



**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,AT**  
**DODDABALLAPURA.**

**Dated this the 12<sup>th</sup> day of November 2024**

**PRESENT: SMT.SHILPA.H.A.**

**B.A.L., LL.B.,**  
**Senior Civil Judge & J.M.F.C.**  
**Doddaballapura.**

**O.S.No.49/2017**

**Plaintiffs:**

- 1. SMT. ANJINAMMA**  
W/o. Puttappa,  
Aged about 65 years,  
R/at, Kanchiganala Village,  
Kasaba Hobli,  
Doddaballapura Taluk,
- 2. SMT. NAGARATHNAMMA,**  
W/o. Late Thimmappa,  
Aged about 48 years,  
R/at, Kanchiganala Village,  
Kasaba Hobli,  
Doddaballapura Taluk.

**(By Sri.M.R.Suresh Advocate for plaintiffs)**

**-Vs-**

**Defendants:**

- 1. SMT.CHINNAMMA**  
W/o. Late Anjinappa  
Aged about 60 years,  
R/at, Kanchiganala Village,  
Kasaba Hobli,  
Doddaballapura Taluk.



- 2. SMT. JAYAMMA,**  
W/o. Late Anjinappa  
Aged about 55 years,  
R/at, Kanchiganala Village,  
Kasaba Hobli,  
Doddaballapura Taluk.
- 3. SMT. ANJINAPPA,**  
D/o. LateAnjinappa,  
Aged about 36 years,  
R/at, Kanchiganala Village,  
Kasaba Hobli,  
Doddaballapura Taluk,
- 4. SRI. RAVICHANDRASWAMY,**  
S/o. Late Anjinappa,  
Aged about 30 years,  
R/at, Kanchiganala Village,  
Kasaba Hobli,  
Doddaballapura Taluk.
- 5. SRI. S. NAGARAJU,**  
S/o. Late Ramahia,  
Aged about 32 years,  
R/at, Kanchiganala Village,  
Kasaba Hobli,  
Doddaballapura Taluk.
- 6. SRI. N.MANJUNATH,**  
S/o. M.Narayanappa,  
Aged about 40 years,  
R/at, Doddatumkur Village,  
Madhure Hobli,  
Doddaballapura Taluk.



**7. SRI. SONNEGOWDA.N,**  
S/o. Late Basappa,  
Aged about 41 years,  
R/at, Tank Road,  
Opposite Prasanna Takes,  
Doddaballapura Town.

**(By defendant No.1 & 6 placed exparte, Sri.Y.S.Ramesh Advocate for defendant No.1 to 4, Sri.T.H.Chikkavenkate Gowda for defendant No.5, Sri.B.S.Satish Advocate for defendant No.7)**

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**ORDER ON I.A.No.VIII**

This is an application filed by the defendant No.2 to 4 under order 7 Rule 11 (a) and (d) R/w Sec.151 of CPC for rejection of plaint.

**2. FACTS IN BRIEF:**

The Plaintiffs have filed the suit for the relief of partition and separate possession seeking their 1/5th share each in the suit properties.

3. It is the case of the plaintiffs that, they along with defendants are the members of Hindu undivided joint family and suit schedule properties are their ancestral and joint family properties and no partition is effected. After the death of Narasimhaih, the husband of defendant No.1 & 2 by name



Anjinappa was managing the affairs of joint family. After his death, defendant No.4 being his son got transfer khata of the Revenue records in his name through inheritance. The 1<sup>st</sup> plaintiff and her mother had filed suit in O.S.No.265/1995 against her father Narasimhaiah and brother Anjinappa for the relief of partition and separate possession. In the said case her father Narasimhaiah had promised to bequeath her share by way of Will and hence she got withdrawn the suit. Thereafter her father Narasimhaiah died on 19.10.1999 without giving any share to the plaintiff and the defendants have refused to effect partition and hence this suit.

4. In pursuance of suit summons defendant No.2 to 5 have appeared through their Advocate and filed the written statement and later defendant No.2 to 4 have filed application under order 7 Rule 11(a) and (d) of CPC.

