

KABK700003862023



O.S./129/2023

IN THE COURT OF PRL.SENIOR CIVIL JUDGE & JMFC, JAMKHANDI.

Present:

**Shri.Rajashekhar S. Harsoor
B.A. LL.B.,
Prl. Senior Civil Judge & JMFC, Jamkhandi.**

OS.No.129/2023.

Dated this, the 13th day of August, 2025.

1. Smt. Annawwa W/o Shekhar Parit @ Madiwalar,
Before Marriage Annawwa D/o Nagappa Parit,
Age: 52 years, Occ : Household work,
R/o: Kadapatti, Tq: Jamkhandi, Dist: Bagalkot
Now at Chilamur-591114, Tq: Ramadurg, Dist: Belagavi.

... Plaintiff.

(Represented by Sri.K.S.N., Advocate)

- Vs

1. Smt. Shakuntala W/o late Fakirappa Parit Urf Madiwalar,
Age: 65 years, Occ : Household work,
R/o : Kadapatti-587301, Tq : Jamkhandi,
Dist : Bagalkot.

2. Shri. Basawaraj S/o late Fakirappa Parit Urf Madiwalar,
Age : 30 years, Occ: Household work,
R/o: Kadapatti-587301, Tq: Jamkhandi, Dist: Bagalkot.
3. Smt. Yamanawwa W/o Late Dyamanna Parit,
Age : 40 years, Occ : Agriculture,
R/o: Kadapatti-587301, Tq: Jamkhandi, Dist: Bagalkot.
4. Smt. Lalita W/o Late Madiwalappa Parit Urf Madiwalar,
Age : 60 years, Occ : Agriculture,
R/o: Kadapatti-587301, Tq: Jamkhandi, Dist: Bagalkot.
5. Shri. Nagaraj S/o Late Madiwalappa Parit Urf Madiwalar,
Age : 35 years, Occ : Private service,
R/o: Kadapatti-587301, Tq: Jamkhandi, Dist: Bagalkot.
6. Smt. Manjula D/o Late Madiwalappa Parit Urf Madiwalar,
Age : 40 years, Occ : Agriculture,
R/o: Kadapatti-587301, Tq: Jamkhandi, Dist: Bagalkot.
7. Shri. Basayya S/o Late Gurumurtayya Mathapati,
Age : 48 years, Occ : Business,
R/o: Kadapatti-587301, Tq: Jamkhandi, Dist: Bagalkot.
8. Shri. Balachandra S/o Late Parasappa Madiwalar Urf Parit,
Age : 50 years, Occ : Agriculture,
R/o: Kadapatti-587301, Tq: Jamkhandi, Dist: Bagalkot.

...Defendants.

(Deft No.1 & 2 represented by Sri.R.M.J., Advocate)

(Deft No.3 to 8 are placed Ex-parte)

: PARTIES IN I.A No.V :

1. Shri. Basawaraj S/o late Fakirappa Parit @ Madiwalar,
Age : 30 years, Occ: Household work,
R/o: Kadapatti-587301, Tq: Jamkhandi, Dist: Bagalkot.

... Applicant/Deft.No.2

- Vs -

1. Smt. Annawwa W/o Shekhar Parit @Madiwalar,
Before Marriage Annawwa D/o Nagappa Parit,
Age: 52 years, Occ : Household work,
R/o: Kadapatti, Tq: Jamkhandi, Dist : Bagalkot
Now at Chilamur-591114, Tq: Ramadurg, Dist: Belagavi.

...Opponent/Plaintiff

i.	Provision under which the application is filed	:	U/o.VII Rule 11 (a) & (d) R/w Sec.151 of CPC
ii.	Relief sought for	:	Rejection of plaint.
iii.	The date on which the application is filed	:	30.07.2025
iv.	Number of the application	:	I.A.No.V
v.	The date on which the objection is filed by different opponents	:	07.08.2025
vi.	The date on which the order was passed on the said application	:	13.08.2025

ORDER ON I.A.NO.V FILED U/O. VII RULE 11 (a) & (d)

R/w. Sec.151 OF C.P.C.

