



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND  
JMFC AT MUDIGERE**

**: PRESENT :**

**SRI. JAYAPRAKASH V. B.A., LL.B.,  
SENIOR CIVIL JUDGE & JMFC,  
MUDIGERE.**

**O.S. NO. 28/2021**

**DATED THIS THE 28<sup>th</sup> DAY OF AUGUST 2024**

**Plaintiffs:** Sri. Syed Pyaru,  
S/o Syed Ibrahim,  
Aged about 61 years,  
Agriculturist,  
R/o J.M. Road,  
Mudigere Town,  
Chikkamagaluru District.  
[By Sri. H.S., Advocate]

V/s.

**DEFENDANTS:** 1. Sri. D.R. Raju,  
S/o Ramaiah,  
Aged about 68 years,  
R/o 'Krithika Estate',  
Bankenahalli village,  
Mudigere Taluk,  
Chikkamagaluru District.  
2. Sri. B.J. Chandregowda,  
S/o Junjegowda,



Aged about 65 years,  
R/o Bankenahalli village,  
Mudigere Taluk,  
Chikkamagaluru District.

3. Sri. Harish,  
S/o Late Eshwara Poojari,  
Aged about 45 years,  
R/o Indira Nagara,  
Bankenahalli village,  
Mudigere Taluk,  
Chikkamagaluru District.  
[D1 & 2 by Sri K.S.A., Advocate,  
D3 by Sri K.M.P., Advocate]

**RANK OF PARTIES IN IA.NO.XVI**

**Applicant/s:** Sri. D.R. Raju and others

V/s.

**Opponent:** Sri. Syed Pyaru

1	Provisions under which the application is filed	Under order VII rule 11 R/W Sec. 151 of CPC
2	Relief sought for	Rejection of plaint
3	The date on which the application is filed	04/06/2024
4	Number of the application	I.A.No.XVI
5	Date on which the	21/06/2024



	objection filed by opponents	
6	The date on which the order passed on the application	28/08/2024

Senior Civil Judge and JMFC,  
Mudigere

**ORDERS ON I.A.NO.XVI FILED BY THE FIRST DEFENDANT  
NO.1 AND 2 U/O VII RULE 11 R/W 151 OF CPC**

I.A.No.XVI filed by the defendant No.1 and 2 U/o VII rule 11 R/w 151 of CPC to reject the plaint as there is no cause of action for the suit.

2. On the other hand, plaintiff has filed objection to IA No. XVI and prays to dismiss the application.

3. Heard both side and perused the materials on record.

4. The following points arises for my consideration.

1. Does plaint disclose cause of action?

2. Whether plaint is liable to be rejected for want of cause of action?



3. What order?

5. My findings on the above points are as follows:

Point No. 1 : In the Affirmative

Point No. 2 : In the Negative

Point No. 3 : As for the following:

### REASONS

#### Point No. 1:

6. These points are interlinked with each other and requires common discussion. Hence these points are taken together for common discussion in order to avoid repetition of facts.

7. Defendant No.1 and 2 have filed I.A. No. XVI to reject the plaint filed by plaintiff for want of cause of action. In the memorandum of facts annexed to the application the defendants contended that the whole suit of the plaintiff is based on the report of court commissioner appointed in RSA 1639/2013. It is the case of the plaintiff that after the coming to know the



report of court commissioner in RSA 1639/2013 during March 2021 he has demanded the defendant No.1 and 2 to vacate the plaint 'B' and 'C' schedule property. Defendant further stated that according to plaintiff the cause of action arisen on March 2021 on the commissioner report in RSA. The plaintiff has not stated the specific dated of cause of action except saying that it has arisen on March 2021. Defendants further stated that said RSA No. 1639/2013 is preferred on the Judgment in suit for possession of partition of 'A' schedule property between Vendor of plaintiff and defendants. The RSA No. 1639/2013 has been dismissed about year back. Hence, report of court commissioner also lost its value and so the alleged cause of action will not service and there is no cause of action for suit. Hence defendants prays to reject the plaint.

8. On the other hand plaintiff contended that application filed by the defendant No.1 and 2 is not maintainable either in law or on facts. The memorandum of facts filed in support of the said I.A.



is bereft of merits. The said I.A. is filed in order to drag the proceedings. Plaintiff further stated that entire contents of memorandum of facts are false and created and it is settled principles of law that only the averments of the plaint is to be considered while deciding the I.A. under order VII rule 11 of CPC. The para No. 4 to 6 of the plaint unambiguously disclose the cause of action. It is not the requirement of law that specific date is to be mentioned. It is false that the report of the Court commissioner lost its value. Hence plaintiff prays to dismiss the application.

9. On perusal of the records it reveals that, plaintiff has filed the suit for rectification of northern boundary as 2 ನೇ ಪಾರ್ಲಿಯವರ ಸ್ವತ್ತು ಮತ್ತು ಬಿ ಹೊಸಳ್ಳಿ ಗ್ರಾಮದ ಗಡಿ' and southern boundary as 'ಕೂಡಹಳ್ಳಿ ಗ್ರಾಮದ ಗಡಿ' in the registered sale bearing document No. MGE-1-01408-2015-16 dated 16-10-2015 and for possession of plaint 'B', 'C' and 'D' schedule properties and for permanent injunction. In the application defendants contended that the suit is based on the report of the



court commissioner appointed in RSA 1639/2013. It is the case of the plaintiff that after coming to know the report of court commissioner in RSA 1639/2013 during March 2021 he has demanded the defendant No.1 and 2 to vacate the plaint 'B' and 'C' schedule properties. It is the contention of the defendant that according to the plaintiff the cause of action arise on March 2021 on the commission report filed in RSA 1639/2013.

