

KABK210006312023



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

**PRESENT:**

**SMT.SARASWATI HOTAKAR,**

**B.A., LL.M.,**

**Addl. Civil Judge & JMFC., Mudhol.**

**Dated this the 28<sup>th</sup> day of March-2024**

**O.S.No:94/2023**

**Plaintiff/s:**

1. Irappa S/o Pandappa Balulad.

**- V/s -**

**Defendant/s:**

1. Basappa S/o Hanamappa Balulad.

**I.A.No.3**

**Applicants/Defendants:**

1. Basappa S/o Hanamappa Balulad.  
(Since dead by his LR's
- 1A) Smt. Mahadevi W/o Basappa Balulad.  
Age: 38 years, Occ: Household work
- 1B) Venkatesh S/o Basappa Balulad,  
Age: 17 years, Occ: Student,
- 1C) Tejas S/o Basappa Balulad.  
Age: 16 years, Occ: Student,  
Since defendant No 1B) and C) are minors,

Represented by their M/G, next friend and natural,  
mother defendant No1A).

All are R/o. Kishori village, Tal: Mudhol,  
Dist: Bagalkot.

**- Vs -**

**Opponent/plaintiff:**

1. Irappa S/o Pandappa Balulad,  
Age: 46 years, Occ: Agriculture,  
R/o: Kishori village, Tal: Mudhol.

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**Applicants by Sri.A.S.Y., Advocate**  
**Opponents by Sri.M.B.H, Advocate**

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**ORDERS ON IA No.III FILED UNDER ORDER VII**

**RULE 11(a) R/w. Sec. 151 of OF CPC**

The applicants/defendants No 1(a) to 1(c) have filed I.A.No III U/Or. VII Rule 11(a) R/w. Sec. 151 of CPC seeking to reject the plaint as it does not disclose cause of action, in the interest of justice.

**2.** In the affidavit annexed to the application, the defendant No.1(a) has contended that, the survey authority after conducting the boundary measurement of lands of plaintiff and defendants prepared map stating that the defendants have encroached upon the property of the plaintiff and these defendants preferred an appeal before ADLR,

Mudhol under Appeal No.HBC/APL/MDL/SR-10/2019-20. The ADLR, Mudhol on 14/02/2020 has granted the stay order to the measurement conducted and encroachment sheet prepared by the Taluka Surveyor, Mudhol. Therefore, in view of present stay order by ADLR, Mudhol plaintiff has no cause of action to file the present suit. Plaintiff knowing fully about the stay order granted against him has falsely filed the suit to harass the defendants. Hence on these and other grounds prays to reject the plaint.

**3.** The opponent/plaintiff has filed objections to the application and denied all the averments of the affidavit and contended that at Para No 3 of affidavit of the defendant No 1(a) it has stated that after conducting the boundary measurement of lands of the plaintiff and defendants by the Taluka Surveyor, Mudhol and after preparation of encroachment map by him, late, defendant Basappa Hanamappa Balulad preferred appeal before ADLR, Mudhol and obtained stay order for the measurement conducted by the Taluka Surveyor. Further contended that subsequently on 16/10/2023, defendants have withdrawn the said appeal, so all

interim orders have become extinguished and there is no any stay. Further contended that one deceased Hanamappa Rangappa Balulad and Basappa Hanamappa Balulad filed suit bearing O.S.No.4/2020 praying for the relief of injunction, restraining the present plaintiff and others who are the defendants in the said suit from taking possession of the suit properties without taking recourse to law. Such being the case plaintiff has filed this suit for possession of the encroached area as contended in the plaint. Since presently no appeal is pending in Survey department as such cause of action has arisen. Accordingly prays to dismissed the application with costs.

**4.** On the above pleadings, the following points arise for my consideration:

**POINTS**

1. Whether the defendant has proved that plaint is to be rejected as plaintiff has no cause of action to file the suit?
  2. What order?
- 5.** Heard the arguments of both sides.

