

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

PRESENT:

Sri. Arun Kumar.G. B.A., LL.B.
Senior Civil Judge & JMFC,
Hosakote.

Dated this the 18th day of November 2025

O.S.No.3353/2022 (Old No.2928/2006)

Plaintiff/s : Sri.Basavarajappa

- V/s -

Defendant/s : Sri.Paramashivaiah & Ors.

Applicant/s : Sri.A.N.Nagaraj

Provision under which the application is filed	1) Order 7 Rule 11 (a) & (d) R/w Section 151 of CPC
Relief sought for	Rejection of plaint
The date on which the application is filed	31-1-2025
Number of the application	I.A.No.1/2025
The date on which the objections are filed by the different opponents	3-3-2025
The date on which the orders were passed on the said application	18-11-2025

**Order on I.A.No.1/2025 filed U/o 7 Rule 11 (a) and (d) R/w
Section 151 of CPC**

The defendant No.2 has filed the above application for rejection of plaint as it does not disclose cause of action and the suit is barred by law of limitation.

2. In the annexed affidavit it is stated that, the plaintiff has filed the above suit against the defendants for the relief of partition and separate possession and such other reliefs. But, there was a partition among the family members on 26-10-1986 itself and thereafter the revenue entries were mutated in the name of respective share holders. By virtue of the said partition the respective share holders are enjoying their respective shares as per their schedules of the partition deed. Hence, the above suit will not serve any purpose against the defendant No.2 and it is the abuse of process of law and court and it will not benefit the plaintiffs for having right, interest and title over the properties which are acquired by this defendant. Hence, the suit of the plaintiff is not maintainable and there is no cause of action to file the above suit. Hence, prays to reject the plaint with costs.

3. Per contra, the counsel for plaintiff No.2 filed objections to the above application by denying the statement of the defendant No.2 and further contended that there was no partition held between the family members as alleged by the defendant No.2. Further the plaintiff No.1 and defendant No.1 and 2 have obtained powthi katha from the father and grand father. Therefore, the plaintiffs and defendant No.1, 2 and 4 are joint family members hence, plaintiff No.2 is entitled to her legitimate share in the suit schedule property. Further, the plaint cannot be rejected on the basis of allegations made by the defendant in his written statement or application for rejection of plaint. Plaint disclosing cause of action required determination by the court, mere fact that in opinion, plaintiff may not succeed, cannot be ground to reject the plaint. Suit could not be dismissed under limitation without proper pleadings, framing of issues and evidence. Question of limitation is a mixed question of law and fact and ex facie on reading of the plaint, suit cannot be held to be barred by limitation. The court cannot come to proper conclusion in deciding the case until full fledged trial and after hearing both sides. As such the application is liable to be rejected at threshold itself. Hence, prays to reject the application.

4. Both the parties in their favour have relied upon the copies of documents.

5. Based upon the above contentions of the plaintiff and defendants, following points arise for consideration of this court:

1. Whether the defendant No.2 has made out sufficient grounds to reject the plaint?

2. What order?

6. Heard the arguments on both sides. On due perusal of the records, the court findings on the above points are as under:

Point No.1 : In the Negative,

Point No.2 : As per the final order
for the following;

REASONS

7. **Point No.1:-** The defendant No.2 has filed the above application for rejection of plaint stating that the right to claim the relief of partition by the plaintiff No.2 is barred under Section 6 of Hindu Succession Amendment Act as the alleged partition was effected on 26-10-1986. Therefore, the suit is barred by limitation and as per judgment dated 29-11-2021 passed by the

Hon'ble High Court of Karnataka in CRP.No.121/2021 between Sri.Koshy Abraham V/s Smt.B.K.Jayalakshmi & Others and the same is applicable to the case on hand.

8. Per contra, the plaintiffs have denied the statement made by the defendant and further contended that there is no partition between the joint family members as alleged by the defendant No.2 on 26-10-1986.

9. Further, in support of their arguments they have produced the copy of judgment passed by the Hon'ble Apex Court reported in **Civil Appeal No.7109/2025** between **Vinod Infra Developers Ltd., V/s Mahaveer Lunia & Others** wherein the Hon'ble Court has clearly held that:

“Partial rejection impermissible – Partial rejection of a plaint is not permissible and no adverse observations should be made against any relief in an Order 7 Rule 11 application if other reliefs remain valid.”

10. On perusal of available records and on careful reading of the plaint and its annexed documents it is just and necessary to

refer the provision of Order 7 Rule 11 of CPC which reads as follows:-

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

(a) Where it does not disclose a cause of action;

(b).....

(c).....

(d) Where the suit appears from the statement in the plaint to be barred by any law;

(e).....

(f).....

11. The remedy under Order 7 Rule 11 is an independent and special remedy which empowers the Court to summarily dismiss the suit at the threshold if it is satisfied that any of the grounds contained in Order 7 Rule 11 is made out. The underlying object of Order 7 Rule 11(a) is that in any suit no cause of action is disclosed or suit is barred by limitation under Order 7 Rule 11(d), the court would not permit the plaintiff to unnecessarily to protract the proceedings in the suit. Under Order 7 Rule 11, a duty is cast upon the court to determine whether plaint discloses cause of action by scrutinizing the

averments made in the plaint read in conjunction with the documents relied upon or whether the suit is barred by any law.