5. Defendant No.4 has sworn to an affidavit in support of this I.A.No.6 and contended that plaintiffs have filed this suit claiming partition and separate possession on fictitious grounds. Plaintiffs have contended that all the suit schedule properties are their ancestral and joint family properties but they have not even furnished any iota of documents in this regard except RTC. As per the para No.6 of the plaint, plaintiffs have filed suit in



O.S.No.269/1995 against the father of 1<sup>st</sup> defendant and got withdrawn the suit by filing withdrawal memo on 09.07.1999. As per the memo plaintiffs have categorically admitted that “ they have settle the matter out of the court and also declared as they do not have any share in the schedule properties”, and the same includes all the suit item No.8 herein. When such being the case plaintiffs are not having any manner of right to agetate the above matter as well as no cause of action would arisen for this suit. Plaintiff's father died on 19.10.1999 and Anjinappa died on 07.10.2010 but the plaintiffs have not challenged the memo dated:09.07.1999 within the prescribed time and hence the memo is binding on both the plaintiffs. After lapse of 17 years plaintiffs have come up with this false and frivolous suit by concealing the real facts. Hence, the suit is hopelessly barred by limitation under prevailing rules of law and also barred to claim their share as per amended Act of Sec.6 of Hindu succession Act. All the suit properties does not belongs to the family of Late K.N.Anjinappa. Defendant No.2 to 4 have succeeded to his estate and subsequently partition through court decree. Plaintiffs are utter, strangers to the suit schedule properties as well as defendants family and they never became coparcener at any point of time. Hence, the suit is liable to be dismissed as barred by law and there is no cause of action. Hence, prays to allow the application in the interest of justice and equity.



6. Plaintiffs have filed objections to this I.A and denied the entire affidavit averments as false and reiterated the averments of plaintiff and further contended that suit schedule properties are the ancestral and joint family properties of plaintiff and they have produced all the necessary documents pertaining to the suit schedule properties. At the time of withdrawing the suit filed by the plaintiff in O.S.No.269/1995, the father of 1<sup>st</sup> plaintiff by name Narasimhaiah has promised her to give properties and also executed Will in her favour but the same was canceled. Plaintiffs have produced all the documents in this regard. Even in O.S.No.156/2016 plaintiffs have disclosed all the details about O.S.No.269/1995. Since plaintiffs father has taken back the properties given to the plaintiff under Will and failed to keep up the promise as agreed in O.S.No.269/1995 and has cancelled the Will, the plaintiffs have filed this suit in O.S.No.156/2016 and the said suit has not been adjudicated on merits. Defendants themselves have admitted in the written statement filed in O.S.No.156/2016 that their father has cancelled the Will executed in favour of plaintiff No.1. Since suit schedule properties are the ancestral and joint family properties of plaintiffs and they are not given any share, the suit is not barred by law of limitation and hence prays to dismiss the I.A.No.8 in the interest of justice and equity.



7. Heard both sides by the advocate for plaintiff and defendants.

**8. The points that arises for my consideration.**

**Point No.1:** Whether the defendants have urged valid grounds for rejection of plaint under order 7 Rule 11 (a) and (d) of CPC?

**Point No.2:** What order?

**9. My findings of the afore said points are as under:**

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

**Point No.2: As per final orders.**

**REASONS**

**10. POINT NO.1:** This is an application filed by the defendants under order VII Rule 11 (a) and (d) R/w Sec.151 of CPC for rejection of plaint. The serious allegation made by the defendants is that the cause of action shown by the plaintiff is false and the suit is also hopelessly barred by time. They have also contended that plaintiffs are strangers and they are not the members of joint family and suit schedule properties are not joint family properties. When defendants have taken contention that plaintiffs are strangers, they themselves have admitted that



plaintiff No.1 had filed suit in O.S.No.269/1995 and got withdrawn the suit as the matter is settled out of court. On perusal of the plaint averments it clearly goes to show that plaintiffs have disclosed about the suit filed in O.S.No.265/1995 and the same was withdrawn as per the promise made by her father. In the written statement defendants themselves have admitted that the Will executed by their father Narasimhaiah in favour of plaintiff No.1 has been cancelled. Therefore it prima-facie goes to show that plaintiffs are not given any share in the suit schedule properties. At the same time defendants have also not placed any material on record to show that plaintiffs are given share during the pendency of suit in O.S.No.269/1995 and therefore the present suit for 2<sup>nd</sup> partition is not maintainable. Though defendants have contended that plaintiffs are strangers, they themselves have admitted the relationship with plaintiffs and that they are given share in the previous partition suit but they have not placed any material on record.