10. The present application filed by the defendant No.1 and 2 Under Order VII rule 11(d) of CPC. While deciding the application under order VII rule 11 the court cannot looked into the averments of written statement in this regard this court relied on the decision in Saleem Bhai v. State of Maharashtra decided on *17 December, 2002*, the Hon'ble Supreme Court stated that, for considering Order 7 Rule 11, the court has to look into the averments in the plaint, and the trial court can exercise the same at any stage of the suit. The Court also held that it is obvious that the averments in the written statement are not reasonable



and the Court has a duty to scrutinize the averments in the plaint. In simple words, the court must look at the averments in the plaint while coming to a conclusion on whether such a plaint must be rejected or not. At this stage, the pleas taken by the defendants are highly irrelevant, and the matter must only be decided on the averments of the plaint.

11. In the present case plaintiff stated that he is absolute owner of plaint 'A' schedule property he has acquired the suit schedule property under the registered sale deed dated 22/07/2015 registered as document No. 01408/2015-16 executed as per the decree passed in O.S. No. 106/2011. The plaintiff had entered into an agreement of sale dated 11/01/2008 with the erstwhile owner of the plaint schedule property by name Oliver Wilfred Coelho. Since the vendor failed to honour the terms and condition of the agreement plaintiff filed the suit in No. 106/2011 the said suit was decreed on 11/08/2013. The defendant Oliver Wilfred Coelho filed RA 11/2014 on the said judgment and which was



dismissed as per the judgment dated 26/02/2015. Thereafter the vendor filed second appeal RSA 839/2015 before Hon'ble High Court of Karnataka and the same was dismissed on 7/6/2016. Thereafter the vendor approached the Hon'ble Supreme Court of India in special leave to appeal (c) 6708/2017 and same was also dismissed on 7/4/2017. Thereafter, plaintiff filed execution petition in Ex.P. No. 12/2015 to execute the judgment and decree in O.S. No. 106/2011. The court commissioner has executed the registered sale deed dated 22/07/2015 as per document No. MGE-1-01408/2015-16. Thereafter, plaintiff took possession of the plaint schedule property on 04/02/2016. There is a litigation pending between Oliver Wilfred Coelho and the defendant No.1 and 3 before the Hon'ble High Court of Karnataka in RSA 1639/2013 the plaintiff came to know the same when the surveyor measured the Sy.No. 202 including the plaint schedule property. The survey discloses that plaintiff is in possession of an extent of 5 acres only and defendant have encroached the plaint 'A' schedule property. The plaint 'A' schedule



property is spread over in block No.I to IV of the report submitted in RSA 1639/2013. The plaintiff after survey as per the order of Hon'ble High Court of Karnataka and after receipt of survey report in the month of March 2021 he came to know the encroachment of plaint 'A' schedule property. In para No. 5 of the plaint plaintiff stated that he got confirmed the encroachment through private survey. The plaintiff further stated that he approached the defendant in the month of March 2021 and asked them to vacate the said encroachment. Plaintiff further stated that after receipt of the survey sketch plaintiff came to know that the boundaries of southern and northern side were interchanged in the registered sale deed. Hence he has filed the suit for rectification of boundary and possession of plaint 'B', 'C' and 'D' properties.

12. The plaint clearly discloses the cause of action for the suit. The legal proposition in the matter is well settled. The court while considering an application for rejection of plaint can look into only the averments



made in the plaint and the documents filed by the plaintiff. The defense taken by the defendant is not to be considered while examining such an application and validity of the documents filed by the plaintiff also cannot be examined at this stage. The power to reject the plaint can be exercised only if the court comes to the conclusion that even if all the allegations are taken to be proved, the plaintiff would not be entitled to any relief whatsoever.

13. There is allegation regarding encroachment by defendant. The plaint para No.4 and 5 discloses that that there is cause of action to file the suit. Whether the defendant is bound to hand over the possession of plaint 'B', 'C' and 'D' schedule properties to the plaintiff is required full fledged trial. At this stage it cannot be considered that there is no cause of action for the suit. Therefore, at this stage the application for rejection of plaint does not survive for consideration. Therefore, this court answered point No. 1 in the Affirmative and point No. 2 is the Negative.



14. **Point No. 3:** In view of my findings on point No.1 and 2 I proceed to pass the following:

**ORDER**

IA No. XVI filed by defendant No.1 and 2 U/o VII rule 11 R/w 151 of CPC is hereby dismissed.

Case posted for defendant evidence.

Call on 13/09/2024

(Dictated to the stenographer, directly on computer, then corrected by me and pronounced in the open court on this the 28<sup>th</sup> day of August 2024)

**(JAYAPRAKASH V.)  
SENIOR CIVIL JUDGE AND JMFC.  
MUDIGERE.**