



**IN THE COURT OF THE ADDL. CIVIL JUDGE AND JMFC.,
MUDIGERE**

Present: **Smt.Suraksha.K.K.,** B.B.M., L.L.B.
Addl. Civil Judge & JMFC.,
Mudigere.

DATED: THIS THE 11th DAY OF APRIL 2025

ORIGINAL SUIT No: 35/2025

BETWEEN :

1. Sri.Arvind J.Kotecha,
Aged about 77 years,
S/o Jeram Kotecha,
Mavinakere Estate,
Kalasa Post, Mudigere Taluk,
Chikkamagaluru District-577 201.

2. Smt.Usha Jayendra Kotecha,
Aged about 73 years,
W/o Jeyendra G.Kotecha,
Mavinakere Estate,
Kalasa Post, Mudigere Taluk,
Chikkamagaluru District.

Represented by their Power of Attorney Holder
Sri.Naresh, aged about 49 years,
S/o Madhava,
Manager of Mavinakere Estate,
Kalasa Taluk,
Chikkamagaluru District-577 201.

... Plaintiffs

(By Sri. Gerald Dias/B.T.N, Adv.,)

AND :

1. M/s Mavinakere Estate,
An alleged partnership firm
purportedly formed by a



Partnership deed dtd. 22.02.2020
And registered on 21.05.2020,
Having its alleged office at
Estate Office, Kalasa,
Temple Village, Mudigere Taluk,
Chikkamagaluru,
Represented by its alleged partners No.2 & 3

2. Rupin Prabhudas Kotecha,
Aged about 59 years,
S/o late Prabhudas Damodar Kotecha,
R/o No.6, White Craig Close,
Hetchend, Pinner, HA, England,
United Kingdom.
And also residing at:
No.16, Ram Mahal, 5th Floor,
8 Dinshawa Vatcha Road,
Church Gate, Mumbai-400 020.

3. Smt.Madhavi Rupin Vadera,
Aged about 64 years,
D/o Prabhudas Damodar Kotecha,
W/o Rupin Nitesh Vadera,
R/o La Chenaie, Kewferry Drive,
Northwood, London HA6 2NU,
(United Kingdom).
And also at:
Glenmorgan Estate,
Glenmorgan Post,
Ootacamund-643 237.

4. Smt.Bhavana Jitendra Thakerar,
Aged about 62 years,
D/o Prabhudas Damodar Kotecha,
British Citizen,
Address at UK not known,
And also residing at:
Residing at No.16, Ram Mahal,
5th Floor, 8th Dinshawa Vatcha Road,
Church Gate, Mumbai-400 020.

...Defendants

(By Sri.Kumaraswamy.A.B, Adv.,)



PARTIES TO IA.No.4

BETWEEN :

M/s Mavinakere Estate,
An alleged partnership firm & 3 Ors.

...Applicants

AND :

Sri.Arvind J.Kotecha & Anr.
Represented by their PA holder Naresh

...Opponents

1	Provisions under which the application is filed	Under Order VII Rule 11(a) & (d) R/w section 151 of CPC
2	Relief sought for	Rejection of plaint
3	The date on which the application is filed	18.03.2025
4	Number of the application	4
5	The date on which the objection filed by opponents	04.04.2025
6	The date on which the order was passed on the said application	11.04.2025

Sd/-

(Suraksha.K.K)
Addl. Civil Judge & JMFC,
Mudigere.

ORDER ON I.A NO.4

The present application is filed by the defendants under order VII Rule 11 of Code of civil procedure, seeking rejection of the plaint, on the grounds that the suit filed by the plaintiffs does not



disclose cause of action and since the plaintiffs are not partners in the defendant No.1 firm, hence the suit of the plaintiff is barred by law.

2. On the other hand, the plaintiffs filed their objection to I.A No.4 and contended that, the court while considering the application under Order VII Rule 11 of CPC, it has to look only into plaint and plaint documents and the written statement filed by the defendants and their contention has no relevance while considering the said application. In so far as, the plaintiffs having no locus-standi to file the present suit and having not disclose the cause of action is concerned, on going through the plaint it clearly disclose that there are several disputes pending before different court of law and the averments of the plaint itself disclose the real cause of action to file present suit and the application filed by the defendants is not maintainable. Accordingly sought for dismissal of I.A No.4.

