

KABR310013562019



**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE & JUDICIAL MAGISTRATE  
OF THE FIRST CLASS AT DEVANAHALLI**

**PRESENT : SRI KUMARA G. B.COM. LL.B.  
PRINCIPAL SENIOR CIVIL JUDGE AND JMFC,  
DEVANAHALLI**

**ORIGINAL SUIT 1058 OF 2019  
DATED ON THIS 05<sup>TH</sup> DAY OF APRIL, 2025**

- PLAINTIFFS :**
- 01. SMT SHASHIKALA S.,  
D/O SAMPANGI GOWDA,  
W/O KESHAVAMURTHY,  
AGED ABOUT 23 YEARS,  
R/AT KOTTIGE VILLAGE,  
THURUVEKERE TALUK,  
TUMKUR DISTRICT-572227.**
  - 02. SMT NAVYA S.,  
D/O SAMPANGI GOWDA,  
W/O RAMANATH,  
AGED ABOUT 26 YEARS,  
R/O BODANAHOSAHALLI VILLAGE,  
ANUGONDANAHALLI HOBLI,  
HOSAKOTE TALUK.**
  - 03. SMT AMARAVATHI S.,  
D/O SAMPANGI GOWDA,  
W/O SRI SUBRAMANI N,  
AGED ABOUT 28 YEARS,  
R/O GOBBARAGUNTE VILLAGE,  
KASABA HOBLI,  
DEVANAHALLI TALUK.**

**(REPRESENTED BY SRI PVR, ADVOCATE)**

**VERSUS**

- DEFENDANTS** : 01. **SRI SAMPANGI GOWDA,  
S/O LATE DASAPPA,  
AGED ABOUT 57 YEARS,  
R/AT HOSAHALLI VILLAGE,  
JALA HOBLI,  
BANGALORE NORTH TALUK.**
02. **SRI KALLE SHIVOTHAMA RAO,  
S/O KALLE NARAYANA RAO,  
AGED ABOUT 89 YEARS,  
R/AT NO.1031, 1<sup>ST</sup> MAIN,  
INDUSTRIAL SUBURB, KHB,  
OPP: WHEEL AND AXLE PLANT,  
YELAHANKA NEW TOWN,  
BANGALORE - 560 064.**
03. **SRI AJITH ASHUTOSH KALLE,  
S/O KALLE SHIVOTHAMA RAO,  
AGED ABOUT 55 YEARS,  
R/AT NO.1031, 1<sup>ST</sup> MAIN,  
INDUSTRIAL SUBURB, KHB,  
OPP: WHEEL AND AXLE PLANT,  
YELAHANKA NEW TOWN,  
BANGALORE - 560 064.**
04. **SMT ANITHA PRIYANKARANI KALLE,  
W/O BHARATH KUMAR U,  
AGED ABOUT 60 YEARS,  
R/AT NO.108, BALAJI - LAYOUT,  
KENCHENAHALLI ROAD,  
BEHIND HERTAGE APARTMENT,  
KENCHENAHALLI, YELAHANKA,  
BANGALORE - 560 064.**
05. **SRI GOVINDARAJ KOZHIPURATH,  
S/O LATE P. VENUGOPAL,  
AGED ABOUT 52 YEARS,**

**R/AT NO.50, RBI COLONY,  
ANAND NAGAR,  
BANGALORE - 560 024.**

- 06. SRI MANOHARA K.,  
S/O KRISHNE GOWDA,  
AGED ABOUT 35 YEARS,  
R/AT NO.8, NARAYANA NEST,  
GROUND FLOOR, PARK ROAD,  
CHINNAPPA LAYOUT,  
HEBBALA, KEMPAPURA,  
BANGALORE - 560 024.**
- 07. SMT M. SIMHACHALAM,  
W/O VEERABHADRA SWAMY,  
AGED ABOUT 79 YEARS,  
R/AT NO.136, SBM COLONY,  
ANAND NAGARA, BANGALORE - 24.**
- 08. SMT NALINA G.N.,  
W/O SRI HANUMESH M.,  
AGED ABOUT 60 YEARS,  
R/AT MALLENAHALLI VILLAGE,  
REDDAHALLI POST,  
DEVANAHALLI TALUK,  
BANGALORE RURAL DISTRICT.**
- 09. SRI G.N. RAGHAVENDRA SWAMY,  
S/O G.C. NARASIMHAIAH,  
AGED ABOUT 59 YEARS,  
R/AT NO.72, FLAT NO.F1,  
1ST FLOOR, 4<sup>TH</sup> CROSS, 3<sup>RD</sup> MAIN,  
SRI BASAVESHWARA HBCS LAYOUT,  
VIJAYANAGARA, BANGALORE - 40.**
- 10. SRI VEGE VENKATESHWARA RAO,  
S/O LATE VEGE ANJIAH,  
AGED ABOUT 60 YEARS,  
R/AT NO.201, ANUSHA RESIDENCY,  
4<sup>TH</sup> CROSS, BHUVANESHWARI NAGAR,**