1. The defendant No.2 has filed I.A.No.V U/o.VII Rule 11(a) & (d) R/w. Sec.151 of CPC for rejection of the plaint.
2. In the application as well as in the affidavit annexed to above application, the defendant No.2 has mainly contended that, the suit is

barred by law and the law of limitation. Hence the plaint is liable to be rejected. The main paragraphs of above application are reproduced as under;

“For the reasons stated in the accompanying affidavit, it is prayed that, the plaint of the plaintiff may be rejected in view of para No.6 of the plaint as plaintiff herself has admitted that, “It is submitted that, the property at Sl.No.1 in schedule “A” is the ancestral joint family property, during the time of the compromise partition this property fallen to the share of the propositus Nagappa and after the death of Nagappa in the year 30-10-1985 as per the M.E No.1807 dated 04-02-1989 three sons and a daughter (present plaintiff) inherited to the said property, as the deceased Fakirappa was the elder amongst all and as a joint family manager his only name was entered to the said property. After the death of Fakirappa his L.Rs. i.e., present defendants No.1 to 3 inherited the said suit property behind the back of the plaintiff”. Therefore, the plaintiff is not having subsisting right and thereby there is no cause of action to the plaintiff. As such the plaint is required to be rejected and also the plaintiff is not having subsisting right over the suit property under law and the present suit is barred by U/Sec.6 of the Hindu Succession Act

1956, as partition is admitted by the plaintiff herself on this ground also the plaint is required to be rejected.

In view of the para No.8 of the plaint it is averred that, the partition without including the property the plaintiff has stated that “It is submitted that, property at Sl.No.5 and 6, which are previously R.S.No.153/4A totally measuring 7A-11Gts was purchased by the propositus hence M.E No.10367 dated 05-05-1975 effected, later soon before few months to the death of the propositus Nagappa gain colluding with the lower revenue authorities plaintiff’s brothers entered into a partition without including the plaintiff, thus deceived the plaintiff without allotting her legitimate share and also without bringing to the knowledge of the propositus Nagappa and plaintiff, certified the M.E No.14038 in the said illegal and void M.E., the suit property i.e., R.S.No.153/4A total measuring 7A-11Gts in it 3A-25G was taken by the deceased Shankar and survey no. became R.S.No.153/4/A2 and remaining 3A-26Gts was taken by the deceased Madiwalappa and survey no. became R.S.No.153/4/A1”.

That, suit itself self is categorically on the admission of partition is barred U/Sec.6 of Hindu Succession Act. 1956. As such it attracts U/O.VII Rule 11(d) of C.P.C.

That, the plaintiff has cleverly drafted by suppressing the date of execution of sale deed though the plaintiff is having full knowledge about the execution of sale deed, as pleaded at para No.9 of the plaint, so on this count also the suit is barred by limitation and as such the plaint is required to be rejected as suit is barred by limitation on the face of the plaint itself, in view of reported ruling reported by Hon'ble Supreme court in Umadevi Vs Anandkumar on 2nd April 2025, in the interest of justice and equity.”

3. On the contrary, counsel for the plaintiff filed objection to above application contending that, the contents of above application as well as affidavit are all false & frivolous. The above application is not maintainable in law or on facts. The plaintiff has clearly pleaded about the cause of action to file this suit. The plaintiff came to know about the illegal acts of the defendants in January-2023, when she obtained the RTC of the suit schedule properties. Thereafter she immediately filed this suit. It is further contended by the counsel for the plaintiff that, the point of limitation is a mixed question of law and facts which needs full-fledged trial. He further stated that, while entertaining an application filed U/o VII Rule 11 (a) & (d) the court

has to consider only plaint averments not the defence put forth by the defendant. The defendant No.2 filed this application only with intent to harass the innocent plaintiff and drag the matter. With this counsel for the plaintiff prayed for dismissal of above application with costs.

4. Heard counsel for the plaintiff. Counsel for the defendants No.1 and 2 has failed to canvass his arguments despite giving time & opportunity. Perused the contents of application, objection, plaint averments and the decisions placed on record. Upon going through the same, the following points arise for consideration:

POINTS

1. Whether the suit is barred by law?
2. What order?

5. Having heard argument & going by the materials available on record, this court answers to above points as under:

Point No.1 : In the negative.

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

: REASONS :

6. Point No.1: It is well settled law that, while entertaining an application filed U/o.VII Rule 11 of C.P.C, the court shall have to consider only the statements made in the plaint, not the defence put forth by the defendant. It is relevant & worthy to refer the decisions reported in **AIR 2012 Supreme Court 3023-Bhau Ram Vs Janak Singh, AIR 2003 SC 759 – Saleem Bhai & others Vs. State of Maharashtra & others** & the decisions reported in **ILR 2016 KAR 2429- Smt.N.Triveni V/s. Sri.G.T.Shankar & ILR 2008 KAR 3993 - Hanumappa & Others Vs. Chikkannaiah & Others**, wherein the Hon'ble Supreme Court as well as the Hon'ble High Court of Karnataka have time & again held that, while considering an application U/o.VII Rule 11 of C.P.C., the court has to examine averments made in the plaint and the pleas taken by the defendant/s in the written statement are irrelevant.

