

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
DODDABALLAPUR.

PRESENT: Sri. Arvind Saibanna Hagargi,
B.Sc., LL.B (Spl)
Senior Civil Judge & JMFC.,
Doddaballapur.

Dated this 25th day of April 2024

ORIGINAL SUIT No.09/2011

Plaintiff:

1. Smt.Shantamma,
W/o Yellappa,
D/o Anjinappa,
Aged about 40 years,
R/at, Thogarighatta Village,
Kasaba Hobli,
Doddaballapura Taluk.

(Represented by Advocate Sri.A.N.Lokesh Kumar
for plaintiff)

Diffendants:

1. Sri. Anjinappa,
S/o Munishamappa,
Aged in major,
R/at, No.717, II Main,
II Cross,R.K.Heggadenager,
Arabic College Post,
Bangalore.
2. Smt.Sarojamma,
D/o Anjinamma,
Aged in major,
R/at, No.717, II Main,
II Cross,R.K.Heggadenager,
Arabic College Post,
Bangalore.
3. Abdul Kareem,
S/o Mohammed Khasim,

Aged in major,
R/at, No.2637,
Chickpet, II Ward,
Doddaballapura-561203.

4. Sri. Venkatesh,
S/o Late Govindappa,
Aged about 45 years,
R/at, Rayadurganahalli Village,
Gulur Gubli, Nallapareddy Post,
Bhagepalli Taluk,
Chikkaballapura District.
5. Sri. Nanjudappa,
S/o Late Govindappa,
Aged about 41 years,
R/at, Rayadurganahalli Village,
Gulur Gubli, Nallapareddy Post,
Bhagepalli Taluk,
Chikkaballapura District.

(Represented by Advocate Sri.K.N Satish Kumar
for defendant No.2,
Sri.Asadulla Khan for defendant No.3,
Sri.A.Krishnamurthy for defendant No.4 and 5,
defendant No.1 placed exparte)

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ORDER ON I.A.No.12

This is an application filed by the defendant No.6 and 7 under order 7 Rule 11 (a) and (d) of CPC for rejection of plaint for want of cause of action and bared by law.

2. FACTS IN BRIEF:

Sl No.	Sy No.	Acres-Guntas	Situated at
01	123/3	0.19 guntas	Kestur Village, Kasaba Hobli, Doddaballapura Taluk.

3. This is a suit of plaintiff for the relief of partition and separate possession claiming 1/3rd share and also for the discretion of title over suit property on the basis of will and to declare the sale deed dated: 01-12-2006 executed by defendant No.1 in favour of defendant No.3 is not binding on the plaintiff.

4. The case of plaintiff is that plaintiff and defendant No.1 and 2 are the family members defendant No.1 is the grand father of plaintiff and defendant No.2 is the grand mother of plaintiff. Defendant No.3 to 5 of purchaser of the suit property. Plaintiff and defendant No.1 and 2 are said to be constituting in the joint family plaintiff is the daughter of defendant No.1. It is specific case of plaintiff suit schedule property is inherited by defendant No.1 from his father of Plaintiff. Defendant No.1 and 2 are in joint possession and enjoyment of suit property as joint family members. Defendant No.1 is the manager of the family of plaintiff and defendants No.1 and 2. It is the allegation of plaintiff that defendant No.1 has misused this position has manager of family and misappropriation of the joint family fund. The plaintiff has demanded partition on 23-10-2010. But defendant No.1 to 3 are alleged to have refuse to effect the partition. Thereafter plaintiff came to know that the defendant No.1 has executed sale deed in favour of defendant No.3 on 01-12-2006 in respect of suit property without there being any legal necessity of the family. Hence the sale deed dated:01-12-2006 is contended to be not binding on the plaintiff. It is specific case of plaintiff that the first wife of defendant No.1 Ramakka had filed maintenance case against defendant No.1 and the maintenance order was passed in favour of first wife of defendant No.1 Ramakka. Ramakka had executed will dated:06-05-2008 in favour of plaintiff in respect of suit property. Hence the present suit filed by the plaintiffs.