6. I have perused pleadings, applications, objections and documents on records.

7. On careful perusal of records, my findings to the above points are as under:

Point No.1 : In the Negative,

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

**: R E A S O N S :**

8. **Point No.1:-** Before going to discussion on point No 1 it is very necessary to refer the grounds on which plaint is to be rejected.

**Order VII Rule 11 Rejection of plaint;**

The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is under-valued, 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 provision of Rule 9.

**9.** Admittedly this is a suit filed for the relief of possession of 13G's of suit land against the defendants as shown in the P.T Sheet by letter 'C' marked with Pink color to the plaintiff. The defendant has filed present application seeking to reject the plaint as required under 7 Rule 11 (a) of CPC as it does not disclose any cause of action. In the affidavit annexed to the application defendant has contended that the plaintiff has filed suit for possession against the defendants mainly basing upon report dated 02/01/2020 of Taluka Surveyor Department, Mudhol aggrieved by the said order defendants have preferred Appeal before ADLR under HBL/APL/MDL/SR-10/2019-20 and obtained stay order for the measurement report given by Taluka Surveyor, Mudhol and in view of present stay order suit is not maintainable as plaintiff has no cause of action to maintain the suit.

**10.** It is well established proposition of law that the plaint can not be rejected only when it appears from statement in the plaint to be barred as plaint does not disclose cause of action or any other grounds provided U/Or. 7 Rule 11. Even if

the expression of the statement in the plaint is given as liberal meaning, documents filed with the plaint may be looked into but nothing more. For the purpose of deciding an application under this Rule it is only the facts pleaded in the plaint which are to be taken into account and if on the basis of those facts without any of the infirmities enumerated in Rule 11 of order 7, then alone the plaint is to be rejected. Further the word cause of action denotes a bundle of facts which needs full fledge trail to decide.

**11.** For deciding where the plaint discloses cause of action or not, court has to see only the averments in the plaint and the accompanying documents relied upon by the plaintiff for the rejection of plaint, the court has also presume the facts stated in the plaint as correct. The court cannot for the determination of the application looked into defense set up by the defendant. The pleas, defense taken in the written statement are totally irrelevant. Further the defendant in his application of rejection of plaint cannot take the grounds which are already taken in his written statement.

Therefore, the cause of action was already elucidated in the body of the plaint Para No. 7 that cause of action to file

present suit arose on 21/07/2019 when plaintiff came to know the exact encroachment committed by the defendant and on subsequent date when defendant and another filed suit bearing O.S.No.4/2020. The main contention of the defendant seeking the rejection of plaint is that as per stay order by ADLR, plaint is liable to be rejected as no cause of action to maintain the suit but the plaintiff has filed memo with two documents on 07/12/2023 amongs them one is the letter dated:26/10/2023 given to ADLR, Mudhol seeking permission to withdraw the Appeal bearing No.HBC/APL/SR-10/2019-20 by one Shri. Hanamappa S/o Rangappa Balulad who is nothing but the father of deceased defendant No.1 and another document is the order copy in HBC/APL/SR-10/2019-20 dated:26/10/2023 passed by ADLR, Mudhol wherein as per the requisition given by the defendants the ADLR has dismissed the appeal preferred by the defendants as withdrawn. Therefore, in view of withdrawal of said appeal filed by the defendants challenging the measurement of Taluka Surveyor, Mudhol the application filed under order 7 Rule 11 (a) of CPC deserves to be rejected. Accordingly I proceed to answer point No.1 in the Negative.

**12. Point No.2:** For the afore going reasons, I proceed to pass the following:

**: O R D E R :**

I.A.No.III filed by defendants No. 1(a)  
to 1(c) U/o.7 Rule 11(a) R/w Sec.151 of C.P.C  
is hereby rejected.

(Dictated to the stenographer directly on computer, typed by her, transcript revised, corrected and then pronounced by me in the open court this the day of 28<sup>th</sup> day of **March, 2024**)

**(Smt. Saraswati Hotakar.)**  
Addl Civil Judge & J.M.F.C., Mudhol.



