Karnataka Civil Judge (Mains) 2022

Law Paper II · compulsory paper

Framing of Issues and writing Judgment in Civil Cases · Date: 08.10.2022 · Time: 10.00 AM to 1.00 PM · Maximum Marks: 100

1. Frame proper issues on the basis of following pleadings. 10 Marks

GIST OF PLAINT

The plaintiff entered into an agreement to sell with the defendant in respect of a residential house bearing House No.428/7, situated at Sadashiva Nagara, Belagavi, to purchase the same for Rs.50,00,000/- and paid the sale advance of Rs.10,00,000/- to the defendant, vide sale agreement dated 10.09.2013. On 23.03.2015 plaintiff and defendant mutually agreed to cancel the said sale agreement and refund the sale advance. At the time of cancellation of sale agreement, defendant repaid a sum of Rs.7,40,000/- to the plaintiff, out of sale advance amount of Rs.10,00,000/- and executed an acknowledgment of debt on 23.03.2015, by agreeing to repay the balance amount of Rs.2,60,000/- within one year with interest at the rate of 12% per annum. Inspite of repeated request and issuance of legal notice, defendant failed to repay the said amount. On the date of filing the suit, a sum of Rs.4,45,000/- is due from the defendant, including the interest.

With these pleadings, plaintiff claimed a decree for recovery of Rs.4,45,000/- from the defendant with interest at the rate of 12% per annum from the date of suit till realization of entire decretal amount.

GIST OF WRITTEN STATEMENT

The defendant, in his written statement, admitted the sale transaction between him and plaintiff, execution of sale agreement dated 10.09.2013 and receiving Rs.10,00,000/- from the plaintiff as sale advance. The defendant also admitted the mutual agreement between them to cancel the sale transaction. The defendant denied other plaint averment. According to the defendant, he has repaid entire sale advance amount of Rs.10,00,000/- to the plaintiff on 23.03.2015 and not due to pay any amount. The defendant further contended that for cancellation of sale agreement, his signatures were obtained on blank papers and by fraud and misrepresentation acknowledgement of debt is created. As the cancellation of sale agreement is on 23.03.2015, suit filed in the year 2021 is barred by limitation. On all these grounds, defendant prayed for dismissal of the suit with costs.

2. Frame proper issues on the basis of following pleadings. 15 Marks

GIST OF PLAINT

The plaintiff is the absolute owner of the suit 'A' schedule property, i.e. 2 acres 23 guntas in Sy.No.68 of Navile village of Chennarayapatna Taluk, having purchased the same from the defendant vide registered sale deed dated 02.04.2005. After selling 2 acres 23 guntas in Sy.No.68, defendant retained 1 acre 17 guntas with him, which is on the southern side of the suit 'A' schedule property. Recently when the plaintiff got measured the suit 'A' schedule property, he came to know that the defendant has encroached 17 guntas of land on the southern side, which is described as the suit 'B' schedule property in the plaint. After encroachment of the suit 'B' schedule property, defendant has illegally put up the temporary shed and barbed wire fence. When the plaintiff requested the defendant to remove the encroachment and hand over the possession of the suit 'B' schedule property, defendant refused the

same and denied the plaintiff's title over the suit 'A' schedule property, which made the plaintiff to file the present suit.

On all these grounds, plaintiff claimed a decree to declare him as the absolute owner of the suit 'A' schedule property and for mandatory injunction directing the defendant to remove the temporary shed and barbed wire fence put up in the suit 'B' schedule property and for vacant possession of the suit 'B' schedule property from the defendant.

GIST OF WRITTEN STATEMENT

The defendant, in his written statement, denied all the plaint averments, including the plaintiff's title and ownership over suit 'A' schedule property, alleged encroachment of suit 'B' schedule property by the defendant and he illegally putting up the temporary shed and barbed fence. According to the defendant, he has sold 2 acres 06 guntas land, out of 4-00 acres in Sy.No.68 to the plaintiff and retained 2 acres 34 guntas with him. In the sale deed dated 02.04.2005, the plaintiff has wrongly shown the measurement of the property sold to him as 2 acres 23 guntas, instead of 2 acres 06 guntas. The suit 'B' schedule property was not sold to the plaintiff and it has been in possession and enjoyment of the defendant. In the alternative, defendant contended that he has acquired title over the suit 'B' schedule property by adverse possession, because of his continuous, uninterrupted and hostile possession. The defendant further contended that vide sale deed dated 17.07.2014, he has sold 2 acres 34 guntas in Sy.No.68 to one Joseph D Souza and handed over the possession to him. Hence, said Joseph D Souza is a necessary party to this suit. The defendant further contended that suit is not properly valued and requisite Court fee is not paid on the plaint. On all these grounds, defendant prayed for dismissal of the suit with costs.

