

**IN THE COURT OF XV ADDITIONAL CITY CIVIL &  
SESSIONS: JUDGE AT BENGALURU ( CCH.No.3)**

Dated this the 24<sup>th</sup> day of February 2021

**O.S. No.4871/2011**

**Present        :-    Sri. JAISHANKAR, B.Sc., LL.M.  
XV Additional City Civil &  
Sessions Judge, Bengaluru**

**Plaintiff's    :-    Smt. Bhavya.A and another**

**V/s**

**Defendant's   :-    Sri.B.V. Mohan Babu and  
others**

**ORDERS ON I.A.NO.2/18 FILED BY THE DEFENDANT  
NO.5 U/O 7 RULE 11 (a) & (d) R/W SEC.151 OF CPC**

The defendant No. 5 has filed this application praying to reject the plaint as against her and the suit schedule 'C' property.

2. The defendant No.5 has filed her affidavit along with the I.A. and has stated as follows :-

That the plaintiffs have filed this suit against her and others for the relief of partition. The plaintiffs have filed the suit claiming their alleged interest as against the

defendants No.1 to 4 with respect to the suit schedule 'A' and 'B' properties without whispering anything regarding the suit schedule 'C' property and about her. By reading the plaint, it is clear that the plaintiffs have no right or possession and over the plaint schedule 'C' properties and they have not at all made any allegations by claiming any reliefs as against her. Thereby, the suit has no cause of action and it does not survive for consideration. Hence the plaint is liable to be rejected as against her and the 'C' schedule property. The suit does not require to be prosecuted for conducting evidence or producing any documents. As such, the suit is false and frivolous, causeless and is liable to be dismissed at the budding stage itself. It has to be dismissed to avoid the wastage of the precious time of the Court and also the parties. It is also necessary to be dismissed to avoid multiplicity of proceedings and from injustice to her. If the application is allowed, no harm, injury and injustice would be caused to other side. On the other hand, if the application is not allowed, she will be put to hardship, injury and injustice. Hence, she has prayed to allow the application.

3. The plaintiffs have filed objection to this application and have contended as follows :-

That the application is highly frivolous, vexatious and untenable and the same is liable to be dismissed. They have filed the suit for partition and separate possession in respect of schedule 'A' to 'C' properties against defendants No.1 to 4. The defendant No.1 is the husband of plaintiff No.1 and father of plaintiff No.2 and the defendants No.3 and 4 are the in-laws of plaintiff No.1. The defendant No.5 is the subsequent purchaser of the suit schedule item No.'C' property. The plaint cannot be rejected on the defense taken by the defendant No.5. The defendant No.1 had no locus standi to sell the suit schedule 'C' property depriving the share of the plaintiffs that too a joint family property. The plaintiff No.1 and defendant No.1 are not in good terms and the defendant No.1 has filed M.C.No.3383/2010 for dissolution of their marriage dated 17.10.2007. The said matter is pending. The plaintiff No.1 has also filed M.C.No.43/2011 for relief of restitution of conjugal rights and it is also

pending. Due to mis-understanding arose between the family members, the defendant No.1 has sold the suit 'C' schedule property in favour of defendant No.5 after filing of M.C. No.3383/2010 with an intention to deprive the legitimate share of the plaintiffs. The said fact has to be adjudicated after full fledged trial. The impleading application was filed on 21.02.2013 and it was allowed on 09.07.2015. Thereafter, the defendant No.5 has not chosen to file her written statement. After that, on the last occasion the defendant No.5 has filed an application along with written statement and it was allowed. They have filed an application for amendment of plaint and also for incorporation of some properties. The defendants No.1 to 4 have not filed objection to the said application. Whether the plaintiffs have cause of action to file the suit in respect of suit 'C' schedule property has to be decided at a later stage. Now the plaint cannot be rejected. Hence, prayed to reject the application.

4. I have heard the arguments of both sides and perused the entire materials on record. Now the points

that arise for my consideration are as follows :-

1. Whether the defendants No.5 has made out sufficient ground to reject the plaint under Order 7 Rule 11(a) and (d) of CPC?

2. What order ?

5. Having regard to the arguments heard and the materials on record, I answer the above points as hereunder :-

**Point No.1 :-** In the negative

**Point No.2 :-** See final order for the following

## **REASONS**

6. **Point No.1** :- The plaintiffs have filed this suit for partition and separate possession of their 2/3rd share in the suit schedule properties. Earlier suit was filed against the defendants No.1 to 4 with respect to suit 'A' and 'B' schedule properties. Later, I.A was filed to implead the defendant No.5 who he has filed this application. After that, the impleading application was

allowed on 07.09.2015 and the defendant No.5 has been impleaded in this suit. But, as for as I.A filed under 6 Rule 17 as I.A.No.1/18 is concerned, it is still pending and the suit schedule 'C' property is not yet included in the suit. The allegation against the defendant No.5 is that there are no allegation against her in the plaint and there is no prayer with respect to the 'C' schedule property. I.A filed for inclusion of the said property in Sy.No. 349/2 measuring 2 Acres 30 guntas situated at Begur Village is still pending. The said I.A is filed to include the said property alleging that it was purchased out of the joint family funds. The defendant No.5 is the alleged to the purchaser of the said property. Since, the defendant No.5 is the purchaser, there is no necessity to plead against her as she will stepped into the shoes of the seller. This Court has to decide whether the suit 'C' schedule property has to be included in the suit or not. Since the defendant No.5 has been brought on record as purchaser of one of the joint family property she is a proper party to this suit. The suit is filed with respect to 4 properties shown as 'A' and 'B' properties and the suit

is filed for partition and separate possession. The plaintiffs have contended that they have got right of 2/3rd share in the 'A' schedule property and ½ share in the 'B' schedule property. They have filed application for amendment of the plaint to include a property as 'C' schedule contending that it is also the joint family property. Whether the plaintiffs have right over the said properties or not has to be decided only after the full fledged trial on merits. Under order 7 Rule 11 of CPC the plaint has to be rejected in whole and not partly against some of the properties and some of the parties. As such, the defendant No.5 has not made out any grounds to reject the plaint. Hence, I answer point No.1 in the negative.

**7. Point No.2 :-** In view of the above findings on point No.1, the following is made :-

### **ORDER**

I.A No.2/18 filed by the  
defendants No.5 under Order 7  
Rules 11(a) and (d) readwith Section

151 of CPC is dismissed. No order as  
to costs.

(Dictated to the Stenographer, transcribed and typed by her, corrected and then pronounced  
by me in the open court on this the 24<sup>th</sup> day of February 2020.)

**(Jaishankar)**  
XV Addl.City Civil & Sessions  
Judge, Bengaluru