

KABK210002032023



IN THE COURT OF PRI. CIVIL JUDGE & J.M.F.C, MUDHOL,
AT: MUDHOL.

PRESENT: Sri. Lagama S.Hukkeri.

B.A., LL.B(Spl),

Pri. Civil Judge & JMFC., Mudhol.

Dated this the 29th day of July - 2024

O.S.No.41/2023

Plaintiff:

Sri. Prakash S/o.Appasab @ Appanna
Panchagavi.

(By Sri.MSH, Advocate)

-V/s-

Defendants:

Smt. Yallawwa W/o.Appasab @ Appanna
Panchagavi & others.

(Deft. 1 to 4 By Sri.PMV, Advocate)
(Deft. 5 by Sri.KNK Advocate)

:: I.A.No.II ::

**Applicants/
Defendant No.5:**

Smt. Mayawwa W/o. Govindappa Pujari.
Age: 40 years, Occ: Coolie & Household work,
R/o. Baragi, Tal: Mudhol, Dist. Bagalkot.

-V/s-

**Opponent/
Plaintiff:**

Sri. Prakash S/o.Appasab @ Appanna
Panchagavi. Age: 43 years, Occ: Coolie,
R/o. Baragi, Tal: Mudhol, Dist. Bagalkot.

:: ORDER ON IA NO.III filed U/Or. VII RULE 11 (a)
& (d) R/W Sec. 151 OF CPC ::

The applicant/defendant No.5 has filed this application U/Or. VII Rule 11(a) & (d) R/w Sec. 151 of C.P.C. praying to reject the plaint as against defendant No.5.

2. In the affidavit accompanying the application filed by the applicant/defendant No.5 contended that there is no cause of action for the plaintiff to file the present suit and plaintiff has filed present suit without any reason only with an intention to extract money and cause harassment to the defendant. Originally Sl.No.4 property of suit schedule "B" of Baragi village bearing VPC No.495 (Ward No.2) belongs father of plaintiff and defendant Nos. 2 and 3 and husband of defendant No.1 by name deceased Appasab Urf Appanna S/o. Hanappa Panchayavi and it is his self acquired property and said deceased Appasab Urf Appanna S/o.Hanamappa Panchayagi for the family necessity intended to sell the said open space bearing VPC No.495 (ward No.2) and husband of defendant No.5 by name Sri.Govindappa Maruti Pujari agreed to purchase the same on 27-10-2009. That plaintiff and defendant No.1 and 2 have all voluntarily sold the said property by executing registered sale deed on the same day before Sub Registrar Mudhol and since then husband of defendant No.5 was in possession and enjoyment of the same without interruption from anybody and after death of husband of

defendant No.5, his family members are in possession of said property and therefore there is no cause of action arose to the present suit and same is liable for rejection.

It is further contended that plaintiff, defendant No. 1 and 2 and deceased Appasab Urf Appanna S/o.Hanamappa Panchagavi have sold the SI No.4 property of suit schedule "B" to the husband of defendant No.5 and therefore the suit of the plaintiff is barred under Sec. 58 of Limitation Act as plaintiff has not filed present suit within 3 years from the date of registration of sale deed. Further as per Article 109 of Limitation Act, if father has alienated the ancestral property, suit has to be filed within 12 years challenging the said alienation and husband of defendant No.5 purchased aforesaid property about 12 years and 8 months back and hence suit is barred under article 111 of Limitation Act and plaint is liable for rejection as against defendant No.5 under Order 7 Rule 11(d) of CPC. The period of limitation is 12 years to file the suit and already 12 years and 8 months have lapsed and suit is barred U/s.58 and 109 of Limitation Act and accordingly not maintainable U/Or. 7 R.11(d) of CPC. If the present application is allowed no loss or harm will be caused to the plaintiff on the contrary defendant No.5 will be put to irreparable loss. On these grounds prayed to reject the plaint as against defendant No.5.

3. On the other hand, the plaintiff has filed objections to present application denying all the contents and inter-alia contended that, the plaintiff has filed present suit for partition and separate possession against defendants with respect to suit schedule B properties claiming 1/4th separate share and said properties are ancestral joint family properties of plaintiff and defendant No. 1 to 4. The defendant No.5 is no way concerned to the family of plaintiff and she has illegally got entered her name to the SI No.4 house property bearing VPC No.495 of suit schedule "B". The the suit schedule "B" properties are the ancestral joint family properties of plaintiff and defendant Nos. 1 to 3 and plaint cannot be rejected as against defendant No.5 without due trial. Further contended that the plaintiff has filed present suit for the relief of partition and therefore Limitation Act not applicable to present suit. The suit schedule "B" properties are the joint family properties and till today there is no partition so far and due to difference of opinion between plaintiff and defendant No.1 to 3, the plaintiff has filed present suit for partition and separate possession. Further contended that if the present application is rejected no loss will be caused to the defendant No.5 and if application is not rejected plaintiff will be put to irreparable loss. On these grounds prayed to reject the present application with costs.

4. Heard the arguments of both sides and by perusal of pleadings, application and documents on record, following points arise for my consideration as under:

: P O I N T S :

1. Whether the applicant/defendant No.5 has made out sufficient grounds to reject the plaint U/Or. 7 Rule 11 (a) & (d) of CPC ?

