



ORDER

The petitioners-defendant Nos.9 and 10 in O.S. No.4409/2018 on the file of the 30th Additional City Civil and Sessions Judge, Bengaluru (CCH-31) are before this Court aggrieved by order dated 15.09.2023 rejecting I.A.No.6 filed under Order 14 Rule 5 of the Code of Civil Procedure, 1908 (for short 'CPC') to frame additional issue as to "whether the suit for partial partition is maintainable".

2. Heard Sri. Shashank Sridhar, learned counsel for Sri. Sridhara.N., learned counsel for the petitioners and Sri. Chokkareddy, learned counsel for caveator/respondent Nos.1 to 5 as well as Sri. Manu.P.Kumar, learned counsel for Sri. C.S.Prasanna Kumar, learned counsel for respondent Nos.6 and 11 to 13. Perused the writ petition papers.

3. Learned counsel for the petitioners-defendant Nos.9 and 10 would submit that the suit of respondents-plaintiffs is one for partition as well as to declare that the



sale deed dated 08.07.2004, 09.09.2005 and 12.04.2017 are not binding on the legitimate share of the plaintiffs over the suit schedule property and also for permanent injunction. Learned counsel would submit that the petitioners as well as other defendants filed their written statement, in which, the defendants specifically contended that the suit for partition by plaintiffs is only with regard to property which has been sold by them through their GPA Holders and plaintiffs have not disclosed with regard to other properties which have fallen to their share under partition deed dated 10.09.1970.

4. Further, learned counsel invited attention of this Court to cross-examination portion of PW.1, where PW.1 has admitted that apart from suit schedule property, there are vacant site, residential house. Thus, learned counsel would submit that there are pleadings to frame issue with regard to partial partition. Further, learned counsel would submit that additional issue could be framed at any stage of the proceedings in terms of Order 14 Rule 5 of CPC.



The trial Court committed an error in rejecting to frame additional issue and would further submit that in a suit for partition, all properties belonging to joint family shall be included. Thus, he prays for allowing the writ petition and to direct the trial Court to frame additional issue.

5. Learned counsel for the contesting respondents-plaintiffs would submit that, the suit of the plaintiffs is only in respect of the suit schedule property and further it is submitted that in the absence of specific pleadings, the trial Court is justified in rejecting I.A.No.6 filed by the petitioners-defendant Nos.9 and 10 for framing additional issue.

6. On hearing learned counsels for the parties and on perusal of the writ petition papers, the only point falls for consideration is:

"Whether the trial Court is justified in rejecting I.A.No.6 filed under Order 14 Rule 5 of CPC to frame additional issue?"



Answer to the above point would be in the negative for the following reasons:

7. The trial Court ought to have framed additional issue as to **"Whether the suit for partial partition would be maintainable"**. The prayer in the suit among other prayers is for partition of the suit schedule property. The suit schedule consists one item of the property. The petitioners-defendant Nos.9 and 10 at Paragraph No.4 of written statement have stated as follows:

"it is pertinent to submit that the Plaintiffs have filed the above suit for Partition of the only Property which has been sold by them through their GPA Holders, and the Plaintiffs have not disclosed what are the other Properties that had been fell in to the share of Pillappa in the said Partition Deed, Dated : 10-09-1970, and why the Plaintiffs have not included other Properties in the above suit for Partition, and what happens to other Properties, and the Plaintiffs are hereby called upon to furnish the said Particulars and soon after receipt of the same this Defendant reserve his right to file additional written Statement, and in the absence of furnishing the said particulars it has to



be construed that the Plaintiffs have filed the above case only against the Property which has been already sold."

8. Order 14 Rule 5 of CPC reads as follows:

*"5. Power to amend and strike out issues. -
(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.*

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced."

In terms of the above provision, the Court at any time before passing a decree, frame an additional issues on such terms as it deems fit as may be necessary for determining the matters in controversy between the parties.

9. The above extracted portion of the written statement of petitioners-defendant Nos.9 and 10 would state that suit for partition is only in respect of the



property sold through GPA Holder and details of the properties are not disclosed. Normally in a suit for partition, all the joint family properties shall be included. The above pleading of defendant Nos.9 and 10 would be sufficient to frame additional issue with regard to partial partition. It is for the defendants, who have taken such contention to prove the said issue. Hence, it would be appropriate to frame issue as to ***"Whether the suit for partial partition is maintainable"*** as contended by the defendant Nos. 9 and 10.

10. If the above additional issue is framed, no prejudice would be caused to the plaintiffs and on the other hand, it would assist the Court in deciding the real controversy between the parties.

With the above, writ petition stands disposed off. Order dated 15.09.2023 on I.A.No.6 in O.S.No.4409/2018 on the file of the 30th Additional City Civil and Sessions Judge, Bengaluru (CCH-31) is set aside. Consequently



I.A.No.6 is allowed, trial Court is directed to frame additional issue as prayed in I.A.No.6.

Sd/-
JUDGE

SMJ
List No.: 1 Sl No.: 35