6.1. It is to note that, learned counsel for the plaintiff relied upon the decision of the Hon'ble Supreme Court rendered in the case of **Saleem Bhai and others V/s State of Maharashtra** and another decision of the Hon'ble High Court of Karnataka rendered in the

case of **Smt.N.Triveni V/s Sri.G.T.Shankar (RFA.No.1194/2014)**.

In the first decision stated supra, the Hon'ble Supreme Court has held that "A perusal of order VII Rule 11 of CPC makes it clear that the relevant facts which need to be looked into for deciding an application there under of the averments in the plaint". In the second decision the Hon'ble High Court of Karnataka has held that "The law has been well settled by catena of decisions by the Apex court. It has been held that while considering the application U/o VII Rule 11 of CPC the court has to examine the averments in the plaint and the pleas taken by the defendant in the written statement would be irrelevant. It is further held that, rejection of the plaint in exercise of the power under VII Rule 11 being drastic power conferred all the court to terminate a civil action at the threshold i.e., without the trial of the suit, the condition precedent to exercise the said power have to be strictly applied.

6.2 Learned counsel for the defendant has also relied upon the decision of the Hon'ble Supreme Court rendered in the case of **Umadevi V/s Anandkumar (SLP (Civil) No.2137/2025)**, wherein it is held at paragraph No.15 that;

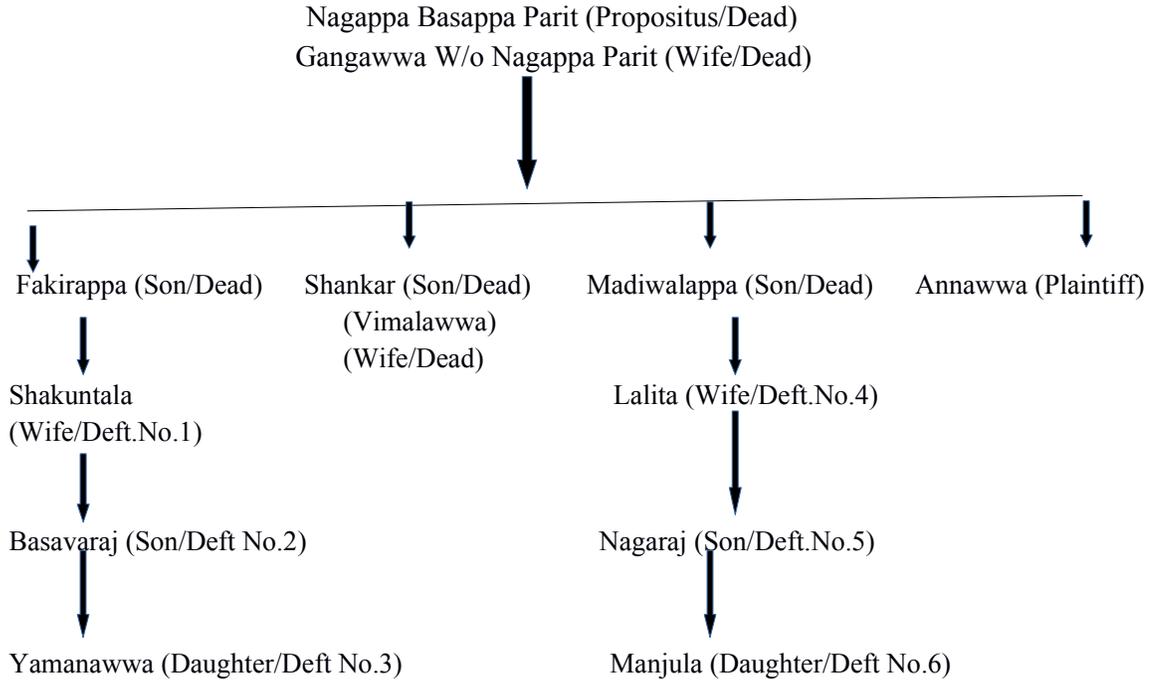
“The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order VII Rule 11, CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order VII Rule 11 of CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when, the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order V11 Rule 11 of CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the

court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage”.

In the light of above decisions, this court proceeds to give findings on the point under discussion.