3. Write a Judgment on the basis of following pleadings, oral and documentary evidence, by giving valid and cogent reasons: (Provision of law, which have been kept blank, shall be stated in the judgment) 75 Marks

PLAINT

The suit property described in the plaint schedule is 08 guntas of land with two storied residential house in Sy.No.24/5 of Navanagara, Bagalkot. The plaintiff is the married daughter of Late Ranganna and younger sister of the defendant No.1 and 2. The plaintiffs' marriage was performed on 17.06.2002. Their family was owning ancestral property measuring 3 acres in Mudhol Taluk and plaintiff's father Ranganna and these defendants have jointly sold the same vide sale deed dated 21-12-2002. From the said sale proceeds, the suit property was purchased by their father Ranganna, vide sale deed dated 25.07.2003 and the suit property is their joint family property. Father of the plaintiff and defendants Ranganna died on 31.10.2011. After the death of their father, defendants have entered their name in the revenue records of the suit property on the basis of the Will dated 27.09.2011. The alleged Will dated 27.09.2011 is created and concocted by the defendants, just few days before the death of their father, to grab the suit property. The plaintiff requested the defendants for partition and separate possession of her share over the suit property. The defendants have refused to allot the plaintiff's share, which made her to file the present suit.

On all these grounds, plaintiff claimed a decree for partition and separate possession of her 1/3rd share over the suit property.

WRITTEN STATEMENT

The defendant No.1 and 2, in their written statement, admitted the relationship between them and denied other plaint averments about the suit property as their joint family property and plaintiff having share over the same. According to the defendants, to perform the marriage of this plaintiff in the year 2002, their father borrowed the hand loan from his friends and to repay the said loan, they have sold their ancestral property in Mudhol Taluk. The defendants' father Ranganna was working as a primary school teacher and retired during April 2003. From his retirement benefits and from his own earnings, defendants' father purchased the suit property vide sale deed dated 25.07.2003. The suit property was the self acquired property of father of plaintiff and defendants Ranganna. The defendants have looked after their father and out of his love and affection, he bequeathed the suit property in favour of the defendants vide registered Will dated 27.09.2011. After the death of their father, revenue records of the suit property changed in the names of these defendants on the basis of the Will dated 27.09.2011 and they are enjoying the suit property as its absolute owners. The plaintiff has no right, title, interest and share over the suit property. On all these grounds, defendants prayed for dismissal of the suit with costs.

ISSUES

1. Whether the plaintiff proves that the suit property is their joint family property and that she has got right to claim share over the same?
2. Whether the defendants prove that the suit property is the self acquired and absolute property of their father, Ranganna?
3. Whether the defendants prove that their father, Ranganna has executed a registered will dated 27.09.2011 bequeathing the suit property in their favour and thereby, they became the absolute owners of the suit property?
4. Whether the plaintiff is entitled for a decree for partition and separate possession of her share over the suit property?
5. What order or decree?

EVIDENCE ON BEHALF OF THE PLAINTIFF:

The plaintiff, who was examined as PW.1, deposed about the relationship between the parties and suit property is their joint family property, as their father, Ranganna purchased the same by selling the ancestral properties situated at Mudhol. PW.1 further deposed that she has got legitimate share in the suit property as the daughter of Late Ranganna and defendants had refused to allot her share, inspite of repeated request and demands made by her. PW.1 further deposed that the Will relied upon by the defendants, said to have been executed by their father Ranganna, was created and concocted by the defendants, in order to grab the suit property. PW.1 further deposed that she was favorite of her father and there was no reason for her father to execute the will in favour of the defendants, by excluding her.