2. What order?

5. My findings to the above points are as follows:

Point No. 1: In the **Negative**,

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

: R E A S O N S :

6. **POINT NO.1:-** I have already narrated the facts stated in the affidavit annexed to the application and the objections filed by the plaintiff to the above application.

It is well settled principles of law that, while considering the application for rejection of plaint, plaint averments alone shall be looked into and not the contentions raised by the defendants in the written statement.

The Hon'ble Supreme Court in its decision in **Civil Appeal No.3500/2018 between Chhotanben and another -Vs- Kirit bhai Jalkrushnabhai Thakkar and others**, has observed that, " for the purposes of deciding an application under clauses (a) and (b) of Rule 11 of Order VII CPC, the averments in the plaint are

germane: the pleas taken by the defendants in the written statement would be wholly irrelevant at the stage.”

The Hon’ble High Court of Karnataka in **Civil Revision Petition No.100022/2018 between Venkappa @ Venkangouda -Vs- Ramanagouda & others**. At para No.13 held that:

“ it is clear that to reject a plaint exercising power U/Or.VII Rule 11(a) of CPC what is require to be seen is only the averments of the plaint and not the defence.”

It is well established principle of law that, the plaint shall be rejected only on the basis of plaint averments and not by the contentions raised by the defendant in his written statement.

7. The learned counsel for defendant No.5 vehemently argued that there is no cause of action arose to present suit as plaintiff, defendant No.1 and 2 and deceased Appasab @ Appanna S/o Hanamappa Panchganvi have sold SI No.4 property of suit schedule “B” to her husband Govindappa Maruti Pujari and suit of the plaintiff is barred under Article 58 and 109 of Limitation Act.

8. On the other hand, the learned counsel for the plaintiff argued that, the plaintiff has filed present suit for the relief of partition and separate possession with respect ancestral joint family properties as described in the suit schedule “B” and cause of action for the present suit arose in the last week of January 2023, when plaintiff

through elders requested for partition and allotment of 1/4th share to him in the suit schedule B properties and defendants have refused for the same. Further argued that plaint cannot be rejected as against defendant No.5 without due trial. The plaintiff has filed present suit for the relief of partition and as such Limitation Act is not applicable to the present suit.

9. The present suit is filed by the plaintiff against the defendants for the relief of partition and separate possession with respect to suit schedule "B" properties. The plaintiff has contended that, the suit properties are the ancestral joint family properties of plaintiff and defendant No.1 to 3 and he has got 1/4th share in the same and there is no partition so far with respect to suit schedule "B" properties. The averments of plaint para no.7 does disclose that cause of action to present suit arose in the last week of January 2023, when plaintiff through elders requested defendants for partition and allotment of 1/4th share to him in the suit schedule "B" properties and defendants have refused for the same.

10. The defendant No.5 contended that suit of the plaintiff is barred by limitation as per Article 58 and 109 of Limitation Act. The plaintiff in plaint Para No.5 averred that defendant No.5 nowhere related his family and she got mutated her name in the records of SI No.4 property of suit schedule "B" on the basis of false documents.

On the perusal of sale deed produced by the defendant No.5, it reveals that SI No.4 property of suit schedule "B" was purchased by husband of present defendant No.5 by name Govindappa Maruti Pujari from present plaintiff, defendant No.1 and 2 and deceased Appasab Hanamappa Panchaganvi for valuable consideration through registered sale deed dated 27.10.2009. The plaint is cleverly drafted and plaintiff has not sought any relief with respect to said property. While considering the application under Order 7 Rule 11 of CPC, the court has to consider only plaint averments and plaint relied documents and not written statement and documents relied by the defendant.

11. In the present suit, defendant No.5 sought rejection of plaint as against her in respect of SI No.4 property of suit schedule "B". The Hon'ble Supreme Court of India in a decision reported in **(2019) 7 SCC 158 between Madhav Prasad Aggarwal and Another versus Axis Bank Limited and Another** has observed as under:

"10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the

learned Single Judge rejected this objection raised by the Appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in Sejal Glass Ltd is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) of CPC stating that the plaint disclosed no cause of action. The Civil Court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the Civil Court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.

....

12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory

requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part...".

12. The present suit is filed by plaintiff for the relief of partition and separate possession against the defendants with respect to several properties as described in the suit schedule "B" contending that said properties are ancestral joint family properties of plaintiff and defendant No.1 to 3 and he is entitled to 1/4th share in the same. The present defendant No.5 by way of present application sought rejection of plaint as against herself with respect to SI No.4 property of suit schedule "B". So it amounts to partial rejection of plaint, which is not permitted under the law. The plaint should be rejected as a whole and not in part. Hence, aforesaid decision of Hon'ble supreme Court of India is aptly applicable to facts of present suit and plaint cannot be partially rejected as against defendant No.5 with respect SI No.4 property of suit schedule 'B'. Hence I answer point No.1 in **Negative**.

13. POINT NO.2:- For the foregoing discussion on point No.1, I proceed to pass the following:

:: ORDER ::

***The interim application No.III filed
by applicant/defendant No.5 under***

***Order VII Rule 11(a) & (d) R/w. Sec. 151
of CPC is hereby rejected.***

No order as to costs.

(Dictated to the stenographer directly on the computer typed by him, corrected and then pronounced by me in the open court this the day of 29th day of July - 2024)

(Lagama S Hukkeri.)
Prl. Civil Judge & J.M.F.C.,
Mudhol.