**C.V. RAMAN NAGAR,  
BANGALORE - 560 093.**

- 11. SRI SRIDHAR VEGE,  
S/O VEGE VENKATESHWARA RAO,  
AGED ABOUT 48 YEARS,  
R/AT DODDANAKKUNDI,  
OUTER RING ROAD, MARATHAHALLI,  
BANGALORE - 37.**
- 12. SRI LAKSHMIKANTH BHEEMARAYA NALWAR,  
S/O BHEEMARAYA,  
AGED ABOUT 54 YEARS,  
R/AT RAMPURA HALLI,  
CHITTAPUR TALUK,  
GULBARGA DISTRICT.**

**(D-2 TO D-4, D-6, D-7 & D-11 ARE  
REPRESENTED BY SRI MCS, ADVOCATE & D-9  
IS REPRESENTED BY SRI RP, ADVOCATE; D-1,  
D-5, D-8 & D-10 ARE PLACED EXPARTE;)**

<b>PROVISION UNDER WHICH THE APPLICATION IS FILED</b>	<b>ORDER VII, RULE 11 (a) &amp; (d) R/W SECTION 151 OF CPC</b>
<b>RELIEF SOUGHT FOR</b>	<b>REJECTION OF PLAINT</b>
<b>DATE OF FILING APPLICATION</b>	<b>18-04-2022</b>
<b>NUMBER OF APPLICATION</b>	<b>IA NO.III</b>
<b>DATE OF FILING OBJECTION</b>	<b>21-11-2022</b>
<b>DATE OF PRONOUNCEMENT OF ORDER</b>	<b>05-04-2025</b>

**ORDER ON IA NO.III**

This order arises out of IA No.III filed by applicant/defendant No.6 under Order VII, Rule 11 (a) and (d) read with section 151 of Civil Procedure Code, 1908 for rejection of plaint.

02. The lands bearing survey No.66/1, 66/4, 66/5, 66/6, 66/7, 66/8 and 66/9 (earlier all suit property are the part and parcel of survey No.66/1), totally measuring 03-09 acres, excluding 00-06 guntas of Kharab, situated at Sathanuru village, Jala-2 Hobli, Bengaluru North taluk is the subject-matter of the suit and also IA No.III.

03. IA No.III is supported with an affidavit duly sworn by applicant/defendant No.6. It is stated in the affidavit that the plaintiffs have instituted the present suit against the defendants No.1 to 12 for partition and separate possession in the suit property. Late Dasappa who is none other than the grandfather of the plaintiffs and father of defendant No.1 acquired the suit property along with other properties through Registered Partition Deed dated 23-01-1978. Subsequently, the defendant No.1 and his brothers have constituted Hindu Joint Family and defendant No.1 was looking after the joint family as kartha. The defendant No.1 and his brothers have partitioned the family properties on 05-05-2001 and suit property along with other properties have been allotted to the share of defendant No.1 as per C-schedule. At the time of entering unregistered partition on 05-05-2001, the defendant No.1 and his brothers have agreed to sell the suit property and also agreed to share the sale consideration in order to construct separate residential houses and therefore, all the brothers have authorized defendant

No.1 to negotiate with the prospective purchasers to sell the suit property and hence, it is shown in the unregistered partition that suit property was allotted to the share of defendant No.1 and accordingly katha has been mutated in the name of defendant No.1. The defendant No.1, his mother, his brothers and his sisters have sold the suit property through seven Registered Sale Deeds in favour of defendants on 10-11-2005. The mother and sisters of defendant No.1 were not the parties to the unregistered Partition Deed dated 05-05-2001 and therefore, immediately after execution of Registered Sale Deeds, all the family members have partitioned other joint family properties through Registered Partition Deed on 15-11-2005 and C-schedule properties have been allotted to the share of defendant No.1 except the suit property as it was already sold. The plaintiffs have not included other family properties in this suit and therefore suit is bad for non-inclusion of all the family properties. It is further stated that the Late Dasappa acquired the suit property along with other properties through Registered Partition Deed dated 23-01-1978 and after his death, defendant No.1, his brothers, his sisters and mother have jointly succeeded to the suit property as his Class-I legal heirs and hence, during the lifetime of defendant No.1, the plaintiffs have no right and cause of action to institute the suit. It is further stated that the plaintiffs have not challenged the Registered Partition Deed dated 15-11-2005 and hence, it is

deemed that they have accepted it and therefore the plaintiffs have no right to question the Registered Sale Deed executed by defendant No.1, his brothers, his sisters and his mother. It is also further stated that there is no cause of action for the plaintiffs to institute the suit and therefore the plaint is liable to be rejected. For the above said reasons, applicant/defendant No.6 prayed to reject the plaint.

