KAMS020024172022

IN THE COURT OF THE II ADDL. SENIOR CIVIL JUDGE AT MYSURU

:PRESENT:

Smt.N. Anupama, B.A.L.,LL.B.,
II Addl. Senior Civil Judge and CJM.,
Mysuru

ORIGINAL SUIT No.879/2022

DATED THIS THE 30th DAY OF SEPTEMBER -2024

PLAINTIFF/S:

1. Ningamma,
   W/o Late Boralingegowda,
   aged about 58 years,

2. Sunandamma,
   W/o Late Mahadevu,
   aged about 51 years,

3. Suchithra,
   W/o Suresh.B.,
   aged about 32 years,

   All are residing at Door No.38,
   Jattihundi Village, Yelawala Hobli,
   Mysuru Taluk.

By-Sri.B.S.K., Advocate

V/s

DEFENDANT/S:

1. Jayalakshmamma,
   W/o Late Marilingegowda,
   aged about 80 years,
   Presently R/at No.25,
   E Block and C Block,
   Vijayanagara 3rd Stage,
   Vijayanagara, Mysuru.

   Also at: Door No.37,
   Jattihundi Village,
   Yelawala Hobli,
   Mysuru Taluk.

2. Jayamma,
   W/o Late Bommegowda,
   aged 50 years,

3. T.Devegowda,
   S/o Thamanna Padakidevaiah,
   aged 56 years,

4. Sheela,
   D/o Late Bommegowda,
   aged 35 years,

5. Shilpa,
   D/o Late Bommegowda,
   aged 33 years,

6. Sowmya,
   D/o Late Bommegowda,
   aged 30 years,

2 to 6 are residing at
Door No.2279,
4th Cross, 6th Main,
Vinayakanagara,
Jayalakshmipuram, Mysuru.

7. T.Kumar,
S/o Thamanna,
aged 50 years,
R/at Door No.88,
7th Cross, 8th Main,
5th Block Vinayakanagara,
Mysuru.

8. T.Somu,
S/o Thamanna,
aged 48 years,
R/at Door No.2279/5,
Vinayakanagara, 6th Main,
Jayalakshmipuram,
Mysuru.

9. T.Varalakshmi,
W/o Purushotham,
S/o Thamanna,
aged 43 years,
R/at Devinahalli,
Mysuru-571101.

10. Siddamma,
W/o Late Siddegowda,

aged 60 years,
R/at Gopalapura Village,
Jayapura Hobli,
Mysuru Taluk.

11. Srinivas,
S/o Late Siddegowda,
died on 23.12.2022 (unmarried)

12. Suma,
D/o Late Siddegowda,
aged 36 years,
R/at Gopalapura Village,
Jayapura Hobli,
Mysuru Taluk,
Mysuru.

13. Nagarathna,
W/o Late Krishna,
aged 45 years,

14. Madesha,
S/o Late Krishna,
aged 28 years,

15. Manoj,
S/o Late Krishna,
aged 26 years,
Defendant no.13 to 15 are
R/at No.39, Jattihundi Village,
Yelawala Hobli, Mysuru Taluk.

16. Ningegowda,
S/o Late Marilingegowda,
aged 51 years,
R/at Jattihundi Village,
Yelawala Hobli,
Mysuru Taluk.

17. Dr.Jayanthi.N.V.,
W/o Dr.Anil Kumar.C.S.,
aged 57 years,
R/at Jattihundi Village,
Yelawala Hobli,
Mysuru Taluk.

18. M/s Aknavi Properties
Rep. by its partner
Sri.Gopalakrishna Nayak,
Sri.D.Manjunath,
Office at 36/2
4th Main, 8th Cross,
Vinayaka Nagar, Mysuru.

D1, 3, 5, 7 & 9-By Sri.S.L., Advocate,
D2, 6, 10 to 16-Exparte, D11-Dead,
D17, 18-By Sri.S.J.M., Advocate.

PARTIES TO I.A.No.VII

Applicant/Defendant No.18 : M/s Aknavi Properties

V/s

Opponents/Plaintiffs : Sri.Ningamma and others

ORDER ON I.A.No.VII

Defendant NO.18 has filed I.A.No.7 under Order VII Rule 11 of CPC seeking to reject the plaint for want of cause of action against defendant no.18.

2. In the affidavit annexed to the application it is stated that, the plaintiffs have filed the present suit for partition on 14.07.2022 against the defendants, including defendant no.18. Defendant no.18 was impleaded as an additional-defendant as per the order dated 10.07.2024 on the ground that he has purchased 1 acre 20 guntas of suit-property from defendant no.1 vide registered sale deed. Despite impleading defendant no.18 as a party to the suit, the plaintiffs have failed to seek any specific relief against defendant no.18 in the amended plaint. The plaintiffs' failure to seek any relief against defendant no.18 indicates that the plaint does not disclose any cause of action against him. Hence the plaint is liable to be rejected under Order VII Rule 11(a) of CPC. The

inclusion of defendant no.18 without seeking any relief constitutes mis-joinder of parties, as defendant no.18 is unnecessarily dragged-on to litigation without any proper cause or relief being sought against them. Thus it is prayed to allow the application.

3. The ***plaintiff*** has filed the ***objections*** stating that, defendant no.18 has been impleaded in the suit soon after the plaintiffs came to know that he has purchased suit-item no.1. In a suit for partition plaint cannot be rejected on the imaginary grounds. Now that the plaintiffs have come to know about the alleged sale, certain facts would be incorporated and the sale deed will be challenged by seeking an amendment to the plaint. Further, the plaint cannot be rejected without conclusion of trial. On these grounds, it is prayed to dismiss the application.

4. Heard the arguments of both-sides.

5. On careful consideration of the contentions of both-sides, the following points arise for consideration of this court:

1. ***Whether defendant no.18 has made- out grounds to reject the plaint as prayed ?***

2. ***What order?***

6. The above points are answered as under:

Point No.1 : **In the *Negative***

Point No.2 : ***As per final order for the following:***

R E A S O N S

7. **Point No.1:** By way of I.A.No.7, defendant no.18 has sought to reject the plaint stating that since no specific-relief has been sought against him, there is no cause of action as against him.

8. Whereas in the ***objection*** filed by plaintiffs, it is stated that, they have impleaded defendant no.18 after

coming to know that he has purchased suit-item no.1. It is stated that they would plead certain-facts and challenge the sale deed of defendant no.18 by seeking an amendment to plaint.

9. Admittedly, this is a suit for partition filed by plaintiffs against the defendants; and defendant no.18 has been impleaded only recently as per the order dated 10.07.2024. The reason behind impleading defendant no.18 itself is a cause of action against him. Moreover, the plaintiffs have specifically contended that they would plead certain-facts and challenge the sale deed of defendant no.18 by seeking an amendment to plaint, in due course.

10. Above all, it is settled law that *"the plaint cannot be rejected in part"*. The plaintiff cannot be allowed to continue the suit against other defendants by rejecting the plaint as against defendant no.18.

In view of the above, the contention of defendant no.18 that there is no cause of action for the suit, holds no water. Thus the application deserves to be dismissed. Accordingly, Point No.1 is answered in the ***'Negative'.***

11. **Point No. 2:** In view of the answer to above point, I proceed to pass the following:

O R D E R

I.A.No.7 filed by defendant no.18 under Order VII Rule 11 of CPC is dismissed.

(Dictated to the Stenographer on computer, corrected, revised and then pronounced by me in the open court on the this the 30th day of September -2024).

(N.ANUPAMA)
II Addl. Senior Civil Judge
Mysuru.