KABG500005492021

IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE, GOKAK.

BEFORE: Sri.Umesh S. Atnure,

B.Com.LL.B.(Spl)

O.S. No.291/2021

DATED THIS 22nd DAY OF SEPTEMBER-2025

Plaintiffs:

1. Siddavva W/o Gulappa Malali,
   Age: 60 years, Occ: Agriculture,
   R/o: Venkatapur, Tq: Mudalagi.

2. Kareppa S/o Gulappa Malali,
   Age: 26 years, Occ: Agriculture,
   R/o: Vajapayi Nagar, Mudhol,
   Tq: Mudalagi.

3. Subhash S/o Gulappa Malali,
   Age: 23 years, Occ: Agriculture,
   R/o: Venkatapur, Tq: Mudalagi.

4. Shobha W/o Basappa Bevinakoppa,
   Age: 28 years, Occ: Agriculture,
   R/o: Sital Nyamagoudar Tota, Shirol,
   Tq: Mudhol.

V/s

Defendants:

1. Basappa S/o Siddappa Malali,
   Age: 72 years, Occ: Agriculture,
   R/o: Raderahatti, Tq: Gokak.

2. Shivappa S/o Siddappa Malali,
   Age: 70 years, Occ: Agriculture,
   R/o: Venkatapur, Tq: Mudalagi.

3. Kareppa S/o Siddappa Malali,
Age: 58 years, Occ: Agriculture,
R/o: Raderahatti, Tq: Gokak.

4. Hanamant S/o Kareppa Malali,
Age: 30 years, Occ: Agriculture,
R/o: Raderahatti, Tq: Gokak.

5. Krishna S/o Kareppa Malali,
Age: 16 years, Occ: Student,
R/o: Raderahatti, Tq: Gokak
(Since minor R/by. His M/G. natural father Deft.No.3-Kareppa)

6. Basappa S/o Keshavappa @ Keshappa Ullegaddi,
Age: 55 years, Occ: Agriculture,
R/o: Raderahatti, Tq: Gokak.

PARTIES TO I.A.No.XV U/o VII RULE 11(a) OF CPC

Applicant: 1. Kareppa Siddappa Malali

.....Applicant/Defendant

Vs.

Opponents: 1. Siddavva W/o Gulappa Malali
and another

.....Opponents/Plaintiffs

ORDERS ON I.A.No.XV FILED U/o VII RULE 11(a) R/W SEC 151 OF CPC.

The defendant No.3 to 5 filed this present application U/o VII Rule 11A R/W Sec.151 CPC praying to reject the plaint as there is no cause of action.

2. In the accompanying affidavit, the defendant No.3 contended that the plaintiffs have filed this suit for partition and separate possession the suit properties against him and defendant No.4 and 5. Before filing this suit one Gulappa Siddappa Malali who is the brother of defendant No.1 to 3 filed a suit in O.S.No.570/2008 against them for partition and separate possession in respect of R.S.No.17/1A. In that suit they have appeared and filed their written statement thereafter the case is posted for evidence and the Gulappa was not appeared before the court as such, case was dismissed for default on 08.08.2012 in respect of R.S.No.17/1A. Therefore already the deceased Gulappa filed a suit the second suit by the legal heirs of deceased Gulappa is not maintainable in the eye of law there is no cause of action arose to the plaintiff in respect of R.S.No.17/1A as such suit is not maintainable one hence, prayed to reject the plaint.

3. The plaintiff filed objections to this application by denying the entire contention of the defendants. Further contended that the deceased Gulappa Siddappa Malali who is the husband/father of the plaintiff has filed a suit in O.S.No.570/2008. During the pendancy of the said suit the Gulappa Siddappa Malali died but the fact of filing that suit was not within their knowledge and he came to know about the said suit when the defendants have filed this present application. Further in O.S.No.570/2008 no relief was granted to the Gulappa as the said suit was dismissed for default on 08.08.2012, and the said suit was not decided on merits and they are not parties to the suit in O.S.No.570/2008 as such, this application is not maintainable one. This present suit is filed by them in respect of two properties and in O.S.No.570/2008 only one property bearing R.S.No.17/1A and this present suit is filed for two properties as such, this application is not maintainable one. Only to harass them the defendants have filed this present application, as such, prayed to dismiss the application.

