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| i | Provision under which application is filed | the Order 7 Rule 11(a), (b), (d) of C.P.C, |
| ii | Relief sought for | Rejection of plaint |

- iii The date on which the application 15.04.2023 is filed
- iv Number of the application 11
- v The date on which the objections 19.04.2023 are filed by different opponents
- vi The date on which the orders were 16.09.2023 passed on the said application

ORDER ON I.A., NO.XI

The instant I.A.No.XI is filed by the defendant No.12 under Order VII Rule 11(a),(b) and (d) R/w. Section 151 of C.P.C. seeking rejection of the plaint as it does not disclose the Cause of Action of the suit to the present Plaintiff, and does not disclose the proper valuation of the suit and the claim of the plaintiff is barred under law of limitation.

2.The application is supported with affidavit of the defendant No.12, wherein, the defendant No.12 contends that the present suit lacks a valid Cause of Action, as the original plaintiff, Jyothi D/o Madappa, previously

initiated the case but later withdrew it, indicating an out-of-court settlement. Subsequently, the current Plaintiff 2 and 3, who were originally Defendant No.6 and 7, assumed the roles of Plaintiff No.2 and 3, amending the plaint to reflect this change. It is crucial to emphasize that after this transposition, the cause of action for the suit underwent a substantial transformation. However, the amended plaint fails to provide a clear account of when the cause of action arose for plaintiff No.2 and 3, leaving this critical information unaddressed.

3.Furthermore, the 12th defendant in the case and subsequently presented documents establishing the valuation of the property in question, specifically Sy. No. 337/2, measuring 4.A-01½G. which I acquired through a Sale Deed dated 21.06.2022, valuing it at Rs. 3,00,00,000/- (Rupees Three Crores only). Notably, the valuation of other properties mentioned in the schedule exceeds this

amount. The plaintiff, however, has not disclosed the valuation of the scheduled property for which they seek a partition.

4.It is essential to note that the suit schedule properties were previously sold to Mr. K.R. Mani, S/o Ramaswamy, under Sale Deeds dated 06.12.2005 and 28.08.2008. Subsequently, several sale deeds were executed by Mr. K.R. Mani in favor of L.T. Nanwani on 18.07.2016. I acquired Sy. No. 337/2, measuring 4.01½ acres, under a Sale Deed dated 23.06.2022. An agreement of sale was also executed by Dr. Kamalesh Patel in my favor on 11.11.2021 for the other properties mentioned in the schedule. It is worth noting that the current suit is also time-barred under the law of limitation.

5.The plaintiff's failure to address these critical aspects, such as the cause of action, property valuation, and the limitation issue, in their pleadings necessitates

the rejection of the present plaint by this Hon'ble court. Denying this application for plaint rejection would result in substantial and irreparable loss, injury, and hardship to me, which cannot be adequately compensated. In contrast, there is no hardship or loss that would be incurred by the plaintiff in any manner. Therefore, defendant No 12 prays for rejection of plaint.

6. On the other hand, the plaintiff No. 2 and 3 have filed detailed objection to the said application and contended that the suit is maintainable before this court. The application submitted by Defendant No. 12 lacks legal basis or factual merit, rendering it unsuitable for consideration. Therefore, it is imperative that the application be rejected. The 12th defendant has made a false affidavit in support of this application, alleging a lack of cause of action for the initiation of the present

case and disputing the proper valuation of the suit as asserted by Plaintiff No.2 and 3.

7.The plaintiffs contend that the suit initially filed by Plaintiff No.1 against other defendants, including this plaintiffs, underwent a transformation when the plaintiff, along with other defendants, executed a sale deed in favor of the 12th defendant. This act was allegedly done with the intent to defraud the rights of the present plaintiffs, prompting them to seek a transposition as plaintiffs No.2 and 3 in the same case. The Hon'ble court, after due consideration, granted the application filed by Defendant No.6 and 7, permitting them to be transposed as plaintiffs No.2 and 3.