3. Heard learned counsel for defendants, learned counsel for the defendants submit that, the plaintiffs are not partners to the original partnership firm which was established in the year 1963, without being partners to the defendant No.1 firm they do not have any locus-standi to challenge the dissolution deed of the year 2023 and accordingly the suit of the plaintiffs is barred by law and counsel for the defendants also submits that, the prayer and the cause of action claimed by the plaintiffs are intertwined which is only tailored with intent to file this false suit they have created the story and mentioned cause of action as arose on 06.10.2024,



hence there is no nexus between prayer and cause of action and relies on the case of the Hon'ble Supreme court in **Rajendra Bajoria and others Vs. Heamant Kumar Jalan and Others, reported in AIR 2021 SC 4594** and Tahsildar Urban improvement trust and another vs. Gangabai Menariya dead by Lr's and others in civil appeal No.722/2012. Accordingly sought to allow the I.A and reject the plaint of the plaintiffs.

4. On the other hand learned counsel for the plaintiffs would submit that, the partnership firm which was established in the year 1963 stood dissolved in the year 1983 by death of one of the partner by name Sri.Karsandas Kotecha. Hence the deed of the dissolution of the year 2023 which was created by the father of the defendant No.2 to 4 is illegal and void and non-est in the eye of law. Hence it is mentioned in the pleadings that, the cause of action for filing of the suit arose on 06.10.2024, when the defendant No.2 tries to interfere with the management of the defendant No.1 firm and relies on the judgment of the Hon'ble Supreme court of India in the case of the Civil Appeal No.14807/2024 and case reported 2025 Live law (SC) 342 and accordingly sought for dismissal of the application filed by the defendants No.1 to 4.

5. Heard both the parties. on perusal of application, objection, plaint and the documents the following point would arise for consideration:

1. Whether the plaint is liable to be rejected under Order 7 rule 11(a) &



(d) R/w section 151 of civil procedure code?

2. What order?

6. This court answers the above points as hereunder.

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

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

REASONS

7. Point No.1: Before going into the discussion on merits of the application, it would be proper for this court to list out the facts, which leading the plaintiffs to file the present suit. It is the case of the plaintiffs that, Mavinakere Estate originally was a partnership firm constituted under the deed of partnership established in the year 1963, the said partnership firm was dissolved by operation of law and with effect from 13.11.1982, consequently upon the dissolution of the partnership with effect from 1982, the remaining partners has made an interim arrangement for management and entered into an deed of co-ownership in the year 1985, through which they continued the business of Mavinakere estates based on co-ownership. Thus, the legal status of Mavinakere estate as partnership firm no longer in existence.

8. Such being the case, during 2023 the father of defendant no.2 to 4 i.e., late Prabhudas D Kotecha has created a deed styled as deed of dissolution of partnership on 04.02.2023. According to



this deed of dissolution, the partnership firm of 1963 came to be dissolved with the effect from 06.06.2013 and late Prabhudas D Kotecha became the proprietor of Mavinakere estate and it is recited in the deed of dissolution that, there was an oral agreement with dead partners. The alleged deed has been executed by falsely claiming about recording the terms and conditions of the dissolution with dead persons. Therefore, the said deed of dissolution of partnership of the year 1963 is illegal and non-est in the eye of law. The conduct of Late Prabhu Das Kotecha and his legal heirs i.e., defendant no.2 to 4 is incorrect and contrary to law. Hence the plaintiffs filed the present suit.

9. This being the plaintiffs case, it would be proper for this Court to state the facts which leads the defendant No.1 to 4 to file the present application is as hereunder:

It is the contention of the defendants that, the defendant No. 2 to 3 are the legal heirs of deceased of Prabudas D Kotecha who is one of the partner of the Mavinakere estate partnership firm. The defendant no.2 and 3 are the partner of Mavinakere estate partnership firm having right to manage and to look after the Mavinakere estate partnership firm.

The defendants contends that, originally Mavinakere estate is a 712 acres estate located in a high rainfall area wherein tea, coffee, pepper and arecanut are harvested. The firm was established in the year 1963 consisting of 5 partners who contribute to run the business. Viz 1.Jeram Damodar Kotecha 2. Prabhudas D Kotecha 3. Karsandas Jinabhai Kotecha 4. Kalidas Jinabhai Kotecha and 5.



Jyaendra Govindji Kotecha and the same was registered before the sub-registrar, Mudigere. Further defendants submits that, all the above partners entered into "Deed of Rectification of Partnership" on 26th July 1965. the partnership was a partnership at will.