During the course of her cross examination, PW1 admitted that to perform her marriage during the year 2002, her father had borrowed hand loan from their family friends. PW.1 denied that for repayment of the said loan, their ancestral properties were sold. PW.1 admitted that sale of ancestral property by her father and these defendants were not disputed and challenged by her at any point of time. PW.1 admitted that her father was working a teacher in government primary school and retired during April 2003. PW.1 also admitted that, as her father has served as a teacher for more than 35

years, he received substantial amount as retirement benefits. PW.1 denied that her father Ranganna was hale and healthy and had absolutely no ailments. PW1 admitted that her father was never hospitalized and his mental condition was stable till his death. PW1 denied the signature on Ex.D1 Will of her father Ranganna. But, she admitted that her father used to sign in English. PW1 admitted that her father and these defendants have performed her marriage. PW.1 admitted that after her marriage she stayed in her husband's house at Hungund and these defendants used to look after their father during her last days. PW1 denied the suggestion that her father late Ranganna has executed Ex.D1 Will and bequeathed suit property in favour of defendant No. 1 and 2.

The plaintiff produced the property extract of the suit property as per Ex.P.1, which show that suit property was initially standing in the name of Late Ranganna and names of defendant No. 1 and 2 were entered as the owners of suit property on the basis of the registered Will dated 27.09.2011.

EVIDENCE ON BEHALF OF THE DEFENDANTS:

The defendant No.2, who was examined as DW.1, in his evidence admitted the relation between them and denied other plaint averments. DW.1 further deposed that they have performed the marriage of the plaintiff and for meeting the marriage expenses, they have borrowed the hand loan from their family friends. DW.1 further deposed that to repay the said loan they were constrained to sell their ancestral property at Mudhol Taluk. DW.1 further deposed that his father has served as Primary school teacher for about 35 years and retired during the year 2003 and from his retirement benefits, he purchased the suit property just after his retirement. DW.1 further deposed that he and defendant No.1 were looking after their father during his last days, where as plaintiff was staying at Hungund with her husband. DW.1 further deposed that their father, Ranganna, when he was in a sound disposing state of mind, had executed the registered Will dated 27.09.2011 and bequeathed the suit property in their favour. DW.1 identified the signatures of his father and attesting witnesses found on the Ex.D1 Will, by saying that he was personally present at the time of execution of the said Will. DW.1 further deposed that on the basis of the said Will, they became the absolute owners of the suit property and plaintiff has no right to claim share over the suit property.

During the course of his cross examination, DW1 admitted that their family owned ancestral property at Mudhol and it was sold during the year 2002. DW.1 also admitted that suit property was purchased about six months after the sale of their ancestral property. DW.1 said that he was not aware about the amount of loan borrowed for plaintiff's marriage and sale consideration amount for which their ancestral property was sold. DW.1 also admitted that their father used to receive the agricultural income from the ancestral properties at Mudhol. DW.1 also admitted that their father Ranganna had no ill will against the plaintiff and he was treating all his children equally and cordially. DW1 denied the suggestion that late Ranganna's health condition was not good about one and half years prior to his death. DW1 denied the suggestion that they have forged the signature of their father and created Ex.D1 Will in order to grab the suit property and deprive the plaintiff of her legitimate share in the suit property.

The defendants examined one Aruna, son of attesting witness to the Will, late Manjappa, as DW.2 and he deposed that, his father is no more and he is familiar with his father's signature, but he did not find the signature of his father on Ex.D1 Will. The defendants cross-examined DW.2 by treating him as a hostile witness and even during the cross-examination, DW2 denied the suggestion that his father had

signed on Ex.D1 Will as an attesting witness, by saying that his father used to sign in Kannada. Counsel for the plaintiff submitted no cross examination to DW2.

The defendants examined one Krishnamurthy, a document writer at Bagalkot as DW.3 and he deposed that he has been working as a document writer in Bagalkot since last 28 years and Ex.D.1 Will was prepared by him as per the instructions of Ranganna. DW.3 further deposed that on 27.09.2011 Ranganna come to his office along with two witnesses by name Manjappa and Venkappa and in their presence Ex.D.1 Will was read over to Ranganna and he put his signatures for the same. DW.3 identified the signatures of Late Ranganna and attesting witnesses and also his signature as a scribe on Ex.D.1 Will.

DW.3 during the course of his cross-examination, deposed that he was not present when Ex.D.1 Will was taken to the office of Sub-Registrar for Registration. DW.1 admitted that defendant No.1 and 2 were present when the Will was prepared. DW.3 said that he can not say as to who has brought attesting witnesses to his office. DW.3 admitted that Sri Venkappa, who has signed Ex.D1 as an attesting witness, was running a petty shop near his office and he has put signature for many documents prepared by him as a witness. DW.3 denied the suggestion that Ranganna was not in a sound state of mind to give instruction to him to prepare the Will. DW.3 denied the suggestion that said Will was prepared by him as per the instruction of defendant No.1 and 2.