11. Plaintiffs have narrated entire particulars of O.S.No.269/1995 in page No.5 of the plaint by stating that as per the promise given by her father she had withdrawn the suit but immediately her father died on 19.10.1996 and the promise was not fulfilled. She has mentioned in para No.10 of the plaint as cause of action to file this suit arose on last week of January



2017, when the plaintiffs have demanded partition. When plaintiffs have disclosed the cause of action in the plaint, the plaint is not liable to be rejected under order 7 Rule 11(a) of CPC. So far as limitation is concerned it is a mixed question of law and fact which requires fulfilled trial. Apart from that defendants have also not placed any material on record to show that whether they have given any share to the plaintiffs in the ancestral and joint family properties. They themselves have admitted that Will executed by their father Narasimhaiah has been canceled. Hence, there is no material on record to show that whether the suit is barred by law of limitation.

**Order VII Rule 11 reads as under:-**

**11. Rejection of plaint- The plaint shall be rejected in following cases:-**

- (a). where it does not disclose a cause of action;**
- (b). Where the relief claimed is undervalued, and the plaintiff on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;**



- (c). Where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply there quisite stamp paper with a time to be fixed 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 to comply the provisions of Rule 9.**

**In (2020) 3 Indian Civil Cases 448 The Hon'ble Supreme Court held that -**

**“Documents filed along with plaint, are required to be taken into consideration for deciding application U/o. 7 R.11 (a) of C.P.C. When document referred in the plaint, forms basis of plaint, it should be treated as a part of plaint.”**



In the case of **H.S. DEEKSHIT & ANR. versus M/S. METROPOLI OVERSEAS LIMITED & ORS.** reported in **2022 Live Law (SC) 703** it was held that:

**“ Averments in the plaint alone are to be examined while considering an application for rejection of plaint and No other extraneous factor can be taken into consideration.”**

In the Judgment of Hon'ble Supreme Court of India in **Civil Appeal No.3500/2018** in the case of **Chhotanben and another Vs Kiritbhai Jal Krushnabhai Thakkar and others** it was held that:-

**“In the present case, we find that the appellants(plaintiffs) have asserted that the suit was filed immediately after getting knowledge about the fraudulent sale deed executed by original defendant Nos.1 & 2 by keeping them in the dark about such execution and within two days from the refusal by the original defendant Nos.1 & 2 to refrain from obstructing the peaceful enjoyment of use and possession of the ancestral property of the appellants. We affirm the view taken by the Trial Court that the issue regarding the suit being barred by limitation in**



**the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of the power under Order VII Rule 11(d).”**

Defendants have relied upon the citation reported in **HCR 2017 KANT 191 in the case of Pramila.N.Vs.N.Mahadevaiah** it was held that:-

**“ The above said rulings makes it abundantly clear that the Court has got ample jurisdiction to reject the plaint under order 7 Rule 11 (b) and (d) of CPC particularly basing its decision on the facts and circumstances of each case. When a Court without referring to any factual aspects and no evidence is required for the purpose of establishing the plaint allegation, if the suit is ex-facie barred by the law of limitation or barred by any other law for the time being in force and it lacks cause of action, then the Court can reject the plaint without affording any opportunity to the parties to lead evidence to establish the plaint allegations. If such situation is available, the Court has within its parameters to reject the plaint.”**



In **2013(4) ICC 716 in the case of M/s Subarnarekha properties Private Ltd Vs.Dr. Akbar Ali Khan** it was held that:

The power and jurisdiction under Order 7 Rule 11 would be exercised by the Court, in the event, the Court finds that the plaint did not disclose any cause of action or the cause of action is illusory or it is frivolous, vexatious and an abuse of the process of law.

