

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JULY, 2022

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 22744 OF 2021(GM-CPC)

BETWEEN:

MR K DURGA PRASAD SHETTY

...PETITIONER

(BY SRI.ANANDARAMA K, ADVOCATE)

AND:

1. DR SHASHIKALA

2. SMT USHA KUMARI

3. DR K SHIVAPRASAD SHETTY

...RESPONDENTS

(BY SRI.SHRAVANTH ARYA TANDRA, ADVOCATE FOR R1-3)

THIS PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DTD.16.11.2021 ANNEXURE-G PASSED BY THE III ADDITIONAL SENIOR CIVIL JUDGE AND JMFC MANGALURU ON IA NO.3 IN O.S.NO.57/2020 AND CONSEQUENTLY DISMISS IA NO.3 IN O.S.NO.57/2020.

THIS PETITION COMING ON FOR FURTHER HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned writ petition is filed by the sole defendant feeling aggrieved by the order of the learned Judge passed on I.A.No.3 filed under Order VI Rule 17 read with Section 151 of CPC, wherein the learned Judge has allowed the amendment application and has permitted the respondent-plaintiff to incorporate additional properties and pleadings in that regard.

2. The respondents-plaintiffs have instituted a suit for partition and separate possession in O.S.No.57/2020. The plaintiffs have specifically alleged against the present petitioner-defendant that he is guilty of not furnishing the accounts of income and expenditure and has not distributed 3/4th of the profits i.e. legally due to the plaintiffs. The plaintiffs have further specifically pleaded at Para (4) of the plaint that the present petitioner having failed to

provide accounts has dishonestly utilized the income derived from the properties for himself.

The petitioner-defendant on receipt of summons has tendered appearance and contested the suit by filing the written statement. Before commencement of trial, the plaintiffs have filed an amendment application seeking leave to add additional properties. The said application is strongly resisted by the petitioner herein by contending that amendment application is tainted with malafides. The petitioner contended that the respondents-plaintiffs are well aware that petitioner purchased this property in view of the sale of the joint family ancestral property wherein the petitioner was also equally paid a sum of Rs.75,000/-. On this set of defence, sought for rejection of the application. The learned Judge has allowed the application. It is this order, which is under challenge.

3. The learned counsel appearing for the petitioner reiterating the grounds urged in the writ petition would straightaway place reliance on the judgment rendered by the Apex Court in the case of ***Revajeetu Builders and Developers .vs. Narayanaswamy and sons and others***¹. Referring to para 64 of the said judgment, he would contend that the trial Court while dealing with amendment application is under bounden duty to find out whether the amendment application is tainted with malafides and therefore, if at this juncture, the respondent-plaintiff is permitted to bring in the self acquired properties of the petitioner, the petitioner would be put to irreparable loss. He would conclude his arguments by contending that the order under challenge is not at all sustainable in the light of the

¹ (2009) 10 SCC 84

principles laid down by the Apex Court in the judgment cited supra.

4. The learned counsel appearing for the respondents repelling the arguments canvassed by the counsel for the petitioner would contend that the amendment was sought at pre-trial stage and therefore, all amendments more particularly those which are sought at pre-trial stage have to be liberally allowed by taking a lenient view. Placing reliance on Para 7 of an unreported judgment rendered by this Court in W.P.No.55337/2019 disposed of on 13.6.2022, he would contend that where relationships are admitted and if one of the family members was to assert and claim that particular property is his self acquired property, the said question has to be adjudicated only by a full fledged trial and the parties have to be relegated to trial. At the stage of considering amendment application, the family

members cannot be permitted to assert absolute right over a particular property. On this set of grounds, he would contend that the writ petition is devoid of merits and the same is liable to be dismissed.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents. Perused the order under challenge.

6. The respondents-plaintiffs have instituted a suit for partition and separate possession. The respondent has specifically averred that there is an arrangement in the family where the present petitioner-defendant is entrusted to look after the suit schedule property. As per the arrangement, the petitioner is under bounden duty to render accounts of income and expenditure every year and is required to distribute the profits derived from the suit schedule properties. There are specific allegations that the

petitioner-defendant has utilized the income derived from the joint family ancestral property and therefore, the present suit.

7. Insofar as the proposed amendment is concerned, by way of amendment the respondents-plaintiffs claim that the properties which are now sought to be inserted by way of amendment are also joint family ancestral properties while the petitioner claims that these properties are his self acquired properties and therefore, not available for partition. These rival submissions made by the plaintiffs and defendant are to be tested only by way of a full fledged trial. Though plaintiffs claim that the properties now sought to be included are also joint family ancestral properties, the said statement has to be corroborated and substantiated during trial. Initial burden is on the plaintiffs. Once the said initial burden is discharged, the onus would shift on the

petitioner-defendant. Therefore, it is equally incumbent on the part of the defendant to lead rebuttal evidence to discharge his burden and establish that the properties covered under the amendment application are his self acquired properties. Without having recourse to this adjudication process, neither these properties can be held to be ancestral properties nor self acquired properties. Therefore, the amendment of plaint is absolutely necessary. The learned Judge, though has not elaborately discussed, but has rightly allowed the application thereby relegating both the parties to trial. Merely because the proposed amendment may cause some inconvenience to the petitioner-defendant, on an assumption that it is his self acquired properties cannot be a ground to reject the amendment application. The judgment cited by the learned

counsel for the petitioner is not applicable to the present case on hand.

The writ petition is devoid of merits. Accordingly, stands rejected.

Sd/-
JUDGE

*alb/-