The defendants produced registered Will dated 27.09.2011 as per Ex.D1, where in it is recited that suit property is the self acquired property of Ranganna and he was looked after by the defendants during his old age and they had performed the marriage of the plaintiff by borrowing the loan and gave her money and ornaments at the time of her marriage and she was staying comfortably in her husband's house and out of his free will, love and affection, he had bequeathed the suit property in favour of the defendants. Ex.D2 is the death certificates of Late Ranganna, which shows that he died on 31.10.2011.

HIGHLIGHTS OF ARGUMENT FOR THE PLAINTIFF:

> There is no dispute about the relationship between the plaintiff and the defendants and their family having ancestral property at Mudhol.

> There is also no dispute about sale of ancestral property and purchase of suit property within few months. The defendant No.2/DW1 admitted that their father Ranganna was getting agricultural income from the ancestral property at Mudhol till it was sold.

> The plaintiff discharged the initial burden of proving the suit property as the property purchased from the sale proceeds of the ancestral property and onus shift upon the defendants to prove that the suit property was purchased from the self earning of their father. But, the defendants failed to let in any evidence to prove the same.

> The burden of proving the issue No.3 is on the defendants. Section _____ of the Indian Succession Act, 1925 describes as to how a Will has to be executed and Section _____ of the Indian Evidence Act, 1872 describes as to how execution of the will has to be proved. As per the above provisions Will shall be attested by at least two witnesses, each of whom has seen the testator signing the Will and the said Will has to be proved by examining at least one attesting witnesses. Both the attesting witnesses to Ex.D1 Will were not examined by the defendants.

> Son of one of attesting witness, though examined as DW.2, has not identified his father's signatures. Therefore, evidence of DW.2 will not help the defendants to prove Ex.D.1 Will, as

required under Section _____ of the Indian Evidence Act, 1872.

> Evidence of DW.3 can not be considered to prove the Ex.D.1 Will because he is only a scribe. When Section _____ of the Indian Evidence Act, 1872 mandates for examining at least one of the attesting witnesses to prove the Will, evidence of scribe can not be considered to prove the execution of the Will.

> Ex.D.1 Will is surrounded by suspicious circumstances and it is unnatural Will, as one of the natural heirs of Late Ranganna i.e. plaintiff has been excluded from inheriting the suit property, without any valid reason and also due to the presence of the beneficiaries of the Will at the time of its execution.

HIGHLIGHTS OF ARGUMENT FOR THE DEFENDANTS:

> The plaintiff/PW.1 admitted that to perform her marriage, her father borrowed the loan from his family friends.

> Sale of ancestral property by the defendants and their father Ranganna was few months after the plaintiff's marriage to repay the said loan.

> The plaintiff/PW.1 admitted that her father retired during April 2003 and received substantial retirement benefits. Purchase of suit property was few months after the retirement of Ranganna and from his retirement benefits.

> If the suit property is purchased from the sale of ancestral property, it would have been purchased jointly in the name of these defendants and their father Ranganna.

> When Ranganna having self acquired income is admitted and property was purchased in his name alone, the purchase of suit property by him presumed to be from his own earnings and burden is upon the plaintiff to prove that the suit property was purchased from the sale proceeds of ancestral property. The plaintiff has not let in any evidence to prove the same.

> As both the attesting witnesses are not available to prove Ex.D.1 Will, defendants are invoking Section _____ of the Indian Evidence Act, 1872.

> Even though DW.2 has not supported the defendants and failed to identify the signature of his father on Ex.D.1, there is evidence of DW.3 to prove the Ex.D.1 Will. DW.3 has deposed about the execution of D1 Will by Ranganna and also identified his signatures and signatures of both the attesting witnesses. Therefore, evidence of DW.3 can be considered as evidence of a witness as required under Section _____ of the Indian Evidence Act, 1872.

> The recitals of the Ex.D1 Will offer valid explanation for excluding the plaintiff and bequeathing the suit property only in favour of the defendants. Therefore, it is not an unnatural will. There are no suspicious circumstances surrounding the execution of Ex.D.1 Will in favour of these defendants.