



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

DATED: THIS THE 19th DAY OF AUGUST 2023

Present: Sri. Vishwanath A., B.B.A., L.L.B.
Addl. Civil Judge & JMFC.,
Mudigere.

ORIGINAL SUIT No: 110/2016

BETWEEN :

Sri. Krishnappa
S/o Late Appanna,
Aged about 68 years,
R/o Heggudlu Village,
Banakal & Post,
Mudigere Taluk.

... Plaintiff

(By Sri. Siddaiah D., Adv.,)

AND :

Mr. Harish
Aged about 49 years,
S/o Late Appanna,
R/o Heggudlu Village,
Banakal Hobli & Post,
Mudigere Taluk.

...Defendant

(By Sri.K.A.Mohith Adv.,)

**PARTIES ON I.A.NO.VII****BETWEEN :**

Harish

*... Applicant***AND :**

Krishnappa

*...Opponent***ORDERS ON I.A.NO.VII**

The defendant has filed the present application during the stage of defendant evidence. The present application is filed under Order 7 Rule 11(a) of CPC seeking rejection of plaint for want of cause of action.

2. In the affidavit accompanied to the present application, the defendant has submitted that the plaintiff at one stage contends that there was partition between him and the defendant in the year 2016 and seeks for declaration to be the owner of suit 'A' schedule property. At another stage the plaintiff also seeks of partition of the suit schedule properties, as such there is no cause of action for the suit. On these averments, the defendant has sought for rejection of plaint.



3. On the other hand, the plaintiff has not filed his statement of objections to the present application even though sufficient opportunity is granted to him.

4. In view of the above rival contentions of both the parties, the following points do arise for consideration:

1. Whether the defendant has made out that the plaint does not disclose the cause of action?

2. What order?

5. Heard both side and also perused entire materials on record. Now, the findings of this Court on the above points are as follows.

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

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

REASONS

6. **POINT No.1:** This is the application filed seeking rejection of plaint on the ground that the plaintiff has got no cause of action to file the suit. It is now a settled possession of the law that the averments of plaint and the document



relied by the plaintiff shall only be considered while deciding the applications filed under Order VII Rule 11 of CPC. Order VII Rule 11(a) provides that the plaint shall be rejected if the same does not disclose a cause of action. In this background, if the plaint averments are carefully looked into, the plaintiff has contended that the suit schedule properties are the joint family properties of himself and the defendant. There was a oral partition between them and as per the said oral partition suit schedule 'A' property was allotted to the share of plaintiff. Since the revenue entries with respect to suit schedule properties was mutated in the name of the plaintiff, he has ousted the plaintiff from the possession of 'A' schedule property. In spite of panchayath and agreement in writing the defendant has refused to execute partition or release deed in favour of plaintiff with respect to suit 'A' schedule property.

7. The plaintiff has claimed that the cause of action for the above suit aroused on 28.05.2016 i.e., when the defendant has refused the request of plaintiff. Keeping in view the above aspects, this Court places its reliance on the recent decision of the Division Bench of Hon'ble High Court of Karnataka in the case of **Smt. Mallamma and Others**



V/s Shri Mallegowda @ Karigowda and Others reported in **ILR 2022 KAR 992** wherein relied on the decision of Hon'ble Apex Court in the case of **Dahiben V/s Aravind Bai Kalyanji Bhanusali** reported in **(2020) 7 SCC 366** wherein propositions of law is laid down with respect to Order 7 rule 11 of CPC.

8. On careful reading of the above decision, it is thus clear that while deciding the applications under Order 7 rule 11 of CPC, Courts have to scrutinize the plaint averments in conjunction with the documents relied upon or whether the suit is barred by law and also whether the assertions made in plaint are contrary to statutory law or judicial dicta. Therefore, clear distinction can be made between non-disclosures of cause of action and there is no cause of action. What is provided under Order 7 rule 11(a) of CPC is non-disclosure of cause of action and while deciding the issue of non-disclosure of cause of action the genuineness of cause of action cannot be decided as the same require necessary materials.

9. Herein the present case the sole ground urged by the defendant is that the plaintiff having took contention of



oral partition he has sought for declaration of title and also for partition. Thus, he has got no cause of action to file the present case. It is also relevant here to refer the recent order dated 09.11.2022 passed by Hon'ble Apex Court in **SLP(Civil) No. 19018/2022** in the case of **Gurudev Singh Vs. Harvinder Singh** wherein it has been held that since the plaintiff is not entitled to any relief in the suit, the same cannot be ground for rejection of plaint at the threshold in exercise of powers under Order 7 rule 11 of the CPC. Keeping in view the above decision of Hon'ble Apex Court, if the plaint averments are looked into in consonance with the documents relied by the plaintiff, there is a disclosure of cause of action and the genuineness of the same is disputed by the defendant which cannot be decided in the present application as the issue on that point is to be answered. Therefore, this Court considers that the defendant has not made out grounds for rejection of plaint and hence, Point No. 1 is answered in **Negative**.

10. POINT No.2: In view of the above findings on point No.1, this Court proceed to pass the following.



ORDER

***IA.No.II filed by the Defendant
under Order VII Rule 11(a) of CPC is
rejected.***

***For hearing on I.A.No.VIII by:
26.08.2023.***

*(Dictated to the stenographer, typed by her on computer, corrected and
then pronounced by me in the open court on this the **19th day of August,
2023**).*

Sd/-

(Vishwanath.A)

Addl. Civil Judge & JMFC,
Mudigere.

***BSM**