5. Suit summons are issued to defendant No.1 to 5.

6. Defendant No.1 and 2 are placed exparte. Defendant No.3 to 5 have appeared through advocate this application is filed by defendant No.3. Hence the written statement of defendant No.3 alone is referred in this orders. The defendant No.3 in written statement has denied the entire case of plaintiff. The defendant No.3 has contended that the plaintiff is debarred from claiming title over the suit property. It is the case of defendant' No.3 that the plaintiff is daughter of one Anjinamma and Govindappa. He said Anjinamma is daughter of Ramakka. Ramakka is one of the wife of defendant No.1. Defendant No.1 is Munishamappa defendant No. has inherited property from his father Munishamappa the defendant No.3 has further contended that the plaintiff has no right of any kind over the suit property and she is not having right to challenge the sale deed of defendant No.3 dated:01-12-2006. Hence on this contention the defendant No.3 prayed to dismiss the suit.

7. Defendant No.3 filed I.A No.12 under order 7 rule 11 (a) and (d) of CPC for rejection of plaint. An affidavit is filed by defendant No.3 along with I.A No.12. The entire written statement contentions are restated in the affidavit. Hence the defendant No.3 prayed to reject the plaint.

8. The plaintiff has filed objection to I.A No.12. The entire plaint averments are restated in the objections. The plaintiff has contended that is an application to drag the proceedings. Hence prayed to reject I.A No.12.

9. Heard both sides on I.A No.12.

10. The points that arises for my consideration are as under:

Point No.1: Whether the defendants demonstrates that plaint is liable to be reject under order 7 Rule 11 (a) and (d)?

Point No.2: What order ?

11 . My findings on the afore said points are as under:

Point No.1: In Negative

Point No.2: As per final orders for following reasons

REASONS

POINT NO.1:

12. This is an application filed by the defendants under order VII Rule 11 (a) of CPC for rejection of plaint for want of cause of action. On the contrary if the defendants fails to demonstrate that there is no cause of action for the plaintiff to file the suit. Therefore, this point is taken for discussions. Before going further I am duty bound to have glimpse of order VII Rule 11 which reads as under;

1. where it does not disclose a cause of action;

2. where the relief claimed in 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;

3. 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 the requisite stamp paper

with a time to be fixed by the Court, fails to do so;

4. where the suit appears from the statement in the plaint to be barred by any law;

5. where it is not filed in duplicate.

6. where the plaintiff fails to comply the provisions of Rule 9.

13. This is a suit of grand daughter of defendant No.1 against defendant No.1 to 5 for the relief of partition and separate possession. The plaintiff is asserting that she is the daughter of Anjinamma. Anjinamma is the daughter of Ramakka. Ramakka is the disputed first wife of defendant No.1. The plaintiff is claiming her partition through her mother Anjinamma under section 15 of Hindu secession Act. The defendant has contended that the plaintiff cannot claim right over the suit property as there is no right for the plaintiff. The defendant No.3 has further contended that the plaintiff is claiming the relief of partition and declaration on the basis of will dated:06-05-2008 in respect of very same suit property. Hence the defendant has contended that the suit of plaintiff is not maintainable the disputed facts are at trial in this suit. Know plaintiff has commence the trial. The facts that are stated by the defendant No.3. In the affidavit are taken the shape of issues. The defendant No.3 now wants to invoke order 7 Rule 11 (a) and (d) of CPC for rejection of plaint on the same grounds urged in the written statement. In support of his arguments the advocate for defendant No.3 has relied upon **the principles laid down by Madras High Court in second appeal No.224/2016 and CMP**

No.16392/2019 in the case of S.Murugan and others Vs K.Sadayan and others.