04. The plaintiffs have filed objection to IA No.III contending that the application itself is not maintainable. It is specifically contended that there are no grounds made out in the application for rejection of plaint. It is further contended that the plaint averments shows the clear cause of action for the plaintiffs to institute and maintain the suit. It is further contended that the grounds urged for rejection of plaint has to be decided in the regular trial after recording evidence and not at this stage. It is further contended that the grounds urged in the application are mixed question of law and fact and they can be decided in the regular trial. For the above said reasons, the plaintiffs prayed for rejection on IA No.III.

05. Heard the arguments advanced by Sri PVR, the learned counsel for the plaintiffs and Sri MCS, the learned counsel for defendants No.6 on IA No.III.

06. Perused the plaint averments and documents placed on record from plaintiffs' side.

07. Upon hearing arguments and on perusal of the above materials available on record, the following points that would arise for my consideration:

***01. Whether the plaint averments are disclosing cause of action for the plaintiffs to institute the suit?***

***02. Whether the suit of the plaintiffs is barred under any law?***

***03. Whether the plaint is liable to be rejected under Order VII, Rule 11 of Civil Procedure Code, 1908?***

***04. What order?***

08. My findings to the above points are as under;

***Point No.1           :-     In the affirmative,***  
***Point No.2           :-     In the negative,***  
***Point No.3           :-     In the negative and***  
***Point No.4           :-     As per order for the following;***

**REASONS**

**09. POINT NO.1 & 2:** - These points are inter-linked with each other.

Discussion and reasoning revolve on same set of facts. Hence these issues are taken together for joint discussion for avoiding repetition of discussion and reasoning.

10. Before advertng to the facts of the case, let me state some important principles governing the rejection of plaint under Order VII, Rule 11 of Civil Procedure Code, 1908 and also the principles laid down by the Hon'ble Apex Court and other Hon'ble High Courts while dealing with the above provision. It is well settled that cause of action means a bundle of facts which accrues right to the plaintiffs to get the relief against the defendants under the law applicable to that particular facts and circumstances of the case. The cause of action must also include some acts done by the defendants. It is well settled that the plaintiffs must aver and prove all the material facts in the plaint in order to get the reliefs sought for. It is also well settled that on a meaningful reading of the plaint, if it is found that the plaint is not disclosed the cause of action, the plaint ought to have been rejected at the threshold. The court has the power to examine the plaint to find out whether the genuine cause of action arose to the plaintiffs to institute the suit or not. On careful perusal and examination of the plaint averments, if the court finds that the cause of action is illusive and created by skillful drafting, the plaint ought to have been rejected. The main objective of Order VII, Rule 11 of Civil Procedure Code, 1908 is to nip the false, frivolous vexatious suit at the budding stage in order to save the valuable of the time of the court and also

to discourage the false, frivolous and vexatious litigations. It is also well settled that while considering an application filed under Order VII, Rule 11 of Civil Procedure Code, 1908, the court has to look the plaint averments only along with the documents pleaded therein and relied upon by the plaintiffs and not to consider the contentions raised in the written statement and also the documents placed on record from the defendants side. Keeping all these settled principles of law let me analyze the present case on hand.

11. Admittedly the plaintiffs No.1 to 3 have instituted the present suit against the defendants No.1 to 12 for partition and separate possession in the suit property and allotment of their 1/4<sup>th</sup> share therein by metes and bounds and for declaration that seven Registered Sale Deeds dated 10-11-2005 executed by defendant No.1 in favour of defendant No.2, 7, 8, 10 and 12 and subsequent three Gift Deeds dated 12-09-2011, 17-01-2018 and 06-07-2010 and five Registered Sale Deeds 04-03-2011, 31-05-2019, 31-05-2019, 18-10-2019, 13-06-2019 relating to suit property are not binding on their shares. It is specifically averred in Para No.3 of the plaint that one Sri late Dasappa is the common propositor having 7 children namely 1) Rajanna, 2) Sampangigowda (defendant No.1), 3) Nagaraja, 4) Sumithamma, 5) Kamala, 6) Manjula and 7) Rupesh @ Srinivasa. It is also averred that family oral partition taken place on