Further submitted that, during 2013 only Prabhudas D Kotecha who is the last surviving partner was alive, all other 4 partners were died. Hence, the partner Prabhudas D Kotecha who was last surviving partner, has made deed of dissolution of partnership firm of Mavinakere estate partnership on 4.02.2023, with the effect from 06.06.2013 and the same was registered before the district registrar, Chikkamagaluru. Thereafter, Prabhudas D Kotecha who was the only living and surviving partner, in order to carry on the business as a partner of a partnership firm dated 22.12.1963, reconstituted the partnership firm included three members i.e., 1. Prabhudas D Kotecha 2. Taruna prabhudas Kotecha and 3. Rupin prabhudas Kotecha on 22.2.2020 and the Mavinakere estate partnership firm property made over to the re-constituted Mavinakere estate partnership firm. Thereafter Tarun Kotecha died and partnership was reconstituted with Madhavi Vadera as partner on 23.07.2020. since partners are only entitled to profits and have no right or interest in the property of the firm, their role is merely to act as agents of the firm in any dispute/litigation relating to ownership of the immovable property owned by the firm. That being the case, there was no impediment to Prabhudas D Kotecha adding partner to the reconstituted firm, as the purpose was purely management



in return for a share of profits. Hence Prabhudas D Kotecha acted according to sec42(c) of Indian partnership act. He made dissolution of the partnership deed dated 04.02.2023 and duly filed it on the file of registrar of firms, Chikkamagaluru which is maintainable in the eye of law.

10. Now, on considering the facts pleaded by the plaintiffs and defendants herein the only fact which is forthcoming is that, whether the plaintiffs who are legal heirs of deceased original partners of the firm have any locus-standi to file this suit or have any right to challenge the deed of dissolution made by the only surviving partner of Prabhudas D Kotecha and in order to answer the said question the contention raised by the plaintiffs is that, the partnership Deed which was established in the year 1963 has already dissolved in the year 1982, if so then the plaintiffs who are the legal heirs of the deceased partners are liable for the shares in the properties of dissolved partnership firm for examining which it would be proper if provisions of law are referred in Section 29 of the Partnership Act reads as hereunder:

" A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee



shall accept the account of profits agreed to by the partners.

(2).If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution."

11. If section 29 of the partnership act is perused it could be understood that, any transferee from the partner is only entitled for benefits, profits during the continuation of the firm but once firm is dissolved or if the transferring partner ceases to be a partner the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled.

12. Here if the present case, is considered in connection with section 29 of the Act, then it could be pointed out that, there is a particular claim by the plaintiffs that, the firm which was established in the year 1963 was already dissolved in the year 1982 and since it is already dissolved they being legal heirs of the deceased partners are entitled for assets in the firm to an extent of share of deceased partner, but such a contention by the plaintiffs requires to be examined and then determined by this court, for which a full fledged trial is necessary.



13. This being the matter with respect to suit being barred by law, if the matter of cause of action is concerned, as rightly pointed out by the counsel for the plaintiffs, it is only the plaint and the plaint documents which the court should look into while considering application under order VII Rule 11 CPC, on entire reading of the plaint it discloses that, the defendant No.2 after the act of execution of deed of dissolution dated 04.02.2023, the defendants, more particularly the defendant No.2 by giving complaint to superintendent of police and doing several other acts has tried to interfere with the management of the Mavinakere estate, if such fact is considered the plaint of the plaintiffs does disclose the cause of action and it is important here to mention that, it is not the stage for court to consider the genuinity of the cause of action or its maintainability, it is only that, the court should see, on considering the plaint and documents thereto, that should disclose the cause of action, which is apparent in the plaint presented by the plaintiffs herein. Accordingly this court is of the opinion that, in the present case on hand the suit filed by the plaintiffs is not barred by law and does disclose the cause of action and it is needless to mention that, the facts which are alleged by the defendants does need a full fledged trial, without which this court cannot comes into conclusion at this point of time. Accordingly for the reasons stated above the application filed by the defendants deserves to be dismissed. Accordingly, this Court answers Point No.1 in the '**Negative**'.



14. Point No.2: on considering the above discussion this Court proceed to pass the following

ORDER

The application filed by the defendant No.1 to 4 under Order 7 Rule 11(a) and (d) R/w section 151 of Civil Procedure Code is hereby rejected.

(Dictated to the Stenographer, typed by him on computer, corrected and then pronounced by me in the open court on this the **11th day of APRIL, 2025**).

Sd/-
(Suraksha.K.K)
Addl. Civil Judge & JMFC.,
Mudigere.