

KACM210016942025



**IN THE COURT OF III ADDITIONAL CIVIL JUDGE AND
J.M.F.C., AT KADUR.**

Dated : This 8th day of October 2025

:PRESENT:

Sri. Thahakaleel K.A., B.A.LL.B.,

II Addl. Civil Judge and JMFC Kadur.

C/C. III Addl. Civil Judge and JMFC Kadur.

OS No.258/2025

PLAINTIFF/S:

Smt. Sakamma

D/o Rangappa,

Aged about 50 years, House-wife,

R/o Vakkalagere Village, Yagati

Hobli, Kadur Taluk.

Chikkamagaluru District.

(Rep. By Sri. K.S.R., Advocate)

V/S

DEFENDANT/S 1) Sri. Rangappa

S/o Late. Madalappa,

Aged about 80 years,

Agriculturist,

R/o P. Mallapura Village,

Yagati Hobli, Kadur Taluk.

2) Smt. Gangamma

D/o Rangappa,

W/o Late. Mahanteshappa,

Aged about 60 years, House-wife,

R/o P. Mallapura Village, Yagati

Hobli, Kadur Taluk.

KACM210016942025



- 3) **Smt. Nanjamma**
D/o Rangappa,
W/o Chikkanna,
Aged about 55 years,
R/o Vakkalagere Village,
Yagati Hobli, Kadur Taluk.
Chikkamagaluru District.
- 4) **Sri. Manjappa**
S/o Rangappa,
Aged about 47 years,
Agriculturist,
R/o P. Mallapura Village, Yagati
Hobli, Kadur Taluk.
- 5) **Smt. Manjula**
W/o Late Paramesh,
Aged about 35 years, House-wife,
R/o P. Mallapura Village, Yagati
Hobli, Kadur Taluk.
- 6) **Kumari. Arpitha**
D/o Late Paramesh,
Aged about 11 years, Minor rep by
her Mother Smt. Manjula,
R/o P. Mallapura Village, Yagati
Hobli, Kadur Taluk.
- 7) **Smt. Ningamma**
W/o Late Revanna,
Aged about 65 years, House-wife,
R/o P. Mallapura Village, Yagati
Hobli, Kadur Taluk.

(D3-4 Rep. By Sri. C.J.M., Advocate
D5-7 Rep. By Sri. H.N.R., Advocate
D1-2 Exparte)

KACM210016942025



Parties to I.A No.II

Applicant/s : D-5 Smt. Manjula

V/S

Opponent/s : Smt. Sakamma.

Sl. No.	Subject	Remarks
1	Provision under which the application is filed	Order VI Rule 11(d) and 2 R/w Section 151 CPC
2	Relief sought for	Reject the plaint
3	The date of which the application is filed	08.04.2025
4	Number of the application	I.A.No.II
5	The date of which the objections are filed by different opponents.	I.A.No.II on 10.07.2025 By the Plaintiff.
6	The date of Order.	08.10.2025

ORDER ON I.A No. II.

The learned Counsel for the Defendant No. 5 and 6 have filed present I.A under Order VII Rule 11(d) CPC praying to reject the Plaint as suit is hit by the law of ***Res- Judicata.***

KACM210016942025



2. In the Affidavit sworn by the Defendant No. 5, it is prayed to read the written statement as part and parcel of the Affidavit. In the Written Statement, it is stated that, the husband of the Defendant No.5 and the father of the Defendant No. 6 by name Sri. Paramesha K.R had filed the suit in OS No. 584/2021 before the III Addl. Civil Judge and JMFC Court at Kadur against his father Rangappa and sisters Smt. Gangamma, Smt. Nanjamma, Smt. Sakamma (the present Plaintiff) and Sri. Manjunatha for the relief of partition and separate possession of his 1/6th share. The same came to be disposed before lok- adalath by way of compromise, wherein the present plaintiff has received a sum of Rs. 50,000/ - and relinquished her share over the suit schedule property. Therefore, this being the second suit on the same property and for the same reliefs is not maintainable. Hence, prayed to reject the plaint.

