
(2015) 12 KAR CK 0078
In the Karnataka High Court
Case No : R.F.A. No. 360/2013 (PAR)

Shwetha and Others

APPELLANT

Vs

Narasimhaiah and Others

RESPONDENT

Date of Decision : 08-12-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1, Order 7 Rule 11(a), 151

Citation : (2015) 12 KAR CK 0078

Hon'ble Judges : N. Kumar and B.V. Nagarathna, JJ.

Bench : Division Bench

Advocate : G.S. Balagangadhar, Advocate, for the Appellant

Final Decision : Allowed

Judgement

N. Kumar, J.—The plaintiffs have preferred this regular first appeal against the order dated 2/2/2013 in O.S. No. 731/2010 rejecting the plaint under Order VII Rule 1 of the Code of Civil Procedure.

2. For the sake of convenience, the parties are referred to as they are referred to in the original suit.

3. The plaintiffs had filed the said suit for the relief of partition and separate possession of their 1/5th share each in respect of the schedule properties and also for declaration declaring that any sale made in respect of schedule properties is not having any binding effect over the rights of the plaintiffs and other consequential reliefs. The defendants filed their written statement contesting the claim. They contended that the suit itself is not maintainable. Therefore, defendant Nos. 7 and 8 filed an application under Order VII Rule 11(a) and (d) read with Section 151 of the CPC seeking rejection of the plaint on the ground of no cause of action and also barred by law. The plaintiffs had filed their objections contesting the same. Thereafter, on hearing both the parties, learned trial Judge was of the view that as the property in question was also acquired by the Bangalore Development Authority ("the BDA" for short) and

hence, the possession factor is only with regard to the award of compensation and the property is also not in the hands of the person to pass any order. Hence, the plaint was rejected as not maintainable. Without assigning any reason, it has also been held that there was cause of action nor the claim of the plaintiff was in time. Aggrieved by the said order, the present appeal is filed.

4. We have heard the learned counsel for the parties.

5. Learned trial Judge has not kept in mind the settled law insofar as rejection of the plaint. The relationship between the parties is not in dispute. It is also not in dispute that the schedule properties were the joint family properties. The question was that, when there was already a partition and his father has taken the partition under the partition deed, were his daughters were entitled to maintain the suit for partition. They had filed some other documents. Whether the same is binding or not is the question to be gone into by the trial Court. When a plaint is filed on the ground that the property is acquired by the BDA and the parties are entitled for compensation, the plaint has to be rejected only if the allegations in the plaint does not disclose any cause of action and the said allegations show that the suit is barred by time. In the instant case, the allegations do not show that there is no cause of action for the suit nor it show that the suit is barred by time. Therefore, the order passed by the trial Court is erroneous and requires to be set aside. Accordingly, it is set aside. Hence, we pass the following order:

The appeal is allowed. The impugned order passed by the trial Court is hereby set aside. The suit is restored to its original filed.

The application filed for rejection has to be considered by the trial Court on its merits and in accordance with law keeping in mind the observations made above.