7. Perused the plaint and the documents placed on record. According to the plaint, the plaintiff has filed this suit for the relief of partition & separate possession claiming her 1/3rd share in the suit schedule properties. It is specifically averred in the plaint that, the propositus deceased Nagappa S/o Basappa Parit and his spouse Smt. Gangawwa W/o Nagappa Parit died leaving behind their four children viz., Fakirappa, Shankar, Madivalappa & the plaintiff as their legal heirs. Aforesaid Fakirappa died leaving behind his spouse i.e., defendant No.1 and children defendants No.2 & 3 as his legal heirs. Aforesaid Shankar & his spouse Smt.Vimalawwa both of them died issue less as per the family genealogy. Aforesaid Madivalappa died leaving behind his wife i.e., defendant No.4 and two children defendants No.5 & 6 as his legal heirs. For better understanding of the relationship amongst the plaintiff & defendants, the family

genealogy shown in the B schedule of the plaint is reproduced as under;



7.1 It is mainly averred in the plaint that, the suit schedule properties are ancestral & joint family properties of the plaintiff & defendants No.1 to 6. The father of plaintiff namely Nagappa had inherited the suit schedule properties from his ancestors. He had got the same in family properties partition. After his demise, his legal heirs inherited the suit schedule properties vide ME.No.1807 dated 04-02-1989. Therefore the plaintiff is entitled for 1/3rd share in the suit schedule properties. Such being the

state of affairs the deceased Fakirappa sold the suit schedule property bearing R.S No.28/1 measuring 28 guntas out of 1 acre 22 guntas in favour of the defendant No.8. Further aforesaid deceased Madivalappa had sold the suit schedule property bearing R.S No.153/4A/1 measuring 3 acres 26 guntas in favour of one Gurumurtayya S/o Veerbhadrayya Mathapati behind the back of plaintiff. It is further averred in the plaint that, the defendant No.7 has got the suit schedule property bearing R.S No.153/4A/1 in a partition with his family members. Therefore aforesaid sale deeds are not binding upon the plaintiff's share. It is further averred in the plaint that, the brothers of plaintiff have illegally & clandestinely alienated aforesaid suit schedule properties. The deceased Fakirappa had given an assurance to the plaintiff to allot her share in the suit schedule properties. But he failed to do so. However the plaintiff demanded the defendants No.1 to 6 to allot her share in the suit schedule properties, but they declined her demand. Hence she filed this suit.

8. On the contrary, the defendants No.1 & 2 have specifically contended in their written statement that, the plaintiff & her siblings had got divided the suit schedule properties during the life time of the propositus. The plaintiff filed this suit only with intent to cause hardship to the

defendants. Hence the suit is not maintainable. With this said defendants have prayed for dismissal of suit.

9. On meaningful reading of the whole plaint averments, it prima facie appears that, the plaintiff filed this suit for the relief of partition & separate possession claiming her legitimate share in the suit properties. On careful reading of the plaint averments, it appears that, the plaintiff has not admitted that, the defendants No.1 to 3 are having exclusive rights over the suit properties as contended in the above application. She has pleaded that, the defendants have clandestinely got mutated the suit properties in their names. She came to know about the same just prior to filing to this suit. It is to note that, no any such an unequivocal admission or averment finds place in the plaint, which disentitle the plaintiff to institute this suit.

10. Further it is to note that, the defendants have contended that, the they have got mutated the suit properties in their names long back, as such the claim of the plaintiff is barred by law of limitation. As stated above, the plaintiff has asserted in the plaint that, she came to know about the revenue entries made in respect of the suit properties, prior filing this

suit. There is no such averment in the plaint, which demonstrate that the claim of the plaintiff is barred by law of limitation. Anyhow it is well settled law that, the plea of limitation is a mixed question of law & facts. The plaint cannot be rejected on the sole ground of the limitation. As discussed above, since there is no any assertion or admission which demonstrates the suit is barred by law of limitation, the plaint cannot be rejected on the point of limitation. In view of above facts and circumstances, this court is of considered opinion that, the decision on which defendant No.2 relied, is not applicable to the case on hand. In view of above discussion and in the light of decisions referred above, this court arrived at conclusion that, the defendant No.2 has failed to make out grounds for rejection of the plaint. Accordingly point No.1 is answered in the negative.

11. Point No.2: In view of above findings, following order is passed:

: ORDER :

I.A.No.V filed U/o.VII Rule 11 (a) & (d) of CPC by the defendant No.2 is hereby rejected.

No order as to costs.

(Dictated to the stenographer directly on computer, typed by her, corrected and signed by me, then pronounced in the open Court on 13th day of August 2025)

**Sd/-
(Sri. Rajashekhar S. Harsoor)
Prl. Senior Civil Judge & JMFC,
Jamkhandi.**