8.The plaintiffs assert that the scheduled properties are coparcenary assets involving plaintiff No.2 and 3, as well as defendant No.1 to 4, representing properties that originally belonged to the father of plaintiff No.2 and 3.

Consequently, plaintiff No.2 and 3 maintain joint, constructive, and lawful possession of these properties. Thus, any claim of insufficiency in the court fee paid by the plaintiff is unsubstantiated.

9.Furthermore, plaintiff No.2 and 3 argue that defendant No.12 lacks the necessary standing to file the application, as they are not coparceners in the matter. The plaintiffs contend that defendant No.12's application is a deliberate attempt to prolong the proceedings of the ongoing case, lacking any genuine legal or factual basis. In the interest of justice and equity, the plaintiffs prays for rejection of the application.

10.Based upon the above said pleadings, the following points arose for consideration of the court:

- 1. Whether the defendant No.12 has assigned sufficient reason to invoke Order VII Rule 11(a), (b) and (d) of C.P.C at this stage of the suit?**

2. What order?

11. Having heard and examined the matter, including the written arguments submitted by the plaintiffs' counsel, and considering the representations made by both parties and the case records, the court proceeds to address as following:

Point No.1 In the Negative

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

REASONS

12. **Point No.1**: The perusal of the records reveals that, originally the plaintiff No 1 has filed the instant suit seeking relief of partition and separate possession. The defendant No.12 taken the contention under the application that, the defendant asserts that the suit is barred under the law of limitation. This means that according to the defendant, the plaintiffs have exceeded the legally prescribed time within which they can file

their case. Additionally, the defendant contends that the cause of action for the plaintiff No. 2 and 3 is not clearly mentioned in the suit.

13.Initially, the plaintiff No.1, i.e., Jyothi, filed a memo stating that she had settled the matter and requested the dismissal of the case. However, defendant No.6 and 7 objected to this and sought to be transposed as plaintiffs No.2 and 3. The court granted this request, allowing them to proceed with the case. The defendant now argues that despite this change, the plaintiffs did not amend their pleadings to reflect a new cause of action or provide details on when this cause of action emerged.

14.The defendant presents a timeline of property transactions involving various parties, highlighting sales and transfers of property. These transactions were executed before and after the change in the suit

composition, and the defendant asserts that they are legally binding. The defendant claims that the plaintiffs have not adequately described their share in the properties mentioned in the suit. This lack of clarity, according to the defendant, hampers their entitlement to possession. The defendant argues that the subsequent filing of an amendment to the plaint will not rectify the situation, as the entire suit is allegedly barred by the law of limitation. Furthermore, the defendant contends that the relief sought in the proposed amendment is also time-barred. In summary, the defendant's position is that the suit is legally invalid due to issues related to the law of limitation, insufficient description of property shares, and a failure to adequately address property transactions in the original pleadings. They argue that even an amendment to the plaint would not salvage the case due to the fundamental legal constraints.

15.As mentioned above, the Plaintiffs in their objections, have contended that the application filed by the defendant is not maintainable as there is no sufficient reason is assigned and the instant application is filed with an intention to drag the matter and to misguide the court. It is further contended by the Plaintiff that by filing this frivolous application, the defendant has wasted the precious time of the court and the application is liable to be rejected with cost. As per the decision reported in **HCR 2011 KARNATAKA 269 (Manik Chand and others Vs. Babulal and others)**. On perusal of the above said decision, it reveals that the Hon'ble High Court of Karnataka, Bangalore while considering the scope of Order VII Rule 11 of C.P.C held the opinion that whether the Plaintiffs have made out a cause of action to institute a suit or the suit is barred by time etc., will have to be looked into only by the perusal

of the plaint and not by looking into the defense raised by the defendant No.12. It is further held that if the perusal of the plaint, discloses, a cause of action, then the court has no authority to reject the plaint under Order VII Rule 11 of C.P.C. The said decision is favourable to the plaintiffs in this case.