KACM210016942025



3. On the other hand, the learned counsel for the plaintiff has filed statement of objection to I.A No. II contending that, the applicant has sworn to the false affidavit and as per the various judgment of Hon'ble High Court and Supreme Court, this kind of application is not maintainable. Hence, prayed to reject I.A No. II with cost.

4. Heard Arguments from both sides, perused materials available on records and on perusal, the following points would arise for consideration of this Court.

1. Whether the Defendant No. 5 and 6 have made out sufficient grounds to reject the Plaint by exercising power vested under section Order VII Rule 11(d) CPC., ?
2. What Order ?

5. My answers to the above points are as follows

Point No.1 : In the Negative.

KACM210016942025



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

REASONS

6. Point No.1:- The Plaintiff has filed present suit for the following relief.

- a. Declaration to declare that Sale deed executed by the Defendant No.1 in favour of the Defendant No.7 vide SRD NO. 5122/2024-25 dated 08.11.2024 is not binding on plaintiff.
- b. For partition and separate possession of Plaintiff's 1/6th share in the suit schedule properties by meets and bounds
- c. For mesne profit under Order 20 Rule 12 CPC from the date of suit, till handing over the possession.
- d. For Court cost and such other relief as this Hon'ble Court deems fit to grant to the plaintiff under the circumstances of the case.

KACM210016942025

7. In the plaint, it is stated that the plaintiff and Defendant No. 1 to 6 are the joint family members and the suit schedule properties are their joint family properties and there is no division taken in the family. The Defendant No.1 by colluding with Defendant No. 5 has sold the item No. 4 property to the Defendant No.7 without legal necessities. The cause of action to file this suit arose on 06.10.2024, when the plaintiff has demanded the defendant to allot his share and the Defendants declined to effect partition.

8. After service of the summons, the Defendant No. 5 and 6 had appeared through their counsel and filed written statement and contended that, there was already partition taken place in their family as per the compromise decree passed in OS No. 584/2021. Hence, present suit is not maintainable.

9. At this Juncture, it is apt to refer the provision of Order VII Rule 11 CPC.

KACM210016942025

**Order VII Rule 11 . Rejection of Complaint –**

The complaint shall be rejected in the 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 supply the requisite stamp paper within a time to be fixed by the court, fails to do so;*
- (c) *Where the relief claimed is properly valued, but the Court fee actually paid is insufficient and the plaintiff does not make good the deficiency within time, if any granted by the Court;*
- (d) **Where the suit appears from the statement in the complaint to be barred by any law;**
- (e) *Where it is not filed in duplicate;*
- (f) *Where the plaintiff fails to comply with the provision of Rule 9*

Provided that the time fixed by the court for the correction of valuation or supplying the requisite stamp papers shall be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause injustice to the Plaintiff.

KACM210016942025



Thus, on reading of the Order VII Rule 11(d) it is clear that to reject the plaint, only averments made in the plaint shall take into consideration and not the averments of the Written statement or the application filed by the Defendants. On perusal of the plaint, it does not appear to this court that the plaint is barred by any law. Further, the Defendants pleaded that, in view of earlier suit in OS No. 584/2021, the suit is barred by the *Res judicata* as per section 12 of Civil Procedure Code. The *Res Judicata*, being the mixed question of law and facts, 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 final hearing, but, the said question cannot be decided at this stage. With these observations, this court answers **point No.1 in the Negative.**

10. Point No.2: For the reasons and discussions made above, this court proceeds to pass following :

KACM210016942025

**ORDER**

I.A No.II filed by the Defendant No.5 and 6 under Order VII Rule 11(d) is hereby rejected.

No Order as to cost.

(THAHAKALEEL K.A)
C/c III Addl. Civil Judge and JMFC
Kadur.

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