It is needless to mention that frivolous claims should be nipped in the bud as observed in T.Arivandadam v.V.Satyapal and Anr. Reported in AIR 1977 SC 2421 and the said decision has been followed in several subsequent decision including Church of Christ(supra).

In **2016(1) ICC 139 (Hyd) in the case of Kothakapu Muthyam Reddy and others Vs. Bhargavi Constructions and others** it was held that:-

**“ Order 7 Rule 11 of CPC relates to rejection of plaint and, under clause (d) thereof, a plaint shall be rejected where the suit appears, from the statement in the plaint, to be barred by any law. Section 9 of the Civil Procedure Code confers jurisdiction on a Civil Court to try all suits of a civil nature except in a suits of which their cognizance is either expressly or impliedly barred. A civil suit does not lie if the**



**orders of the authorities are declared to be final or there is an express prohibition in the particular Act.”**

**In 2015 (3)KCCR SN 190 (SC) in the case of Om Aggarwal Vs. Hariyana Financial Corporation and others** it was held that:

**“ The question as to whether a suit is barred by any law or not would always depend upon the facts and circumstances of each case. However, for deciding this question, only the averments made in the plaint are relevant. Since the question of jurisdiction of the Civil Court to entertain and try the civil suit goes to the very root of the case and hence it can be raised at any time by the defendant by taking recourse to the provisions of order 7 Rule 11 of the Code. Indeed, this principle of law is well settled.”**

The principles laid down in the above said citations relied by the defendants applies to all the cases while dealing the application under order VII Rule 11 of CPC. Whereas the facts and circumstances of the instant case is totally different from the above said citations. Moreover, this is a suit for partition filed against the members of joint family by mentioning the cause of action. The issue with regard to limitation is a mixed question of law and fact which has to be decided only on the basis of oral and documentary evidence.



Plaintiff has relied upon the decision rendered by **Hon'ble High court of Karnataka in CRP No.100095/2021** in which it was held that:-

**" The Larger Bench, in the case of Balasaria Construction which was decided on 19.10.2005 recorded the submission of the learned counsels that it is not the case of either side that as an absolute proposition an application under Order VII Rule 11(d) of CPC can never be based on the law of limitation. However, such an action will depend upon the facts and circumstances of each case. Where the issue of limitation is a mixed question of law and fact or where a conclusion is not disearnable from the statement that the suit is barred by limitation, the plaint cannot be rejected by resorting to Order VII Rule 11(d) of CPC."** It was further held that

**" Having regard to such averments in the plaint, it was held that it shall have to be accepted as correct only for the purposes of deciding the application under Order VII Rule 11 of CPC and therefore it is not a fit case to reject the plaint as being barred by law of limitation by resorting to Order VII Rule 11(d) of CPC."**



12. The Principles laid down in the above said citation aptly applies to the case on hand. It is well settled law that issue with regard to limitation is mixed question of law and fact. In the instant case plaintiffs have mentioned the cause of action and the issue with regard to limitation requires to be adjudicated after trial Hence, plaint is not liable to be rejected on any of the grounds mentioned in order 7 Rule (a) to (f) of CPC. Accordingly, defendants have not made out any ground for rejection of plaint as required under Order 7 Rule 11 (a) to (f) of CPC. **Hence, I answer point No.1 in Negative.**

**13. POINT NO.2:** In view of my findings on point No.1. Accordingly, I proceed to pass the following;

**ORDER**

**I.A.No.VIII filed by the  
defendant No.2 to 4 under order 7  
Rule 11 (a) and (d) R/w Sec. 151 of  
CPC is hereby dismissed.**



**No order as to cost.**

(Dictated to the Stenographer transcribed, typed and printout taken by him, corrected by me and then pronounced in the open court on this the 12th day of November 2024)

**(SHILPA.H.A)**  
Senior Civil Judge & JMFC  
Doddaballapura.