

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE  
AND JMFC.,AT DEVANAHALLI**

**Present:** Sri. PRATHAP KUMAR. N.,<sup>B.A. L.L.B.,</sup>  
Prl. Civil Judge & JMFC.,  
Devanahalli.

**Dated this the 4<sup>th</sup> day of July, 2022**

**O.S.No.321/2019**

**Plaintiff :** Sri. Prateek Kumar

**V/s**

**Defendant:** Sri. K. Muniraju.

**PARTIES IN I.A. NO.V**

**Applicant/: defendant:** K. Muniraju.

**-V/s-**

**Opponent/ plaintiff :** Sri. Prateek Kumar

**ORDER ON I.A.V**

This order arising out of I.A No.No.V filed by the defendant U/o 7 Rule 11(d) R/w 151 of CPC, seeking reject the plaint.

2. In the support of the application, the defendant has duly sworn affidavit and annexed the same along with application and stated that, the plaintiff has filed this suit seeing as prayer (a) and (b) for declaration and perpetual

injunction in respect of suit schedule property, further he seeking the declare the deed of cancellation of agreement to sell on dated 22-09-2015 executed by plaintiff in his favour for sale consideration amount of Rs.2,62,81,250/-, the present market value is more than Rs.50,00,000/-, therefore this court have no jurisdiction to decide the matter on merits. Hence pray for the allow the application.

03. On the contrary the plaintiff has not filed objection to I.A No.5 filed by the defendant.

04. Heard on arguments.

05. Upon perusal of the pleadings and documents, the following points are arise for my consideration.

### **POINTS**

***1. Whether plaintiff allegations disclosed the suit is barred by law?***

***2. Whether plaintiff is liable to be rejected Under Order 7 Rule 11(d) of C.P.C.?***

***3. What order?***

6. My findings to the above points as follows;

**Point No. 1: In the Negative**

**Point No. 2: In the Negative**

**Point No. 3: As per final order for the**

**following**  
**REASONS**

**7. Point No.1 and 2:** These points are interlinked and hence to avoid the repetition the same are taken together for discussion.

08. This is an application filed by the defendants for rejection of plaint as there is no justification to try this suit. On the other hand plaintiff has not filed any objection. The present plaintiff has filed this suit against the defendant seeking relief of permanent injunction and declaration. It is specific case of the defendant that, the plaintiff has filed this suit seeing as prayer (a) and (b) for declaration and perpetual injunction in respect of suit schedule property, further he seeking the declare the deed of cancellation of agreement to sell on dated 22-09-2015 executed by plaintiff in his favour for sale consideration amount of Rs.2,62,81,250/-, the present market value is more than Rs.50,00,000/-, therefore this court have no jurisdiction to decide the matter on merits.

9. On considering rival pleadings it is well settled in law that rights of purpose further property is not consider at primary stage which should have trail for determination of right liability of parties. On considering both submission U/o 7 Rule 11 (a to d) is not appear suit instituted by the plaintiff either barred by law or barred

by any other law etc., Further hopeless rival pleadings this court feels that trial is need for adjudicate the mater in dispute.

**10. The provision Under Order 7 Rule 11 of C.P.C., is deal with court shall be rejected the plaint in fallowing cases.**

- a) Where it does not disclose a cause of action.*
- b) Where the relief claimed is undervalued, and the plaintiff, and being required by the court to correct the valuation within a time to be fix by the court, fails to do so.*
- c) Where the relief claimed is properly valued but, the plaintiff is written upon paper insufficiently stamped, and the plaintiff on being required by the court to supply the requests stamp paper within a time to be fix by the court, fails to do so.*
- d) Where the suit appears from the statement in the plaint to be barred by any law.*
- e) Where it is not filed in duplicate.*
- f) Where the plaintiff fails, compile with the provision of rule 9.*

11. The specific provision under order VII rule 11(d) of C.P.C., deal with where the suit appears from the statement in the plaint to be barred by any law. But, in this case the defendants had not ascertained under which provision of Hindu Successions Act, 1956 is barred filing of the suit on self acquired properties. In absence of any specific provision for bar to entertain the suit for partition

on the basis of self acquired property this court cannot assumed, presumed the Hindu Successions Act, 1956 is bar to filing of suit on the basis of self acquired property.