12. Having regard to Order 7 Rule 14 of CPC, the documents filed along with the plaint are required to be taken into consideration for deciding an application Order 7 Rule 11(a) of the Code and the Court would determine if the assertions made in the plaint are contrary to the statutory law or judicial dicta and whether a case for rejecting the plaint at the threshold is made out. If on meaningful reading of the plaint it is found that suit is manifestly vexatious and without any merit and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 of the Code.

13. Further, the plaintiff has filed the above suit for the relief of partition and separate possession in respect of the suit schedule property alleging that himself and the defendants constitutes a Hindu undivided joint family and they are in joint possession over the same.

14. The defendants through their written statement have denied the existence of the joint family and further taken a specific contention that on 26-10-1986 there was a panchayath partition among the family members through which suit schedule 'B' property was allotted in favour of plaintiff. From the date of partition, they are leaving separately. Further, the defendant No.2 has produced the copy of unregistered partition deed dated 26-10-1986, mutation and JDA dated 20-10-2022.

15. On perusal of all the above records in order to reject the plaint the court has to consider the averments made in the plaint and its annexed documents. Here in this case, the plaintiffs are claiming the relief of partition that as on the date of filing of the suit there exists a joint family between the parties and there is no partition was effected. Further, the defendant No.3 during pendency of the suit has transposed as plaintiff No.2 by claiming an equal share in the suit schedule properties.

16. It is the contention of the defendant No.2 that under Section 6 of Hindu Succession Amendment Act 2005 there is a clear bar regarding claim of the daughter as there was a partition

effected among the joint family members on 26-10-1986. On perusal of the said proviso to Section 6 of Hindu Succession Amendment Act their should be a registration partition effected between the family members.

17. But, here in this case as per documents produced by the defendant No.2 the alleged partition deed is unregistered one and the right to sue with respect to plaintiff No.2 is survives for consideration. Admittedly, it is well settled principles of law that the plaint cannot be rejected in part against any one of the party or property by invoking provision U/o 7 Rule 11 of CPC. The law on that point is already clarified by the **Hon'ble Apex Court** in the case of **Mahadeva Prasad Agarval and another vs. Axis Bank Limited and another**, reported in **2019(7) SCC 158**, Hon'ble Apex Court held that the plaint cannot be rejected in part. In this decision their lordship held in para No.10 to 14 the same is reproduced as under:

“10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) of CPC cannot be pursued only in respect of one of the defendant(s). In other

words, the plaint has to be rejected as a whole or not at all, in exercise of power Order 7 Rule 11 (d) of CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in the case of Sejal Glass Limited (supra) is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) of CPC stating that the plaint disclosed no cause of action.

The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the director's defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against defendant No.1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) of CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) of CPC will have no application at all, and the suit as a whole must then proceed to trial”.

“11. In view of this settled legal position we may now turn to the nature of reliefs claimed by

respondent No.1 in the notice of motion considered by the Single Judge in the first instance and then the Division Bench of the High Court of Bombay. The principal or singular substantive relief is to reject the plaint only qua the applicant/respondent No.1 herein. No more and no less”.

“12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) of CPC on account of non compliance of mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 of CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part. In that sense, the relief claimed by respondent No.1 in the notice of motion(s) which commended to the High Court, is clearly a jurisdictional error. The fact that one or some of the reliefs claimed against respondent No.1 in the concerned suit is barred by Section 34 of 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 of CPC at the appropriate stage. That can be considered by the Court on its own merits and in accordance with law. Although, the High Court has examined those matters in the impugned judgment the same, in our opinion, should stand effaced and we order accordingly”.

“13. Resultantly, we do not wish to dilate on the argument of the appellant(s) about the inapplicability of the judgments taken into

account by the Division Bench of the High Court or for that matter the correctness of the dictum in the concerned judgment on the principle underlying the exposition in Nahar Industrial Enterprises Limited Vs. Hong Kong and Shanghai Banking Corporation 7 to the effect that the DRT and also the appellate authority cannot pass a decree nor it is open to it to enter upon determination in respect of matters beyond the scope of power or jurisdiction endowed in terms of Section 17 of the 2002 Act. We leave all questions open to be decided afresh on its own merits in accordance with law”.

“14. A fortiori, these appeals must succeed on the sole ground that the principal relief claimed in the notice of motion filed by respondent No.1 to reject the plaint only qua the said respondent and which commended to the High Court, is replete with jurisdictional error. Such a relief “cannot be entertained” in exercise of power under Order 7 Rule 11(d) of CPC. That power is limited to rejection of the plaint as a whole or not at all”.In view of the preposition extracted in the aforesaid decision the plaint in respect of 1st plaintiff is concerned cannot be rejected, when the rights of other plaintiffs are survive for consideration.

18. In view of the decisions rendered by the Hon'ble Apex Court as stated supra, the application filed for rejection of plaint in part in respect of plaintiff No.2 is not permissible under the

law, when the right to claim the relief against other plaintiff is survive for consideration. Therefore, the application filed by defendant No. 2 is liable to be dismissed. Hence, this point is answered in the Negative.

19. **Point No.2** :- In view of the aforesaid findings on point No.1, I proceed to pass the following:

ORDER

I.A.No.1/2025 filed by the defendant No.2 under Order 7 Rule 11 (a) & (d) R/w Section 151 of CPC is hereby dismissed.

No order as to costs.

(Dictated to the stenographer, transcribed by her, corrected by me and then pronounced by me in the open court on this the 18th day of November 2025.)

(Arun Kumar.G)
Senior Civil Judge & JMFC,
Hosakote.

