

**IN THE COURT OF THE PRL. CIVIL JUDGE AND
JMFC., AT GOWRIBIDANUR**

Dated this 15th day of March 2023

:: PRESENT ::

SRI. SACHIN P.M.

B.A., L.L.B., (Hons)

Prl. Civil Judge and JMFC.,
Gowribidanur

ORIGINAL SUIT NO.369/2021

- PLAINTIFF/S:** 1. Sri. D.L.Narasimha Murthy,
S/o Late. Lingappa,
Aged about 60 years,
R/at Devarakondahalli Village,
Manchenahalli Hobli,
Gowribidanur Taluk,
Chikkaballapur District.
2. Smt. Mini Akkayamma
W/o Late. Lingappa,
Aged about 80 years,
R/at Devarakondahalli Village,
Manchenahalli Hobli,
Gowribidanur Taluk,
Chikkaballapur District.

(Rep. by Sri. C.M, Advocate)

-VS-

- DEFENDANT/S:** 1. Smt. Lakshminarasamma,
W/o Late. Chikka
Mutharayappa,
Aged about 70 years,

2. Nagamani @ Nagaveni
D/o Late. Chikka
Mutharayappa,
Aged about 40 years,
3. Sri. Nagaraj
S/o Late. Chikkamutharayappa,
Aged about 38 years,
4. Smt. Muniyamma
D/o Late. Chikkamutharayappa,
Aged about 48 years,
5. Smt. Lalithamma
D/o Late. Chikkamutharayappa,
Aged about 45 years,
6. Sri. Linga Gowda
S/o Late. Chikkamutharayappa,
Aged about 40 years,

All are residing at
Devarakondahalli Village,
Manchenahalli Hobli,
Gowribidanur Taluk,
Chikkaballapur District.

**(D-1 to 3 Rep. by Sri. V.V.K,
Advocate, D-4 Rep. by Sri.
G.R, Advocate, D-5 and 6 Rep.
By Sri. T.K.V, Advocate)**

ORDER ON I.A.NO.III FILED BY DEFENDANT NO.3
UNDER ORDER VII RULE 11(a) OF C.P.C.

The defendant No.3 has filed this application,
when the case was posted for plaintiff evidence,

seeking the rejection of the plaint.

2. The defendant No.3 has sworn to an affidavit stating that the plaintiff as filed this suit for partition and separate possession and that the suit schedule properties originally belongs to the father of the deceased Lingappa and Chikkamuthurayappa. That after the demise of Lingappa, his wife Muni Akkayamma i.e., the plaintiff No.2 and Chikkamuthurayappa entered into a prtition on 13/07/2022 and as per the partition deed, the suit schedule properties fell to the share of the defendant and the plaintiff got the properties mentioned in the partition deed. That the name of the plaintiff No.2 has been mutated in the revenue records as per MR No.24/2005-06 on 17/03/2006 and that the plaintiffs are in possession and enjoyment of the same. That the suit schedule properties are the remaining properties which came to the sahe of the defendants and that the defendants are in peaceful possession and enjoyment of the suit schedule properties. That due to misunderstanding between the defendants, the defendants No.1 to 3 herein filed a suit for partition in O.S No.80 of 2021 on the file of this Court against the defendants No.4 to 6 herein and that the said suit was compromised between

them as per the compromise petition. That the name of the defendant No.3 has been mutated in the revenue documents as per the compromise petition and that the defendant No.3 is are in peaceful possession and enjoyment of the suit schedule properties. That the plaintiffs have intentionally filed this suit only with regard to the share of the defendants but the plaintiffs have not included their share which was allotted to them as per the partition dated 13/07/2002 and hence there is no cause of action to file this suit. On these grounds, it is prayed that the plaint may be rejected.

3. The plaintiff has filed objections to the above application contending that the application is not maintainable in law or on facts and that the defendant has sworn to a false affidavit. That the suit schedule properties are in joint possession and enjoyment of the plaintiffs and the defendants and that there is no partition affected between the parties. That the defendants filed a collusive suit and compromised the suit without the knowledge of the plaintiffs. That the suit of the plaintiffs cannot be rejected without evidence and without considering the documents filed by them. On these grounds, it is prayed that the application may be dismissed with

exemplary cost.

4. On considering the I.A, its accompanying affidavit and the objections filed against it, the points that arise for my consideration are as under:

POINTS

Point No.1:- Whether the application filed by the defendant under Order VII Rule 11(a) read with Section 151 of C.P.C. deserves to be allowed and whether the plaint is liable to be rejected?

