

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

PRESENT

**SRI. PATIL HARISH RANGANAGOWDA,
B.A., LL.B.(Hon's)**

Addl. Senior Civil Judge & J.M.F.C.
Devanahalli.

Dated this day of 15th September 2022.

O.S.No.430/2016

Smt. Anjinamma, : **Plaintiff**
Aged about 45 years,
W/o. Munirajappa,
Agriculturist,
R/at: Godlumuddenahalli Village,
Vijayapura Hobli,
Devanahalli Taluk,
Bangalore Rural District.

(Plt. - By Sri. A.Y.A.,
Advocate)

- V/s. -

1. Sri. M. Vengopal Reddey, : **Defendants**
Aged about 60 years,
S/o. N. Papireddy,
R/at: No.129, Chord Road,
2nd Block, 3rd Stage,
Basaveshwaranagara,
Bangalore - 560 079.

2. Sri. Anjinappa,
Aged about 70 years,
S/o.Late Munihanumappa,
Agriculturist,
R/at: Gobbaragunte Village,
Kasaba Hobli,
Devanahalli Taluk,
Bangalore Rural District.

(D1, 2 - Ex-parte

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ORDERS ON I.A. FILED U/O 7 RULE 11 OF C.P.C.

The defendant No.1 has filed I.A. U/o.7 rule 11 and of C.P.C. seeking to reject the plaint as it does not disclose cause of action and court fee paid by the plaintiff is insufficient. Before proceeding with the instant application, the facts need to be mention hereunder.

2. The facts of the case are unfurled hereunder :

The plaintiff Anjinamma has filed this suit seeking for the relief of declaration of title and recovery of possession of suit property. According to her the suit property was owned by her father Ramappa S/o Chikka Kakappa of Gobbaragunte Village. The said Ramappa in turn bequeathed the suit property in her favour under registered will deed dated 10.06.1998. The said Ramappa died on 18.05.2015 leaving behind her to succeed the said property. Accordingly she became owner of suit property by virtue of said will. Further according to her the defendant No.1 got mutated his name over suit property in collusion

with defendant No.2 by creating document. Therefore she filed this suit seeking for the relief of declaration of title and recovery of possession. The defendant No.2 did not choose to appear. Hence he was placed to Ex-parte.

3. The defendant No.1 appeared through his counsel and filed his written statement by denying the claim of plaintiff over suit property. According to him the suit property bearing Sy.No.77/1, in all measuring 2 acre 25 gunta was owned by one Munihanumaiah. The said Munihanumaiah had acquired the said property under registered sale deed dated 13.01.1959. The said Munihanumaiah died leaving behind three sons namely Narayanappa, Anjinappa (defendant No.2) and Pillappa @ Subbarayappa. The said Anjinappa is the defendant No.2 herein. The said Narayanappa, Anjinappa and Pillappa have succeeded the said property and alienated the same to him under registered sale deed dated 17.10.1998. Since then he is in possession said property. He has further contended that, the father of plaintiff by name Ramaiah S/o Chikka Kakappa had claimed right over suit property against Anjinappa by filing suit bearing O.S. No.122/1997. The said suit ended in compromise wherein the father of plaintiff had admitted the title of said Anjinappa over said property. Therefore the said Anjinappa has no right to lay any claim over suit property. Therefore he has no right to execute any will. Hence they seek to dismiss the suit.

4. In addition to filing of written statement they filed instant application U/o.7 rule 11(a) and (d) of C.P.C. seeking to reject the plaint on the ground that, the plaintiff has no cause of action to maintain the suit. Further the court fee paid by the plaintiff is insufficient. He has further pleaded that, he is the absolute owner and in possession of suit property having acquired the same under registered sale deed dated 17.10.1998. According to him the father of plaintiff himself entered compromise in suit bearing O.S.No.122/1997 with defendant No.2 by admitting the title of defendant No.2 over suit property. The said defendant No.2 and his two brothers have conveyed the said property to him. Therefore he has contended that, the plaintiff has no right lay her hand over suit property. Further more the court fee paid by plaintiff is insufficient and she cannot value the property as per her whims and francis . **Hence he seeks to reject the plaint.**

5. The plaintiff filed abjection to the said application by denying the contents of affidavit. She has reiterated the stand taken in the plaint. Heard both the sides. The counsel for defendant No.1 relied upon the decision reported in **1977 A.I.R. 2421 (T. Aravanandam V/s. T.V. Satyapal & others)** to contend that the frivolous suit filed by the plaintiff needs to be rejected at the threshold.

6. Having heard both the side, the following point would arise for my consideration.

- 1) Whether the defendant No.1 made out ground to reject the plaint?
- 2) What order?

7. Having heard the counsel on record, and having perused the material on record, my findings to above points is as under:-

Point No.1:- In the Negative

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

REASONS

8. Point No.1 :- The claim of plaintiff over suit property is based on the alleged will deed dated 10.06.1998 said to have been executed by her father. The said father had died on 18.05.2015. Therefore she claimed right over the said property. The claim of defendant No.1 is based on the two instances. The first instance is based on the registered sale deed executed by defendant No.2 and his two brothers. The second instance is on the law of estoppel as the father of plaintiff namely Ramaiah himself entered compromise with defendant No.2 in suit bearing

O.S. No.122/1997 and admitted the title of defendant No.2. Therefore he lost his right over suit property. Therefore the plaintiff has no cause of action to maintain the suit. It is well settled law that, while considering the application filed U/o.7 rule 11 of C.P.C. the court needs to look into the plaint averments alone. The averments of written statement are irrelevant in considering the issue of existence or non existence of cause of action. The plaint averments cannot be doubted on the basis of plea taken by the defendant in his written statement. The plea taken by the defendant No.1 in seeking rejection of plaint is entirely on the basis of averments of written statement which are in the nature of attacking the alleged title of plaintiff over suit property. The fact remains about execution of will by the said father of plaintiff which need to be answered in the trail. Therefore the issue of execution of will and faith of said will on the subsequent event of compromise entered by the said Ramappa needs to be addressed in the trail. Therefore the claim of defendant in seeking rejection of plaint on the basis of want of cause of action cannot be considered at this stage. The second ground of urged by the defendant No.1 is in regard to payment of court fee. The said issue requires to be examined by framing appropriated issue. Therefore I hold that the defendant No.1 has failed to made out ground to reject the plaint. The decision relied upon by counsel for defendant No.1 cannot be applied to the present case at this stage. This

court thought it appropriate to rely upon the decision of Hon'ble Apex Court in the case of Sri. Harihanumana Das Totala V/s. Hemanth Vittal Kamath & others passed in Civil appeal No.4665/2021 wherein the Hon'ble Apex Court has held that the plaint averments alone need to be considered even to examine the claim of applicability of doctrine of res-judicata. Therefore in the instant case also the defendant No.1 made the said issue of res-judicata/estoppel as one of the ground which requires to be considered by framing appropriate issues. **Hence I hold above point in the Negative.**

9. Point No.2 : In the light of aforesaid finding on the above said point, I proceed to pass the following :

ORDER

The I.A. filed by defendant No.1 U/o. 7 Rule 11(a) & (d) of C.P.C. is hereby rejected. The issues are framed and read over in open court.

(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 15th Day of September 2022).

**(SRI. PATIL HARISH RANGANAGOWDA)
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.**