

KABR310003822011



IN THE COURT OF THE PRINICIPAL SENIOR CIVIL JUDGE &

J.M.F.C., AT DEVANAHALLI.

PRESENT

SRI. PRAVEEN NAYAK, LLM.,

Prl. Senior Civil Judge & J.M.F.C.,
Devanahalli.

Dated this day of 20th June, 2025.

O.S.No.168/2011

BETWEEN:

1. Smt. Haseen Taj, : **Plaintiffs**
Aged about 32 years,
W/o. Syed Moula &
D/o. Late Mohammed Masthan.
Nandi Post, Village & Hobli,
Chikkaballapur Taluk & District.
2. Smt. Shabeen Taj,
Aged about 34 years,
W/o. Md.Nayaz & D/o Late Mohammed Mashtan.
R/at: 3rd cross, Behind Kannada School,
Varadaj Nagar, M.S. Palya, Vidyaranyapura post,
Bangalore-097.
3. Miss. Abida Taj,
Aged about 30 years,
D/o. Late Mohammed Masthan,



4. Sri. Mohammed Zabi,
Aged about 26 years,
D/o. Late Mohammed Masthan,
Both are R/at: Buden Palya,
Bagalur Village, Jala Hobli,
Bangalore North Taluk.

(Plts. - By Sri. A.A.K., Advocate)

AND:

1. Smt. Mumtaz, : **Defendants**
W/o. Late Mohammed Masthan,
(Died, Lrs are on record).
2. Sri. Mohammed Usman @ Babu,
S/o. Late Mohammed Masthan,
(Since dead by his Lrs)
- 2(a). Smt. Bee Bee Jan,
Aged about 52 years,
W/o. Mohammed Usman @ Babu,
- 2(b). Arbiya Taj,
Aged about 21 years,
D/o. Mohammed Usman @ Babu.
- 2(c). Nawaz,
Aged about 08 years,
S/o. Mohammed Usman @ Babu,
- 2(d). Arshiya,
Aged about 06 years,
S/o. Mohammed Usman @ Babu,



Since defendant No.2 (c) and (d) are minors,
Represented by their mother Bee Bee Jan
R/at: Garden Road, Dargha mohalla,
Siddleghatta Taluk,
Chikkaballapura District.

3. Sri. Mohammed Jaffer,
S/o. Late Mohammed Masthan,
(Since dead by his Lrs),
 - 3(a). Smt. Shaheena Taj,
Aged about 52 years,
W/o. Late Jaffer.
 - 3(b). Ibrahim,
Aged about 20 years,
S/o. Late Jaffer.
 - 3(c). Mubarak,
Aged about 19 years,
S/o. Late Jaffer.

All are R/at: # Buden Sab Palya,
Baglur Village, Jala Hobli,
Bengaluru North Taluk.
4. Sri. Mohammed Shabbir,
Aged about 38 years,
S/o. Late Mohammed Masthan,
R/at: Buden Palya,
Baglur Village, Jala Hobli,
Bengaluru North Taluk.
5. Sri. Mohammed Adil @ Mahaboob,



Aged about 36 years,
S/o. Late Mohammed Masthan,
R/at: # 175, Hegde Colony,
'A' Block, Tumkur-572101.

6. Sri. Mohammed Sadiq,
Aged about 42 years,
S/o. Late Mohammed Masthan,
R/at: #27, Chennasandra Village,
Chintamani Taluk,
Chikballapura District.
7. Sri. Narasimhaiah
S/o M. Narayanappa,
Aged about 45 years,
R/at: #196, 13th cross,
Kondappa Block, Chowdeshwari Layout.
Yelahanka Town,
Bengaluru North Taluk.
8. Sri. Muniraju,
S/o M. Narayaanappa,
Aged about 42 years,
R/at: #196, 13th cross,
Kondappa Block, Chowdeshwari Layout,
Yelahanka Town,
Bengaluru North Taluk.

(Def.1 to 6 & 8– Ex-parte)

(Def.7 – By Sri. - A.Y.A., Advocate)

(Def.3 (a to c) – By Sri. K.S., Advocate)

(Def.2 (a to d) – By Sri. F.K., Advocate)



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i	Provision under which the application is filed	Under Order VII Rule 11(a) & (d) R/w.Sec.151 of C.P.C.
ii	Relief sought for	Rejection of Plaint
iii	The date on which the application is filed	02-09-2024
iv	Number of the application	I.A.No.X
v	Date of filing objection	01-10-2024
vi	Date of Pronouncement of Order	20-06-2025

Sd/-

(PRAVEEN NAYAK)

Prl. Senior Civil Judge & J.M.F.C.,
Devanahalli.

ORDER ON I.A.No.X

The instant application has been filed by the counsel for defendant No.7 U/o.VII Rule 11(a) and (d) R/w.Sec.151 of C.P.C for rejection of plaint as there is no cause of action and the suit is barred by personal law of Mohammedans.