12. The provision Under Order VII Rule 11(d) of C.P.C., is applicable only extraordinary circumstance and it has to be limited application. It must be shown that, suit is bar under any law. Such a conclusion must be drawn from the averment made in the plaint. But, the defendants has to fail to ascertain under which provision of Hindu Successions Act, is bar to filing such a suit. In this regard, I relied on a decision of Hon'ble Apex court reported in **2008(12) SCC 661 in between (Kamala and others V/s. K.T. Eshwara SA and others)** in which it is held as under;

***A. Civil Procedure Code, 1908, Or.7 R.11(d), S.12, Or.14 R.2(2) and Or.18 - Rejection of plaint - Application of Or.7 R.11(d) - Precondition for - Necessary considerations for determination thereof - Bar of res judicata - Consideration of, at said stage - Power as to - Held, Or.7 R.11(d) has limited application - For applicability thereof it has to be shown that, the suit is barred under any law - Such conclusion has to be drawn from the averments made in the plaint - For invocation of Or7 R.11(d), no amount of evidence can be looked into - At that stage, the issue on merit of the matter would not be within the realm of***

*the court - Principles of res judicata, when attracted, would bar another suit in view of S.12 C.P.C. - But, such question being a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit, may be taken up either as a preliminary issue or at the final hearing - Said question cannot be determined at the stage of proceeding under Or.7 R.11(d).*

*Appellants filing a suit claiming partition in the properties which were same as were described in earlier partition suit - Earlier suit was dismissed for default at the stage of final decree proceedings - Respondent-defendants contending that: (i) the present suit was barred by principles of res judicata, (ii) there had been a division of the joint family properties by meres and bounds, which having been admitted in the plaint, no cause of action survived for grant of a decree for partition, (iii) severance of joint status being not vitiated by any fraud, it should not be permitted to be reopened at this stage, (iv) after passing of the preliminary decree in the earlier suit, no property was available for partition, and (v) sale deeds having been executed by the co-shares and their validity having not been assailed directly, the same could not be done in an indirect manner by way of the present suit - Held, what would be*

***the effect of a partition suit which had not been taken to its logical conclusion by getting the properties partitioned by metes and bounds, could not be gone into in a proceeding under Or.7 R.11(d) - Contentions raised for rejection of the present suit involved various questions which could not be considered at the stage of proceeding under Or.7 R.11(d) - Thus, rejection of plaint under Or.7 R.11(d) C.P.C., by courts below, held on facts, was not proper.***

***B. Civil Procedure Code, 1908 - Or.7 R.11(d), Ss.15 to 20 and Or.14 R.2(2)(a) - Rejection of plaint - Grounds for - Absence of jurisdiction on the part of a court, held, can be invoked at two different stages - Or.7 R.11 is one and Or.14 r.2 is the other.***

***C. Civil Procedure Code, 1908 - Or.7 R.11(a) to (f) - Rejection of plaint - Different clauses in Or.7 R.11 provided in relation to, held, should not be mixed up - Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground, a clear finding to that effect must be arrived at.***

21. Order 7 Rule 11(d) of the code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may filed on more than one ground specified in

*various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. for that purpose, there cannot be any addition or subtraction. absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.*

**13. Further, I relied on another decision of Hon'ble Apex court reported in 2020 SCC Online SC 482 in between (Shakti Bhog Food Industries Ltd., V/s. Central Bank of India and another) in which it is held as under;**

*28. Similarly, in S.S. Rathore (supra), the Court was dealing with a case governed by Article 58 of the 1963 Act, which specifically provides that, time begins to run when the right to sue "first" accrues. In Ram Prakash Gupta (supra), the Court dealt with a case governed by Article 59 of the 1963 Act, which provides that the suit could be filed when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded "first" become known to him. The court opined that the knowledge mentioned in the concerned plaint could not be termed as inadequate and incomplete. The Court reversed the judgment of the Civil Judge and the High Court rejecting the plaint. This Court also*

*noted that while deciding the application under Order VII Rule 11 of the C.P.C., few lines or passage from the plaint should not be read in isolation and the pleadings ought to be read as a whole to ascertain its true import. Even in that case, the trial Court and the High Court had failed to advert to the relevant averments, as stated in the plaint, which approach was disapproved by this Court. In the present case, as noticed earlier, the trial Court had failed to advert to and analyze the averments in the plaint, but selectively took notice of the assertion in the plaint in question that the appellant became aware about the discrepancies in July, 2000, and then proceeded to reject the plaint being barred by law of limitation having been filed in February, 2005.*

14. Therefore, on the discussion made above, I am of the opinion that, there is no provision under the Hindu Successions Act, 1956 is bar to filing this suit, further at this court can't ascertain suit is barred under law without trial. Hence, the application filed by the defendants is deserves to be dismissed. **Accordingly, I answer point No.1 and 2 in the Negative.**

15. **Point No.3:** In view of the above discussion, this court proceeds to pass the following:

**ORDER**

I.A.No.V filed by the defendant  
U/o 7 Rule 11(d) R/w 151 of CPC is  
hereby rejected with cost.

(Dictated to Stenographer, transcribed and computerized by him, transcript corrected and pronounced by me in the open court on this the 4<sup>th</sup> day of July 2022.)

**(Sri. Prathap Kumar. N)**  
Prl. Civil Judge and JMFC.,  
Devanahalli.

**ORDER PRONOUNCED IN THE OPEN COURT**  
**(VIDE SEPARATE)**  
**ORDER**

I.A.No.V filed by the defendant U/o  
7 Rule 11(d) R/w 151 of of CPC is  
hereby rejected with cost.

Prl.Civil Judge and JMFC.,  
Devanahalli.