

KABG040001102020



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC,
AT : BELAGAVI.**

PRESENT : Smt. Preeti L. Malavalli, B.B.A.,LL.B (Hons.)
Prl. Civil Judge & JMFC.,
Belagavi.

DATED THIS THE 13TH DAY OF SEPTEMBER-2024

ORIGINAL SUIT NO.54/2020

PLAINTIFF :

1)	Shri. Dattu Bhima Kamble, Age : 69 Years, Occ : Nil, R/o : H. No.6, New Mochiline, Camp Belagavi-590001.
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Vs.

DEFENDANTS :

1)	Shri. Prakash Deendayal Naidu, Age : 55 Years, Occ : Service, R/o : Ambarnath Kochgaon, Kamlaker Nagar, Room No.10, Mumbai-62, Maharashtra State.
2)	Lucy Lancelot Manki, Age : 52 Years, Occ : Housewife, R/o : B.P.T. Land, Plot No.29, Mahim Reti Bandhar, Mahim, Mumbai-400016, Maharashtra State.

PARTIES TO I.A.NO.II**Applicants/Defendants :**

1)	Shri. Prakash Deendayal Naidu & another.
	(By Shri. S. R. Hiremath, Adv.)

Vs.**Opponent/Plaintiff :**

1)	Shri. Dattu Bhima Kamble.
	(By Shri. D. D. Patil, Adv.)

1.	Provision under which application is filed	U/O.VII Rule 11(d) R/w. Sec. 151 of CPC,
2.	Relief sought for	Rejection of plaint
3.	The date on which the application is filed	03.11.2020
4.	Number of application	II
5.	The date on which the objections are filed by different opponent	16.01.2021
6.	The date on which the orders were passed on the said application.	13.09.2024.

**ORDERS ON I.A.NO.II FILED BY DEFENDANTS U/O.VII RULE
11(d) R/W. SEC.151 OF CODE OF CIVIL PROCEDURE**

The defendants have filed the present application seeking rejection of plaint U/O. VII Rule 11(d) R/w. Sec.151 of C.P.C. on the ground that the present suit is not maintainable in the eye of law and it is barred by law. In the affidavit annexed to the application, it is stated that the plaintiff has filed the present suit against the defendants seeking the relief of permanent injunction in respect of the suit schedule property, but it is fact that the plaintiff is tenant under the defendants who are the owners of suit property, as such the plaintiff cannot file a suit for permanent injunction to restrain the defendants who are lawful owners of the property, from interfering with plaintiff's peaceful possession and enjoyment over suit schedule property. That the plaintiff being a tenant, he cannot maintain a suit for the relief of permanent injunction against true owners. That the relief claimed by plaintiff is barred by law and not maintainable, hence the plaint deserves to be rejected.

2. On the other hand, the learned counsel for plaintiff has filed objection to the said application and stated that the defendants have not stated in their application as to how the plaint is barred and which law bars the same. That the defendants have to evict the plaintiff by due process of law as the plaintiff being tenant, is

residing in the suit property since decades. That to sustain and justify the order of rejection of plaint, one must see only the averments of the plaint and the Court should exercise the said duty with circumspection. It is further stated that since the defendants tried to evict the plaintiff forcibly and illegally from the suit property, the plaintiff has filed this suit and hence the plaint cannot be rejected.

3. Heard both sides. Perused the application, objection, plaint and documents on record.

4. The following points arise for my consideration :

- i) Whether the application deserves to be allowed ?
- ii) What order ?

5. My answer to above points are as under :

Point No.1 : In the Negative.

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

REASONS

6. **Point No.1 :** The gist of the application filed by the defendants is that the suit of plaintiff is not maintainable and the provision under which the application is maintained under Order VII Rule 11 (d) of C.P.C. which states that where the suit appears from the statement in the plaint to be barred by any law, then the

plaint has to be rejected. But, it is well settled that such a conclusion must be drawn only from the averments made in the plaint and for that purpose there cannot be any addition or subtraction. In the present case, the defendants are admittedly the owners of the suit schedule property and the plaintiff is tenant under them. Such being the case, though the defendants are the owners, they cannot evict the plaintiff except under due process of law, which means the owner or landlord cannot disturb the possession of the plaintiff without taking steps for evicting the plaintiff tenant legally. Such being the case, the defendants have not made out as to how the suit of the plaintiff is barred by any law. The defendants have also not specified as to which law bars the suit of plaintiff. The plain reading of plaint at this stage does not make out that it is barred by any law. So far as maintainability of suit is concerned, if the defendants contend that the suit is not maintainable on any ground, the said issue can be taken up either as a preliminary issue or at the final hearing, but the said question cannot be determined at this stage. Therefore, since the defendants have not made out that the plaint is barred by any law, their application deserves to be dismissed. Accordingly, I answer **Point No.1 in the Negative.**

7. Point No.2 : For the above discussed reasons, I proceed to pass the following :

ORDER

***The application i.e., I.A.No.II filed by
defendants U/O.VII Rule 11(d) R/w.
Sec.151 of C.P.C. is hereby rejected.
No order as to cost.***

(Dictated to the stenographer directly on computer, revised by me & after corrections pronounced in the open Court on this the **13th day September-2024.**)

**(Smt. Preeti L. Malavalli)
Prl. Civil Judge & JMFC,
Belagavi.**