs also relied upon the decision of the Supreme Court in the case of State of Orissa Vs. Klockner and Company and Others, and stated that if the plaintiff has pleaded a cause of action for filing the suit seeking the relief, that question has to be determined on the basis of materials (other than the plaint) which may be produced by the parties at the appropriate stage in the suit. For the purpose of determining the question whether the suit is to be wiped out under Order 7 Rule 11(1) or not the averments in the plaint are only to be looked into.

13. On the other hand, the learned counsel for respondent No. 1 contended that the suit filed is a collusive and speculative suit. The earlier suit filed by plaintiffs has been withdrawn and the facts of earlier suit and present suit are different, there is no cause of action, plaintiffs have not established any semblance of right over the suit schedule property which is in the hands of Jayalakshmamma who is the wife of Venkateshappa and she is in no way related to other members in the family of B.M. Anjanappa, the entire property was in the hands of Venkateshappa, after his death, being inherited by defendant No. 1 and as such the suit schedule property is the self-acquired property of Venkateshappa and not the property inherited by B.M. Anjanappa. Accordingly it is sought to contend that on illusory cause of action, suit is filed. He relied upon the decision of the Apex Court in the case of T. Arivandandam Vs. T.V. Satyapal and Another, and contended that, on a meaningful reading of the plaint, if it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, the trial Court should exercise power under Order 7 Rule 11 of CPC by taking care to see that the ground mentioned therein is fulfilled and if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X of CPC. The learned counsel also relied upon a decision of the Apex Court in the case of I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others, wherein while examining the question as to whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 CPC, it is held that clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint.

14. After hearing the learned counsel for respective parties, the point that arise for consideration is as to "whether the trial Court is justified in dismissing the suit of the plaintiffs while allowing the application filed by defendant No. 1 under Order VII Rule 11 of CPC having regard to the facts pleaded in the plaint?"

15. Of course, throughout the plaintiffs are trying to make out a case that the property sold by B.M. Anjanappa in favour of Kempaiah is a nominal sale, for which, the reply by defendant No. 1 is that it was not as such, but at the relevant point of time, all the family members of B.M. Anjanappa have consented for such sale and that the property has been purchased by her husband from Kempaiah. As such, the plaintiffs and defendants 2 to 5 cannot claim any right over the suit schedule property which is not in the hands of Anjanappa. The trial Court having taken note of the transactions of sale of property by Anjanappa to one Kempaiah and subsequently, Kempaiah selling the property in favour of Venkateshappa and also taking into consideration the pleadings in the plaint that Anjanappa seems to have sold the property in favour of Kempaiah and in order to clear off the debts, requested Kempaiah to convey the land in the name of Venkateshappa, held that the word "seems" to be used by the plaintiffs shows that they are not clear and specific, but it is only a bare pleading. The plaintiffs must be specific and consistent of events. The trial Court further observed from the pleadings in the plaint that their stand is not definite and also there is no such dispute with

regard to sale transaction at the relevant point of time and the suit came to be filed only during 2006 and not immediately after such sale transaction took place. The trial Court also has taken note of the fact that when Anjanappa purchased the property for a sum of Rs. 10,000/-, he could not have sold it for a paltry sum of Rs. 1000/- or Rs. 475/- to Kempaiah who in turn sold the land to Venkateshappa. On the contention of the plaintiffs that such sale must have been only for securing loan and not loan obtained by him by selling the land etc., the trial Court came to the conclusion that the plaintiffs have not come out with a specific pleading and also they have kept quiet at the relevant point of time i.e., at the time of selling of land by Anjanappa to Kempaiah. Only to have a share in the property, plaintiffs have taken the stand that property was being sold through nominal Sale Deed and also sale deed is executed for security purpose and it is not an outright sale. The trial Court also observed that even the point of limitation arose in this context because the sale transaction took place in the year 1972 and the suit is filed during 2006.

16. The trial Court further observed that Anjanappa directed Venkateshappa to convey 13 guntas of land in favour of Raghavendra to clear the debt and accordingly, Venkateshappa on 13.1.1981 conveyed 13 guntas of land in favour of Raghavendra for a sum of Rs. 2,000/- and remaining 3 acres 30 guntas was the land available at the hands of Venkateshappa. On his death, the same is inherited by Jayalakshamma-defendant No. 1 being the wife of Venkateshappa and also taking note of the fact that this property is not a joint family property, held that there is no cause of action for the plaintiffs to file the suit having regard to the nature of sale transaction concerned i.e., purchase value being Rs. 10,000/-, whereas, the same is sold for Rs. 475/- and that too, when 13 guntas of land is conveyed in favour of Raghavendra for a sum of Rs. 2,000/- in the year 1981. On the point of limitation, the reasoning given by the trial Court is that the plaintiffs are silent about selling of 13 guntas of land in favour of Raghavendra and even estopped from questioning the earlier alienations made and also being silent and consented for sale at the relevant point of time, now they are coming with a different stand which is not proper. The trial Court also observed that the document which is sought to be relied upon by the plaintiffs to contend that Venkateshappa has relinquished his rights in favour of Anjanappa stating that the loan is realized by sale of 13 guntas of land, cannot be relied upon because that has to be in the form of compulsorily registrable document. The trial Court further noted that plaintiffs are pursuing the suit based on the old document which is nothing but harassment and the alleged agreement/relinquishment deed produced by the plaintiffs is void and the claim set forth by the plaintiffs seeking partition of the property in the hands of Jayalakshamma is nothing but claiming the property which is not the joint family property of Anjanappa. By referring to various judgments of Apex Court, the trial Court formed an opinion that there is no point in pursuing the suit as filed by the plaintiffs as it is clearly barred under Section 17 of the Indian Registration Act and also suit is barred by limitation. Accordingly, it has rejected the plaint.

I do not find any illegality in the reasoning given by the trial Court, much less., if there is a sale transaction or alienation, the same has to be challenged by the plaintiffs at the relevant point of time. After marriage, defendant No. 1 Jayalakshamma lost the status of joint family member of Anjanappa and became the family member of Venkateshappa and the property at the hands of Venkateshappa after sale by Anjanappa in favour of Kempaiah, who in turn sold the property in favour of Venkateshappa, becomes the absolute property of Venkateshappa and that cannot be made available for partition in favour of plaintiffs and defendants 2 to 5. Since the suit seeking for declaration is barred by limitation, property in the hands of Jayalakshamma cannot be partitioned. As such, the suit is not maintainable and rightly the trial Court has dismissed the suit.

In view of the above, Appeal is dismissed. Parties are directed to bear their own costs.