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**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
& J.M.F.C., AT DEVANAHALLI.**

PRESENT

SRI. PRAVEEN NAYAK, LLM.,
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.

Dated this day of 01st March, 2024.

O.S.No.40/2013

Smt. Rathnamma & Another : **Plaintiffs**

(Plts. - By Sri. H.C.A.,
Advocate)

- V/s. -

Smt. Akkayamma & Others : **Defendants**

(Def.1, 2 & 4 - By Sri. M.R.,
Advocate)

(Def.3 - By Sri. A.R.S.R.,
Advocate)

(Def.5 - By Sri. S.V.K.,
Advocate)

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**ORDER ON I.A. No.XV**

The instant application has been filed by counsel for defendants No.2 and 3 U/o.VII Rule 11 (d) of C.P.C for rejection of plaint as it is barred by law in view of the decision of Hon'ble Supreme Court of India reported in 2015(4) KCCR 3265 SC, Sri. Prakash and others V/s. Smt. Pulavathi and others.

2. In the affidavit, the defendant No.2 has stated that, the Hon'ble Supreme Court of India in the above decision has held that the amendment to Hindu Succession Act is applicable only to living daughters and leaving co-parceners as on 09.09.2005. It is admitted by the plaintiffs that their father Late Hemanna died about 40 year ago and hence, the suit is barred by law and also there is no cause of action to file the suit. Hence, prayed to allow the application.

3. The counsel for the plaintiffs have resisted the application by arguing that, the application is not maintainable under law. He has reiterated the averments of the plaint in his written arguments. He has further argued that in view of decision rendered by Hon'ble Supreme Court of India in Arunachala Gounder (died by LRs and others) V/s.

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Ponnuswamy, the daughters enjoy equal rights to their father's ancestral property, irrespective of year of their father's death. Accordingly, the plaintiff prayed to reject the I.A. No.15 with cost.

4. The brief averments of the Plaintiff's case are as follows:-

The plaintiffs and defendants No.2 to 4 are the children of one Late Hemanna and Akkayamma. The said Akkayamma is the defendant No.1 herein. The plaintiffs and defendants No.1 to 4 are the members of Hindu joint family. One Nanjappa was the prepositor of the joint family. He died by leaving behind his 2 sons. The plaintiff has narrated the relationship between the parties in the plaint and further claimed that in O.S.No.727/1998, the defendants No.2 and 3 herein filed suit for declaration in respect of the share of their father Hemanna. Accordingly, the suit was compromised and the share of Hemanna was allotted in favour defendants No.2 and 3. There is no partition of the property of Late Hemanna between the plaintiffs and defendants No.1 to 4 and the same is liable for partition. The plaintiffs demanded for partition and the same was refused by the other side.

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5. **The following points would arise for my consideration:**

1. Whether the defendants No.2 & 3 have made out grounds for rejection of plaint ?
2. What order?

6. **My findings on above 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 present application was filed in the year 2019 U/o.VII Rule 11(d) of C.P.C by stating that the suit is barred under law as per decision reported in 2015(4) KCCR 3265 SC, Sri. Prakash and others V/s. Smt. Pulavathi and others. It is pertinent to note that in view of decision rendered by Hon'ble Supreme Court of India in Vineeta sharma V/s. Rakesh Sharma, the position of law is well settled. Now, the living daughter as on the date of amendment to Hindu Succession Act is entitle for a share in

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the ancestral property irrespective of the date of death of her father. The learned counsel for the plaintiff has also relied upon a decision reported in Arunachala Gounder case, on the said position of law. In view of the subsequent decisions rendered by Apex Court the contentions taken by defendants No.2 and 3 in the present application falls to the ground. In view of the same, the application is not maintainable as per the grounds urged in the application.

8. During the course of his arguments, the learned counsel for the defendants No.2 and 3 has contended that in O.S.No.727/1998, there has been a partition in the joint family and the defendants No.2 and 3 herein have got their separate share as per the compromise entered into between them and the defendants therein. He has argued that the compromise was entered into long before amendment to Hindu Succession Act and the plaintiffs being the daughters of Late Hemanna have no right to seek the partition at this stage. The learned counsel for the plaintiffs have argued that the copy of the plaint and compromise petition in O.S.No. 727/1998 have been already marked as Ex.P15 and P16 and the said suit was one for the relief of declaration in respect of the share of Late Hemanna and not for partition. In the compromise decree the share of Late Hemanna was

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separated and there was no partition effected as per Ex.P16. In view of the rival claims, on looking into Ex.P15 and P16, it is clear that the said suit was filed by the defendants No.2 and 3 herein seeking declaration that they along with one Muniyappa son of Ummanna are the absolute owners in possession and enjoyment of the suit schedule properties therein. They have also sought for cancellation of Gift Deed dated 01.03.1969 and consequential relief of Permanent Injunction. The said suit came to be compromised as per Ex.P16, wherein the shares of defendants No.2 and 3 have been shown. It is pertinent to note that the plaintiffs and defendant No.4 are not parties to the said suit. It is also pertinent to note that, the compromise was entered into between the parties on 17.08.2001, which is coming forward in Ex.P16. The defendant No.1 being the wife Hemanna was also alive as on the date of compromise. It is pertinent to note that as per Ex.P15, the defendant No.1 herein was also not made as a party. All these aspects as to whether there was a partition among the children of Late Hemanna or not is a matter of trial. The court cannot predetermine the same on the basis of contention taken by defendants No.2 and 3 during the course their arguments. Moreover, all these grounds are not pleaded in the present application or the

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affidavit accompanying the same. The learned counsel for defendant No.3 has relied upon following decisions:

- a) 2023 Live Law SC 372
- b) 2021 (0) Supreme Kar 244
- c) 2020(11) ADJ 71
- d) Criminal Appeal No.439-441/2022 Judgment dated 09.02.2022 by Hon'ble Supreme Court of India.

9. I have gone through the above decisions with due respect. In the decisions relied upon by the defendant No.3 himself it is held that in order to consider an application U/o.VII Rule 11 of C.P.C, only the plaint averments are required to be considered and the averments in written statement are irrelevant.

10. The decisions relied upon by the counsel for defendant No.3 are not applicable to present set of fact. At this stage, I am of the opinion that there is not ground for rejection for rejection of plaint. Hence, I answer **Point No.1 in the Negative.**

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11. **Point No.2:-** In view of the above findings, I proceed to pass the following:

ORDER

I.A. No.XV filed U/o.VII
Rule 11(d) of C.P.C is hereby
rejected with cost of
Rs.500/-.

(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 01st Day of March, 2024).

(SRI. PRAVEEN NAYAK)
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.