4. Heard the learned counsel for the defendants plaintiff counsel filed written arguments I have perused the same.

5. The points that arise for my consideration are;

1. Whether the defendant No.3 to 5 made out grounds to reject the plaint as there is no cause of action?

2. What order?

6. My findings on the above points are:

POINT No.1: In the Negative

POINT No.2: As per final order

for the following;

REASONS

7. **POINT No.1:** When this present suit is posted for steps against the proposed defendants at the time this present application is filed. The plaintiffs are filed this present suit against the defendants for partition and separate possession in respect of R.S.No.17 totally measuring 22 acre 26 guntas PK 01 acre 39 guntas Net 20 acre 27 guntas out of it 04 acre 11 guntas and R.S.No.56/1ಅ/1+1/ಅ/2 measuring 07 acre 35 guntas. The plaintiffs contended that the original propositus Siddappa and his wife Hanamavva died long back living behind five sons namely Gulappa Basappa i.e., defendant No.1, Shivappa i.e., defendant No.2,

Mahadevappa and Kareppa i.e., defendant No.3. Now the Gulappa died living behind his wife Siddavva two sons Kareppa and Subhash and one daughter Shobha who are plaintiff No.1 to 4 Mahadevapa died issue-less and Kareppa had two sons namely Hanamant and Krishna who are the defendant No.4 and 5 and the suit properties are their ancestral joint family properties till today no partition was effected and the defendants have denied their share in the suit properties as such, they have filed this suit.

8. The defendant No.3 to 5 contended that already the husband and father of plaintiff No.2 to 4 by name Gulappa filed a suit for partition and separate possession in respect of R.S.No.17/1A in O.S.No.570/2008 against them and the said suit was dismissed now the present suit is filed by the legal heirs of Gulappa as such, suit is not maintainable one.

9. It is settled principle of law that when the application is filed U/o VII Rule 11(a) of CPC the court as at look into only to plaint averments and not the contentions taken by the defendants. The provision of Order VII Rule 11 says that

a) If the suit does not disclose a cause of action;

b) Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the court, fails to do so;

c) Where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

d) Where the suit appears from the statement in the plaint to be barred by any law;

e) Where it is not filed in duplicate;

f) Where the plaintiff fails comply with the provisions of Rule 9. then the court is to be reject the plaint.

10. In this suit the defendant No.3 to 5 contended that already the father of plaintiff No.1 to 3 and husband of plaintiff No.1 filed a suit in O.S.No.570/2008 and the said suit was came to be dismissed the plaintiffs are the legal heirs of deceased Gulappa as such, suit is not maintainable one. This contention of the defendant No.3 to 5 is not acceptable one because in O.S.No.570/2008 the suit is not decided on merits and the rights of the parties are not decided the said suit was came to be dismissed for default. Under such

circumstances, the contentions taken by the defendant No.3 to 5 is not acceptable one. The learned counsel for the defendant No.3 to 5 relied on the authorities reported in *2025 (1) KCCR SN 35 (SC) Cuddalore Powergen Corporation Ltd. Vs M/s. Chemplast Cuddalore Vinyls Limited and others. 2023 (3) AKR 545 in between P. Devaraj and others Vs Kamalamma and others.* I have perused the authorities which are relied by the learned counsel for the defendant No.3 to 5. The said authorities are not applicable to this present case on hand as such, same are not fulfilled for the defendants in support of their contention. Further the learned counsel for the plaintiff relied on the authority reported in *2023 LiveLaw (SC) 1033 in between ELDECO HOUSING AND INDUSTRIES LIMITED Vs ASHOK VIDYARTHI AND OTHERS.* Where in it is held that while considering an application U/o VII Rule 11(a) of CPC no amount of evidence or merits of the controversy can be examined at the stage of decision of the application U/o VII Rule 11(a) of CPC. The authority relied by the plaintiffs is applicable to the present case on hand as this present application is filed U/o VII Rule 11(a) of CPC and whatever contentions taken by the defendants in this present application cannot be considered while deciding an application U/o VII Rule

11(a) of CPC. Hence, I am of the consider view that the defendant No.3 to 5 have not made out any grounds to reject the plaint. Hence, I answered the point No.1 in the Negative.

11. POINT No.2: For the aforesaid findings, I proceed to pass the following:

ORDER

The application filed by the defendant No.3 to 5 U/o VII Rule 11(a) R/W Sec.151 of CPC filed at I.A.No.XV is hereby rejected.

Call on for plaintiff evidence by 28.10.2025.

(Dictated to the Stenographer, transcribed by him on computer, revised, corrected and then pronounced by me in the open Court on this the 22nd day of September. 2025.)

UMESH S ATNURE
Digitally signed by UMESH S ATNURE
Date: 2025.09.22 17:36:49 +0530

(Umesh S. Atnure)
Prl. Senior Civil Judge Gokak.