14. The matter was pertaining to appeal against the judgments on merits and not against the orders under order 7 Rule 11(a) and (d) of CPC. The statement of the affidavit filed along with I.A No.12 and contention raised by the defendant No.3. In the written statement are one and the same. It is well settled law that the written statement contention and defendant documents are irrelevant under order 7 Rule 11(a) and (d) of CPC. **This principle of law is laid down by Hon'ble Supreme Court of India in case 2023 live law SC 311.**

“Order VII Rule 11- For dealing with an application under Rule 11 of Order VII of CPC, only the averments made in the plaint and the documents produced along with the plaint are required to be seen. The defence of the defendants cannot be even looked into. When the ground pleaded for rejection of the plaint is the absence of cause of action, the Court has to examine the plaint and see whether any cause of action has been disclosed in the plaint- Merely because there were some inconsistent averments in the plaint, that was not sufficient to come to a conclusion that the cause of action was not disclosed in the plaint. The question was whether the plaint discloses cause of action.”

15. Therefore the written statement contentions of defendant No.3 are irrelevant and cannot be considered in this application. The dispute that whether Ramakka is the first wife of defendant No.1 or defendant No.2 is the first wife of defendant No.1 is a matter of evidence. Whether the Ramakka had right to execute will dated:06-05-2008, in favour of plaintiff as pleaded in paragraph No.5 of the plaint is also a matter of trial. Whether the suit property has become separate property of defendant No.1, under section 8 of Hindu Succession Act or has become the absolute property of Ramakka under section 14 of Hindu Succession Act is also a matter of trial. When the evidence needs to be recorded then plaint cannot be rejected under order 7 Rule 11 (a) and (d) of CPC. **This principle of law is laid down by Hon'ble supreme Court of India in the case of Eldeco Housing and Industries Ltd v/s Ashok Vidyarthi and others in 2024 AIR (Civil) 1, which is extracted as under:**

“ Civil Procedure Code, Or. VII Rule 11 (d) – Specific relief Act, 1963, sec. 41(h) – provisions of – A memorandum of understanding was entered into between the appellant and respondent no.1 on 31.08.1998, regarding sale of the property in question – Suit for injunction by appellant was dismissed – A suit for specific performance was filed seeking enforcement of MOU dated: 31.08.1998 – It is in the aforesaid suit that application was filed by respondent no.1 under Or. VII Rule 11 (d) of CPC, for rejection of the plaint on the ground that in terms of Or. II Rule 2 of cpc the

suit was barred by law – the application filed by the respondent no.1 defendant before the trial court under Or. VII Rule 11 (d) of CPC was allowed in review petition by High court and the suit filed by the appellant was dismissed – Challenge – the application for rejection of the plaint was filed by the respondent claiming that prior to MOU dated: 31.08.1995 (registered on 01.09.1998), the MoU was entered into between the parties on 15.04.1998 – In the aforesaid agreement, it was clearly mentioned that in case the litigation of the vendor regarding the property in question is not decided after one year, the vendee will have the right to get his earnest money back along with interest will have the right to get his earnest money back along with interest @ 18% per annum – In fact, the vendee had issued a notice on 22.03.2001 seeking refund of the earnest money – In the light of the aforesaid facts, the suit for specific performance filed after dismissal of the suit for injunction was barred under Or. II Rule 2 CPC and deserved to be rejected – No amount of evidence or merits of the controversy can be examined at the stage of decision of the application under Or. VII Rule CPC – Hence, the impugned order of the High Court passed in

**the review application deserves to be set aside
– Trial Court shall proceed with the suit.”**

16. Hence I am of the opinion that the defendant No.3 has failed to demonstrate that plaint of plaintiff is liable to be rejected under Order 7 Rule 11 (a) and (d) of CPC. Hence I answer point no.1 in the negative.

POINT NO.2:

12. In view of my findings on point No.1. I proceed to pass the following order.

ORDER

I.A.No.12 filed by the defendant No.3 under order 7 Rule 11 (a) and (d) of CPC is hereby rejected.

(Dictated to the Stenographer, typed by her, corrected and then pronounced by me in the open Court on the 25th day of April, 2024.)

(ARVIND SAIBANNA HAGARGI)
Senior Civil Judge & JMFC.,
Doddaballapur.