

IN THE HIGH COURT OF KARNATAKA AT BENGALURU



DATED THIS THE 16TH DAY OF FEBRUARY, 2022

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO.39982 OF 2018 (GM-CPC)

BETWEEN:

SMT.HEMALATHA

... PETITIONER

(BY SRI.A.NAGARAJAPPA, ADV.)

AND:

1. SRI.VENKATESH

2. SMT.CHANNAMMA

3. SRI.SRIDHAR

4. SRI.SOMASHEKAR

5. SRI.V.RAVIKUMAR

...RESPONDENTS

(BY SMT.MANJULA P.V., ADVOCATE FOR R.1 TO R.3;
SRI.PRITHVI RAJ B.N., ADVOCATE FOR R.4;
SRI.K.VENKATESHAIAH, ADVOCATE FOR R.5)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER PASSED BY THE CITY CIVIL JUDGE, BENGALURU DATED 08.08.2018 ON I.A.NO.7 IN C.S.NO.4739/2014 DATED 08.08.2018 ON I.A.NO.7 IN O.S.NO.4739/2014 VIDE ANNEXURE-A AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for the following reliefs;
 - i) *Issue a writ, order or direction in the nature of certiorari in quashing the impugned order passed by the City Civil Judge, Bengaluru dated 08.08.2018 on I.A.No.7 in O.S. No.4739/2014 vide Annexure-A.*
 - ii) *Grant such other relief/s as this Hon'ble Court deems fit under the circumstances of the case, in the interest of justice and equity.*
2. The suit in O.S.No.4739/2014 has been filed by the petitioner herein seeking for partition of the various joint family properties described in the schedule thereto claiming that as a female member of the joint family, she had an interest in the said properties by virtue of the amendment to Section 6 of the Hindu Succession Act.
3. While the suit was pending, I.A.No.7 had been filed by the 4th defendant the brother of the plaintiff before the trial Court seeking for addition of two properties in the schedule of the plaint as item Nos.9 and 10. Assertion of the 4th defendant in the application was that

3.1. Item No.9 property measuring 1 acre situate in Sy. No.17/2 of Pallerayanahalli Village, Amruthur Hobli, Kunigal Taluk, Tumkur District had been given as dowry at the time of marriage of the 1st plaintiff - petitioner. Defendant No.1 had, at the time of marriage of the 1st plaintiff, executed nominal sale deed in favour of Channaiah - the father-in-law of the 1st plaintiff and as such, the said property was also amenable for partition since the said item has been given as dowry at the time of the marriage of the 1st plaintiff - petitioner.

3.2. Item No.10, had been purchased by defendant No.1 out of his own funds. He had executed a power of attorney in favour of 1st plaintiff and her husband at the time of her marriage and later on, a sale deed came to be executed by the 1st defendant in favour of the 1st plaintiff and her husband on 15.05.2006. On these grounds, it was

contended that this is also a family property and would be amenable for partition.

4. The said application came to be objected to by the Plaintiffs contending that the property had been purchased by the father-in-law of the 1st plaintiff - Chennaiah out of his own funds from third parties much before the marriage of the 1st plaintiff and that the same is not a joint family property. If at all the 1st defendant had any right in the property, the 1st defendant ought to have filed a declaratory suit to establish ownership. In respect of item No.10 property, it was contended that this property had also been purchased from the 3rd party at the market value and therefore, could not be amenable for partition.
5. The Trial Court, after hearing the arguments of the counsels, allowed the application though by way of cryptic order.
6. Sri.A.Nagarajappa, learned counsel for the petitioner would submit that there are no reasons which had been

given by the Trial Court for allowing the application for amendment and therefore, such order is required to be set-aside. He reiterates the submissions made in the objection to the application for amendment and again, submits that item No.9 has been purchased by the 1st plaintiff's father-in-law and item No.10 has been purchased by the husband of the 1st plaintiff out of their own funds and therefore, they are not amenable for partition.

7. Sri.Prithvi Raj B.N., learned counsel for respondent No.4, who was defendant No.4 in the Trial Court, reiterates that the properties covered item Nos.9 and 10, which was sought to be introduced by way of amendment, were given as dowry and therefore, in a suit for partition, the said properties would also be amenable for partition. He supports the order of the learned Trial Court and states that the said order need not be interfered with.
8. Sri.K.Venkateshaiah, learned counsel for respondent No.5, who was plaintiff No.2 in the Trial Court, adopts

the arguments of Sri.A.Nagarajappa, learned counsel for the petitioner.

