

ORDER ON I.A.NO-II

1. This application is filed by the defendants U/O.7 Rule 11(a) R/w sec. 151 of CPC for rejection of plaint.

2. In the accompanying affidavit the defendant No.2 has stated that there was suit between the same parties in O.S.No. 4/2004 and in that the present defendants had filed counter claim and this court by its judgment dated : 31.08.2006 dismissed said suit as well as counter claim. Against the dismissal of the counter claim the defendants filed RA No. 12/2006 and the same was dismissed for non prosecution, against that order and for restoration of said appeal they filed Civil Misc. No. 14/2019 and the same is pending before the Hon'ble 1st Addl. District Judge sitting at Jamkhandi. They contended that the issue involved in the earlier suit and the present suit is same and the property and parties are also same and there is no cause of action to file the present suit. They denied the right of the plaintiffs over the suit schedule property on merit in the present application and they contended that another matter is pending before Hon'ble KAT Bangalore. They filed the present application for rejection of plaint on the ground that there is no cause of action to file this suit and the plaintiffs by showing false cause of action filed false suit. Hence they

prayed to allow the application and reject the
plaint.

3. The advocate for the plaintiffs filed objections to the application contending that already appeal filed by the defendants is dismissed. Even Misc. petition is also dismissed by the Hon'ble Senior Civil Judge Banahatti against that order, they filed Civil Misc. before 1st Addl. District Court sitting at Jamkhandi. He contended that the parties of the present suit and earlier suit are different and even extent of the property is also different. Further he contended that the cause of action to the present suit and earlier suit was different and the plaintiffs filed the present suit based of new cause of action which is shown in the plaint. Hence, he prayed to reject the application.

4. Heard and perused.

5. The following points arise for my consideration:

Point No.1-Whether the defendants have
made out grounds to allow the
application ?

Point No.2-What order ?

6. My answers to the aforesaid points are as under :

Point No. 1 : In the Negative.

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

REASONS

7. **Point No. 1** : The plaintiffs have filed this suit for permanent injunction restraining the defendants from interfering in the suit schedule properties in any manner. On careful perusal of the entire plaint averments it reveals that the plaintiffs pleaded that when they went to cut the trees situated in the suit schedule properties on 01.02.20 the defendants obstructed for the same and even they have not heeded the advice of the village elderly persons. Hence, the cause of action arose them to file the present suit on that day and they have shown he said act of the defendants as cause of action.

8. The plaintiffs have produced copy of judgment passed in O.S.No. 4/2004. On perusal of the said judgment and present plaint pleadings it is crystal clear that the cause of action of the present suit and cause of action of said suit are entirely different and it appears that the parties are also different means the present plaintiff No.5 was not a party to earlier suit and further the defendant No.2 to 4 were also not parties to earlier suit. Further it reveals that the subject matter of the present suit and earlier suit also different.

9. To decide the application filed U/o 7 Rule 11(a) of CPC the court has to go through the

plaint averments and find out whether there is any cause of action or not to file the suit. The scope of said provision is only with regard to cause of action and not touch to the merit of the case. On careful perusal of the plaint pleadings it reveals that on 01.02.2020 when the plaintiffs gone to their land to cut the trees situated in the suit schedule properties the defendants obstructed for the same. Hence, said act of the defendants gave cause of action to the plaintiffs to file this suit and by showing the same as cause of action they filed the present suit. Hence, it is clear that there is a cause of action to the plaintiffs to file the present suit. Though the defendants filed the present application for rejection of plaint but they pleaded on merit of the case which is irrelevant. Thus, this court is of the opinion that there is sufficient material to show that the plaint of the plaintiffs discloses cause of action to file the present suit. Thus the application filed by the defendants deserves to be dismissed. Hence, I answered Point No.1 in the negative.

10. **Point No.2** : In view of aforesaid reasons, I proceed to pass the following order.

ORDER

I.A No.II filed by
the defendants U/O.VII Rule
11(a) R/w sec. 151 of CPC is
hereby dismissed.

For hearing on I.A. No. 1

Call on : 14.08.2020.

Sd/-
Civil Judge Banhatti.