2. In the affidavit, the defendant No.7 has stated that the plaintiffs have filed the present suit for the relief of Partition in respect of suit properties, which is barred under Muslim Personal law. As per Mohammedan Law, the concept of ancestral properties is not recognized. As long as the person is alive, the property owned by him is his absolute property. The above suit for partition is bad under law and plaint liable to be rejected. The plaint does not disclose the cause of action. The applicant has purchased the suit schedule property on 31.05.2003. The suit is filed in the year 2011. The suit is not filed within the period of 3 years. Hence, prayed to allow the application.

3. The application is opposed by the counsel for plaintiffs by reiterating the plaint averments. It is stated that the application is not maintainable under law. The plaintiffs have right to sue under Mohammedan Law of inheritance. The contention taken in the application is totally untenable. Hence, prayed to reject the application with cost.

4. The brief averments of the Plaint are as follows:

The plaintiffs and the defendants No.2 to 6 are the brothers and sisters. They are the children of defendant No.1 and Late



Mohammed Masthan Sab. The suit schedule properties originally belong to Late Usman Sab, the grandfather of the plaintiffs and defendants No.2 to 6. After his death, the suit schedule properties were inherited by Mohammed Masthan Sab. He died intestate in the year 2002. The plaintiffs and defendants No.1 to 6 inherited the properties. There is no partition among them. They are in joint possession and enjoyment of the suit schedule property. The plaintiffs approached the defendant No.1 to divide the suit schedule property and the defendants have refused to effect partition. The plaintiffs contended that the defendants No.1 to 6 have already alienated the suit item No.1 property in favour of defendants No.7 and 8 as per sale deed dated 17.06.2003. The said sale deed is not binding upon the share of the plaintiffs in the suit item No.1 property. The cause of action to file the suit arose in the month of October 2010, when the defendant No.1 refused to effect partition. Hence, the suit.

5. Heard both sides.

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

1. Whether the defendant No.7 has made out grounds for rejection of plaint ?



2. What order?

7. 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

8. **Point No.1:** The counsel for defendant No.7 has sought for rejection of plaint mainly on the following grounds :

- a. There is no cause of action to file the suit .
- b. The suit is barred by personal law of Mohammedans as there is no concept of ancestral property under the said law.
- c. The suit is barred by limitation.

9. It is a suit filed by the plaintiffs against the defendants seeking division of suit item No.1 and 2 properties. They have also sought for Declaration that the sale deed dated 17.06.2003 executed by defendants No.1 to 6 in favour of defendants No.7 and 8 is not binding upon their share in the suit properties. On



Careful perusal of the plaint averments in para No.6 the plaintiffs have clearly stated that only the suit item No.1 property has been sold in the year 2003 in favour of defendants No.7 and 8. There is no pleading to the effect that the suit item No.2 property is also sold in favour of defendants No.7 and 8. In para No.6 itself the plaintiffs have stated that the suit item No.2 property is still standing in the name of the ancestors of the plaintiffs. Therefore, it can be inferred that the defendant No.7 being the purchaser of suit item No.1 property only has filed the present application for rejection of plaint. The contention taken in the application is that the suit is barred by limitation as the sale deed was executed on 31.05.2003 in respect of suit schedule property. However, the applicant has not stated that which of the two suit schedule properties he has purchased. Therefore, the partial rejection of plaint only in respect of one of the suit properties is not permissible under law. Further, limitation is a mixed question of fact and law and without framing an issue in this regard, the plaint can not be rejected straight away.

10. The main contention taken by the applicant is that there is no concept of joint family and ancestral property under Mohammedan Law and the suit is barred under law. In this



regard on careful reading of the plaint it is forthcoming that in para No.4 of the same, the plaintiffs have stated that the suit schedule properties originally belong to one Usman Sab and after his death his son Mohammed Masthan Sab inherited the same. Mohammed Masthan Sab died in the year 2002 by leaving behind the plaintiffs and the defendants No.1 to 6 to inherit the properties. It is also stated that the plaintiffs and defendants No.1 to 6 are in joint possession of the same as tenants-in-common. Therefore, there is no contention by the plaintiffs that the suit schedule properties are ancestral properties and they are the co-parceners. The plaintiffs have also not stated anywhere that the suit schedule properties are the joint family properties of them and the defendants No.1 to 6. Under such circumstances, the contention of the applicant that the suit is barred under law does not hold any water.

11. The applicant has contended that there is no cause of action to file the suit. The cause of action is the bundle of facts and shall be gathered by reading the entire plaint averments. On careful reading of the plaint averments it is forthcoming that the plaintiffs have stated that they and the defendants No.1 to 6 are tenants-in-common in respect of suit schedule properties. They



sought for partition of the same. The present application came to be filed after commencement of trial, when the matter was posted for cross of PW-1. I am of the considered opinion that the matter in controversy cannot be adjudicated in the present application without recording the evidence of both sides. In view of the same, there is no ground for rejection of plaint at this stage. Hence, I answer **Point No.1 in the Negative.**

12. Point No.2 : In view of the above findings, this court proceed to pass the following:

ORDER

I.A. No.X is rejected with
cost of Rs.1,000/-.

(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 20th Day of June, 2025).

Sd/-
(PRAVEEN NAYAK)
Prl. Senior Civil Judge & J.M.F.C.,
Devanahalli.