05-05-2001 and accordingly suit property bearing survey No.66/1, measuring 03-09 acres of Sathanuru Village, Jala Hobli was fallen to the share of defendant No.1 as per C-schedule and hence suit property is the joint family property of plaintiffs and defendant No.1. In Para No.4 it is pleaded that plaintiffs and defendant No.1 are Governed by Mithakshara Hindu joint family; all are in joint possession and enjoyment of the suit property and katha is standing in the name of defendant No.1 as he is the elder male member of the family. It is also pleaded in Para No.5 that after their marriages the plaintiffs are residing in their respective maternal houses.

12. It is pleaded in Para No.6 that during the festival of Dasara, the plaintiffs have visited their parents' house and during that time some differences arose among them with defendant No.1 and therefore they have requested him to make partition in the suit property and allot their shares by metes and bounds on 18-10-2019. But the defendant No.1 not responded to their request. It is also pleaded that after obtaining certified copies of the documents, they came to know about the alienation made by defendant No.1 in favour of defendant No.2, 7, 8, 10 and 12 and also subsequent transactions relating to the suit property. It is also pleaded in Para No.6 that defendant No.1 defrauded the plaintiffs with malafide intention by executing the sale

deeds and therefore they are not binding on their shares. It is also pleaded in Para No.7 to 9 that subsequent transactions have taken place among defendants No.2 to 12; the plaintiffs are not parties to the said transactions; the subsequent transactions are not in accordance with law and therefore they are also not binding on the plaintiffs. It is also pleaded in Para No.10 of the plaint that defendant No.1 has no exclusive or independent right to alienate the suit property to other defendants as they were the joint family and ancestral properties of plaintiffs and defendant No.1 and the plaintiffs are also having undivided interest therein and partition is not taken place among them relating to the suit property so far. It is also pleaded in Para No.11 that defendants No.3 to 5, 7, 9, 11 and 12 having no manner of exclusive right or title or interest over the suit property, they are trying to alienate them to the third parties by taking undue advantage of their names in the revenue records and hence they have instituted the present suit. It is clearly stated in Para No.13 that the cause of action arose to the plaintiffs to institute the suit on 18-10-2019 when they have requested the defendant No.1 to make partition in the suit property.

13. Along with the plaint, the plaintiffs have produced the Notarized Genealogy of the family. The plaintiffs also produced the Record of Rights;

certified copies of Registered Sale Deeds and Registered Gift Deeds taken place among the defendants relating to the suit property till date. The documents clearly show the transactions taken place among the defendants.

14. On meticulous and careful examination of the plaint averments along with the documents placed on record from the plaintiffs side as a whole, I am of the opinion at this stage that the plaint averments are disclosing the material facts required for member of Hindu joint family to institute the suit for partition and separate possession and also disclosed the material to challenge the alienation taken place relating to the joint family properties by one of the member without the consent or knowledge of the other family properties. The plaintiffs have clearly and specifically pleaded in the plaint that they and defendant No.1 have constituted Hindu Undivided joint family; suit property are the joint family properties; all are in constructive joint possession of the suit property; all are having undivided interest therein and partition is not taken place among them relating to the suit property so far. Plaint averments also clearly disclosing that the plaintiffs are challenging the alienations and other transactions taken place relating to the suit property among the defendants stating that they are not the parties or signatories or consenting witnesses to the transactions and therefore they

are not binding on their shares and therefore entitled for the reliefs sought for. Hence I am of the clear opinion that the plaint averments are showing clear cause of action for the plaintiffs to maintain the present suit.

15. The learned counsel for the defendant No.6 has vehemently argued that suit property and other family properties have been allotted to the share of defendant No.1 in the unregistered Partition Deed dated 05-05-2001 in the partition taken place between him and other family members C-schedule. He also argued that subsequently on 10-11-2005, defendant No.1 along with his mother, brothers and sisters sold entire extent of 03-19 acres in suit survey No.66 in favour of defendants No.2, 7, 8, 10 and 12 through Registered Sale Deeds. He also argued that subsequently on 15-11-2005, defendant No.1, his brothers and his sisters have once again partitioned the other family properties through Registered Partition Deed on 15-11-2005 excluding the suit property and the properties allotted to the share of defendant No.1 as per C-schedule in the earlier unregistered Partition Deed dated 05-05-2001 have been once again allotted to the share of defendant No.1. He also argued that the plaintiffs have not sought any relief regarding the Registered Partition Deed dated 15-11-2005 and therefore plaint is liable to be rejected. It is well settled that if any transaction taken place through registered

documents to which the plaintiffs are not the parties, it is no necessity to seek relief in that regard. Thus, I am of the opinion that on this ground the plaint is not liable to be rejected.