9. None appears for respondent Nos.1 to 3.
10. Heard Sri.A.Nagarajappa, learned counsel for the petitioner and Sri.Prithvi Raj B.N, learned counsel for respondent No.4 and Sri.k.Venkateshaiah, learned counsel for respondent No.5.
11. The above petition gives rise to certain interesting questions, which read as under;

11.1. Whether in a suit for partition, the properties which had been given as dowry or otherwise at the time of marriage of the daughter plaintiff, who is claiming a right of partition under Section 6 of the Hindu Succession Act, would be amenable for partition and the same would be included in a suit for partition?

11.2. Whether the impugned order suffers from any legal infirmity requiring this Court to interfere with the said order?

12. **Answer to Point No.1: Whether in a suit for partition, the properties which had been given as dowry or otherwise at the time of marriage of the**

daughter plaintiff, who is claiming a right of partition under Section 6 of the Hindu Succession Act, would be amenable for partition and the same would be included in a suit for partition?

13. The contention of defendant No.4 - applicant before the Trial Court is that item Nos.9 and 10 properties, which were sought to be added to the plaint by way of an amendment were given as dowry to the family of the 1st plaintiff during the time of her marriage. At the request of in-laws of the 1st plaintiff, a nominal sale deed was executed in favour of the father-in-law of the 1st plaintiff. As regards item Nos.10 a nominal sale deed was executed in favour of the husband of the 1st plaintiff.
14. The suit, admittedly, has been filed for partition claiming a right in the joint family properties by virtue of the amendment to Section 6 of the Hindu Succession Act. The said amendment being a salutary one having

been brought in to provide equal rights to a woman in the joint family properties.

15. In the present case, interestingly the claim of the 4th defendant is that certain joint family properties had been given to the 1st plaintiff and her family members as dowry during her marriage. That is to say that a portion of the joint family property was made available for plaintiff No.1 as either dowry/gift or share in the property at the time of marriage. This court at present is not concerned with the offences of Dowry if any, there being no complaint in regard thereto.
16. Such being the case, I am of the considered opinion that a beneficiary of Section 6 of the Hindu Succession Act cannot claim a benefit by way of partition as regard to joint family properties without reference to the properties already received by her at the time of marriage as dowry/gift or otherwise. The said properties at an undisputed point of time forming part of the joint family property and the plaintiff having received it, the same would also have to be made part of the partition

suit in order for the partition to be equitable hence, those properties would also be amenable to partition. Hence, the contention of Sri.A.Nagarajappa, learned counsel for the petitioner that these properties were independently purchased (Item no. 9 from Defendant no. 9 and Item No. 10 from third parties) and would not be amenable for partition is an issue that would have to be decided after trial and cannot be adjudicated upon at this stage. The assertions clearly and categorically made is that the 1st defendant had executed nominal sale deeds in respect of item Nos.9 and 10 properties.

17. It is for the parties to establish during the course of trial as to whether the properties belonged to the joint family or not. If the properties belong to the joint family, then the same would be amenable for partition. If the plaintiffs were able to establish that the properties had been independently purchased out of their own funds and the said properties are not joint family properties, then the same would not be amenable for partition.

18. This aspect would have to be ascertained by the Trial Court only after trial. Hence, I answer Point No.1 by holding that in a suit for partition, the properties which had been given as dowry or otherwise at the time of marriage of the daughter plaintiff, claiming a right of partition under Section 6 of the Hindu Succession Act, would be amenable for partition and the same would have to be included in a suit for partition.

19. **Answer to Point No.2: Whether the impugned order suffers from any legal infirmity requiring this Court to interfere with the said order?**

20. As observed above the order of the Trial Court could have been better worded and could have provided better reasoning, however in view of the discussion above the ultimate order which is passed by the trial court is proper and correct requiring no interference at the hands of this Court.

21. In view of the above, this writ petition stands dismissed.

22. In view of dismissal of the writ petition, all pending interlocutory applications stand dismissed and interim orders stand discharged.

Sd/-
JUDGE

NBM