Point No.2:- What Order?

5. My answer to the above points is as under:

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

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

REASONS

6. Point No. 1 : This is a suit filed by the plaintiffs for the relief of partition and separate possession in respect of the suit schedule items No.9. The defendant has contended that this suit is not maintainable as the plaintiffs have only included the

properties which fell to the share of the defendants and not the properties which fell to the share of the plaintiffs in the partition dated 13/07/2002.

7. It is a well settled principle of law that the Court must only look at the plaint while dealing with an application under Order VII Rule 11 of C.P.C. At this juncture it is useful to refer to a decision reported in **AIR 2008 Supreme Court 3174** between **Kamala and Ors Vs K.T.Eshwara Sa and Ors** wherein the Hon'ble Supreme Court held that the rejection of plaint under Order VII Rule 11 of C.P.C has a limited scope. It was further held that for invoking Order VII Rule 11 of C.P.C, no amount of evidence can be looked into. At that stage, issues on merits of the matter cannot be within realm of the Court. The Hon'ble Supreme Court while dealing with the provisions of Order VII Rule 11 of C.P.C was pleased to hold that while adjudicating an application under Order VII Rule 11 of C.P.C. the Court cannot go through the contents and pleadings of the written statement but the Court has to go through plaint averments and therefore the Court has to satisfy itself that the suit appears, from the averments in the plaint, to be barred by law. If it appears from the averments contained in the plaint that suit of the

plaintiff is barred by any law or lacks cause of action, then the Court has to reject the plaint. The above mentioned decision is applicable to the present case in hand.

8. In the plaint, the plaintiffs have pleaded that the suit schedule properties are the ancestral Hindu undivided joint family properties of the plaintiffs and the defendants and that the plaintiffs and the defendants have not divided the same by metes and bounds. That the defendants have colluded with each other and have created revenue documents in the name of others and the defendants tried to cut and remove the standing trees grown by the plaintiffs. That the suit documents are standing in the name of the grandfather of the plaintiffs and that tractor bearing Reg.No.KA-40-T-3025 has been purchased in the name of Chikka Muthurayappa. That the plaintiffs requested the defendants to allot their $\frac{1}{2}$ share in the suit schedule properties but the defendants refused the same and hence, this suit. The cause of action is stated to be 12/11/2021 when the defendants refused to allot the $\frac{1}{2}$ share of the plaintiffs in the suit schedule properties.

9. Given the aforementioned facts of this case

and in light of the instant application filed by the defendant No.1, *the questions that arise at this stage are (a) whether the suit schedule properties were subject to partition dated 13/07/2002? and (b) whether the plaint discloses a cause of action?*; The defendant No.3 has contended that the suit does not disclose a cause of action but it is a well settled law that a cause of action is a bundle of facts which the litigant must prove in order to succeed in the suit. At this juncture, the plaintiffs have pleaded that the suit schedule properties are their undivided ancestral and joint family properties and the burden of proof is upon the plaintiffs to prove the same. To answer the hereinbefore mentioned questions, this Court requires evidence to be adduced and placed before it by the parties regarding the same and in the absence of any evidence in that regard, this Court cannot reject the plaint at this stage. As such, the suit filed by the plaintiffs seeking the relief of partition and separate possession of the suit schedule properties appears to be maintainable at this stage. As stated before, a cause of action is a bundle of facts which the plaintiffs must prove in order to claim the reliefs sought and on a bare reading of the plaint, a cause of action is disclosed. The defendants are at liberty to

cross-examine the plaintiff witnesses and lead evidence to demolish the case of the plaintiffs. Therefore, the averments contained in the plaint do not warrant this Court to invoke its power and Order VII Rule 11 of C.P.C and reject the plaint outright at this stage. Hence, for the above said reasons, I am of the considered view that the application file by the defendant No.1 is liable to be dismissed as devoid of merits and I have answered **Point No.1 in the Negative.**

10. Point No. 2: For the reasons stated above, I proceed to pass the following:

ORDER

I.A filed by defendant No.3 under Order VII Rule 11 (d) read with section 151 of C.P.C. is hereby dismissed on cost of Rs.200/-.

(Typed by me, corrected, signed and then pronounced in the open court on this 15th day of March 2023).

SD/-

(SACHIN P.M)
Prl. Civil Judge & J.M.F.C.
Gowribidanur

