

**(2012) 02 KAR CK 0039**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 44065 of 2011 (GM-CPC)

Sri T. Ramachandra and Others

APPELLANT

Vs

Sri Mandali Ranganna and Others

RESPONDENT

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**Date of Decision :** 23-02-2012

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 5, 151

**Citation :** (2012) 02 KAR CK 0039

**Hon'ble Judges :** Subhash B. Adi, J

**Bench :** Single Bench

**Advocate :** Ashok Haranahalli for Sri A.L. Premakumar, for the Appellant; Shanmukhappa, for M/s. Kesvy and Co. for R2, 6-8, 9(C) and 10 Sri. G.S. Bhat and Assts. Adv. for R-L. 3, 11 and 12: Sri. Harish H.V., for R-L3; Sri. G.L. Vishwanath, for 15-19: Sri. Prabhakarshetty, For R-4 and 5; M/s. Manasa Law Assts, for R-8-12, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Subhash B. Adi

1. M/s. Kesvy & Co. undertakes to file vakalth for respondent No. 9(e). Show the name of M/s. Kesvy & Co. as appearing for respondent No. 9(c). This writ petition is by defendant Nos. 1, 3 to 5 They have filed this writ petition, questioning the framing of the issues.

2. These defendants filed an application under Order XIV rule 5 read with Section 151 of CPC interalia seeking striking down of the issues framed except issue No. 5.

3. Respondent Nos. 1 to 12 are the plaintiffs. They have filed the suit for declaration that the suit schedule properties are joint family properties of the plaintiffs and defendants and for preliminary decree for partition and separate possession in "A" and IV schedule properties according to the shares of the parties and for appointment, of Commissioner for effecting the preliminary

decree and consequential relief.

4. Case of the plaintiffs is that, one Mandalappa was the propositus of the family, who was enjoying the property. During his life time, all the properties except No.3. Ulsoor Road, Bangalore and properly Nos. 108. 109 and 110, Old Poor House Road. Bangalore, both situated at Civil Station, Bangalore, came to be enjoyed by the parties independently. However. two suit schedule properties were enjoyed by late Mandalappa till 1971 and they remained as a joint family property. In respect of these two properties, suit is filed for partition and separate possession.

5. The contesting defendants filed their written statement inter alia claiming that, during the life time of Mandalappa there was a partition between T.M. Chikkaranganna, T.M. Thimmaiah and T.M. Muniswamappa. However, T.M. Thimmaiah during his life time, he adopted M. Ramachandra, son of T.M. Muniswamappa and after the death of Thimmaiah, Thimmaiah's wife T. Puttathayamma got that adoption registered in 1937. Though these were the principal pleadings, however the trial court while framing the issues, in utter disregard to the pleadings framed the following issues:

1. Whether plaintiffs prove that the partition in the family properties in the year 1924 was in respect of Jew properties only?
2. Do they prove that one Puttathayamma adopted defendant M. Ramachandra under deed dated 13-12-1937?
3. Do they prove that partial partition is proved by way of deed of adoption dated 13-12-1937?
4. Whether plaintiffs prove that the lease of 1/3rd of the property is creation of third party interest?
5. Whether defendants prove that there was a partition in the year 1924 in respect of all properties?
6. Whether defendants prove that the partition said to be effected on 24-6-1924 and 30-6-1924 are one and the same?
7. What order or decree?

6. Learned Senior Counsel Sri. Ashok Haranahalli for the petitioners submitted that, except issue No. 5, none other issues would arise out of the pleadings. It is neither the case of the plaintiffs nor the case of the defendants as regard to the partition of the Family in 1924. as regard to Puttathayamma adopting M. Ramachandra or as regard to the partial partition.

7. The trial court without going into the pleadings has framed these issues, which do not fall for consideration and if the evidence is led on the basis of these issues, that would not sub-serve the purpose by which suit is filed.

8. What appears from the pleadings is that, parties are claiming partition in

respect of suit schedule property and the defendants are claiming that there was a prior partition and also claiming adoption. Having regard to these pleadings, the issues now framed are not in consonance with the pleadings.

Hence, proper issues required to be framed. It would be proper to direct the parties to file their draft issues to enable the trial court to frame the proper issues. Since there is already a direction by the Apex Court to dispose of the suit at the earliest and the time stipulated has expired, it is appropriate to fix a date for filing draft issues by both the parties and alter filing of the draft issues, the trial court on proper consideration and based on the pleadings shall frame appropriate issues.

Accordingly, the petition is allowed. All the issues as framed are struck down. Parties are directed to appear before the trial court on 27th February 2011 and file their draft issues before the trial court. The trial court thereafter without any further delay shall frame appropriate issues based on the draft issues filed by both the parties and the pleadings. Since the parties have led the evidence, if it becomes necessary, parties are at liberty to file additional evidence by way of affidavit subject to further cross-examination.