16. The learned counsel for the defendant No.6 has also vehemently argued that in the partition, the suit property along with other family properties have been allotted to the share of defendant No.1, but the plaintiffs have not included the other properties in the present suit and therefore, plaint is liable to be rejected. It is well settled that plaint cannot be rejected on the ground of non-inclusion of other family properties and non-joinder of other family members. The question of non-inclusion of other family properties and non-joinder of proper and necessary parties i.e. other family members is a mixed question of law and fact. Finding cannot be given at the preliminary stage without full-fledged trial relating to the question of non-inclusion of other family properties and non-joinder of necessary parties. Moreover, they are the curable defects. Hence, I am of the opinion that on this ground also plaint is not liable to be rejected.

17. The learned counsel for the defendant No.6 has relied upon the decision reported in **2016 AIR (SC) 1169** in between **Uttam versus Saubhag Singh and Others** rendered by the Hon'ble Supreme Court of India wherein it

is held that, if a male owner died intestate prior to amendment of section 6 of Hindu Succession Act, 1956, the property devolves by succession among his widow and other co-parceners and a partition would be deemed to be effected by operation of law. It is also held that on a male owner dying intestate, the property no more remains a joint family property and his widow and other co-parceners would hold the property as tenants in common. The learned counsel for the defendants argued that in the present case on hand, the suit property was allotted to the share of late Dasappa in the Registered Partition; subsequently suit property and other family properties have been allotted to the share of defendant in the un-registered partition taken place between him and his brothers and therefore the plaintiffs being the daughters of defendant No.1 they have no right and no cause of action to institute the suit. I had respectfully gone through the citation. The cited judgment has been rendered after the full-fledged trial and not at this stage of rejection of plaint. That apart, in the present case on hand, the suit property was inherited to the plaintiffs and defendant No.1 from their ancestors. Hence, with great respect to the citation relied upon by the counsel for the defendant No.6, I am of the opinion that the same may cannot be applied at this stage and it may be helpful to the defendant No.6 in the regular trial and not at this stage.

18. I am already discussed in above paras that the plaint averments are disclosing clear cause of action and the plaintiffs have the right to sue for declaration, for partition and separate possession relating to the suit property. On careful and meaningful reading of the entire plaint averments as a whole in the light of well settled principles of law enunciated by the Hon'ble Apex Court and the Hon'ble High Court of Karnataka, I am of the opinion at this stage that the plaint averments are disclosing clear cause of action for the plaintiffs to institute the suit for Partition and separate possession and declaration. To say in other words, plaintiffs have specifically pleaded about the existence of joint family; nature of suit property such as joint family property in the hands of plaintiffs and defendant No.1; their undivided interest and also demand made by the plaintiff for partition and allotting her share in the suit property with the defendant No.1 and also his denial. So also, as I already discussed other contentions are mixed question of law and facts and therefore finding cannot be given at this stage without full pledged trial. Hence by considering the plaint averments as a whole and also documents placed on record from the plaintiffs side, I am of the opinion that the plaint averments are disclosing the clear cause of action for the plaintiffs to institute the suit and suit is not barred by any law. Hence, I am answering to ***Points No.1 in the affirmative and Point No.2 in the negative.***

**19. POINT NO.3:-** I am already given findings to Points No.1 in the affirmative and point No.2 in the negative holding that the plaint averments are disclosing the clear cause of action for the plaintiffs to institute the suit and suit is not barred under any law. Hence, the plaint is not liable to be rejected under Order VII, Rule 11 (a) and (b) of Civil Procedure Code, 1908. Hence, I am answering to ***Point No.3 in the negative.***

**20. POINT NO.4:-** In view of the findings to point No.1 to 3, for the discussion made above and reasons assigned, I proceed to pass the following:

**ORDER**

***IA No.III filed by the applicant/defendant No.6 under Order VII, Rule 11 (a) & (d) read with section 151 of Civil Procedure Code, 1908 for rejection of plaint is hereby rejected with costs.***

*(Dictated to the stenographer, transcribed and typed by her, corrected, signed and then pronounced by me in the open court on the 05<sup>th</sup> day of April, 2025)*

**(KUMARA G.)  
PRINCIPAL SENIOR CIVIL JUDGE & JMFC  
DEVANAHALLI**

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