16. On perusal of the plaint, it reveals that the suit property originally ancestral property of the plaintiffs and defendant No.1 to 3 and the plaintiff contended that 12th defendant's affidavit, which disputes the cause of action and the suit's valuation as asserted by plaintiff No.2 and 3, is considered by the court as containing false claims. The crux of the matter lies in the transformation of the suit from its original form. It began with plaintiff No.1 suing various defendants, including the present plaintiff, but later evolved when plaintiff No.1, along with other defendants, executed a sale deed benefiting the 12th

defendant. This transaction raised suspicions of fraudulent intent aimed at undermining the rights of the present plaintiffs, leading to their request for transposition as plaintiffs No.2 and 3. The court, following careful deliberation, approved defendant No.6 and 7's application to be transposed as plaintiffs No.2 and 3. Crucially, the plaintiffs maintain that the properties in question are coparcenary assets, jointly owned by Plaintiff No.2 and 3 and Defendant No. 1 to 4, originally belonging to their father. This joint ownership results in shared, constructive, and legally recognized possession of these properties. Consequently, any argument concerning the insufficiency of court fees paid by the plaintiffs is unfounded and without merit.

17.Admittedly, in this case, the Plaintiff has stated the cause for filing the present suit in clear terms. Whether the said cause of action is true or not is subject

matter of the trial. Furthermore, whether the plaintiffs are entitled for the discretionary reliefs as sought by them or not are also to be determined only after conclusion of trial. The defendant No.12 has filed the present application Under Order VII Rule 11(a) (b) and (d) of C.P.C and sought for rejection of the plaint. Above said provision of Order VII Rule 11 of C.P.C contemplates that the plaint shall be rejected in the following cases:

- Where it does not disclose a cause of action.
- Where the relief claimed is undervalued, and the Plaintiff, on being required by the court to correct the valuation within a time to be fixed by the Court, fails to do so;
- Where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, 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;
- Where the suit appears from the statement in the plaint to be barred by any law;
- Where it is not filed in duplicate plaint;

- **Whether the plaintiff fails to comply with the provision of Rule 9 of C.P.C.;**

The above said provision itself reveals that while adjudicating an application of this nature the relevant facts which need to be looked into for deciding an application is only plaintiff averments.

18.It is settled law that the application of this nature can be filed at any stage of the suit and filing of Written Statement is not a condition precedent to file an application of this nature. Further, the application of this nature can be filed even before filing of Written Statement and even after conclusion of the trial. However, the plaint can be rejected only on the grounds mentioned in the clauses of Order VII Rule 11 of C.P.C. In the present case, it is the contention of the defendant that the plaint is silent about the cause of action for the suit. However, as stated above, the Plaintiff has stated the

cause which necessitated her to file the present suit. Admittedly 1st plaintiff not filed memo for withdrawal of the suit. Therefore, the contention taken by the defendant No.12 that the 1st plaintiff already withdrew the suit as settled out of the court is not sustainable. Considering the nature of the relief sought by the Plaintiffs, facts and circumstances of the case on hand, the court is of the opinion that the defendant No.12 has not assigned sufficient grounds to reject the plaint at this stage of the suit. **In the result, the court proceeds to answer Point No.1 in the Negative.**

19. Point No.2: In view of the aforesaid findings on point No.1, the court proceeds to pass the following:

ORDER

I.A.No.XI filed by the defendant No.12
under Order VII Rule 11(a),(b) and (d) R/w
Section 151 of C.P.C. is hereby rejected.

Under the circumstance there shall be
no order as to costs.

(Directly dictated to Stenographer on computer, and typed by him and corrected by me and then pronounced in the open Court on this 16th September 2023)

(Basavaraj H. Talawar)
Senior Civil Judge & JMFC.,
Gundlupet

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