

**IN THE COURT OF THE II ADDL CIVIL JUDGE & JMFC,
CHANNAGIRI.**

PRESENT: **SMT. MAHALAKSHMI G M.A. L.L.B.,**
II Addl Civil Judge & JMFC, Channagiri.

Dated this the 28th Day of November, 2024.

ORIGINAL SUIT No. 442/2022

BETWEEN :

Basavarajappa G.N. **...Plaintiff**

AND

G.M. Asha and others **...Defendants**

I.A. No. IV

BETWEEN :

G.M. Asha and others **...Applicants/Original defendant No.1)**

AND

Basavarajappa G.N. **... Opponent/Original plaintiff**

I.A. No. V

BETWEEN :

Basavarajappa G.N. **...Plaintiff**

AND

G.M. Asha and others **...Defendants**

1.	Provision under which the	:	U/o 7 Rule 11(b) of CPC R/w
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	application is filed:		Sec. 151 of CPC. filed by defendant and U/o 32 rule 3 of CPC filed by plaintiff
2.	Relief sought for	:	Rejection of Plaint and appointment of guardian
3.	Date on which the application is filed	:	10.01.2024 and 08.02.2024
4.	Number of the application	:	IA.No.IV and V
5.	Date on which the objections are filed by different opponents:	:	08.02.2024 and 19.03.2024
6.	The date on which the orders is passed:		28.11.2024

ORDERS ON No. IV and V

This is an application filed by the defendant No.1 U/o 7 Rule 11(b) of CPC R/w Sec. 151 of CPC seeking the order of the court to reject the plaint as the suit is barred by law and the suit is under valued by the plaintiff.

2. In support of the application the defendant No.1 sworn an affidavit and contented that the written statement contention may be read as part and parcel of this affidavit. The plaintiff has filed this suit seeking the relief of recovery of money against them. Wherein the defendant No.2 and 3 are the minors and the plaintiff till date as not made any efforts to appoint guardian to the D.No.2 and 3 and even failed to make an application before this court at the time of filling of the suit or after the filling of the suit. Hence, the suit filed by the plaintiff against the minor without the guardian is not maintainable. Hence the same is barred by law and hence present suit of the plaintiff liable to be rejected. The defendant No.1 also

urged that the plaintiff valued the suit for Rs. 4,40,000/- with interest, But valued the suit for only Rs.3,00,000/- not valued the suit on the interest part for Rs. 1,44,000. Thus, court fee paid by the plaintiff is insufficient. If this application is allowed no harm will be caused to the other side. Thus, prays to reject the plaint.

3. Per contra, the plaintiff has filed objections to the application, stating that the application filed by the defendant No.1 is not maintainable on the ground that the plaintiff has not mentioned the guardian of the defendant No.2 and 3 but not filed the guardian application for appointment of guardian. The defendant no.1 having property of the areca garden land of her deceased husband by name Marulesh, who had borrowed loans during his life time from him and constructed new residential building and also having movable and immovable property. After the death of Marulesha the katha of the said property is changed into the name of defendant No.1. If this application is allowed it will lead to great hardship and irreparable loss to him. He had filed necessary Guardian application on previous date of hearing. Hence, prays to dismiss the application.

4. Subsequent to the IA. IV, the plaintiff filed IA No. V U/o 32 Rule 3 R/w Section 151 of CPC., seeking order of the court to appoint defendant no.1 as natural guardian on behalf of defendant No.2 and 3 to defend the case on their behalf.

5. In support of the application he sworn affidavit and stated that, he has filed the present suit for recovery of money against the defendants. The defendant no.2 and 3 are minors and they are children of the defendant no.1 and deceased Marulesh. The defendant No.2 and 3 are in care and custody of defendant No.1. Who is their mother. The defendant No.1 being a natural guardian of defendant No.2 and 3 she has to

represent the interest of the minor children in the present case. Thus, prays to appointment of defendant No.1 as natural guardian of defendant No.2 and 3 to defend their case. If this application is allowed no hardship will be caused to other side. If not allowed he will be put to great hardship and irreparable injury. Thus, prays to allow the application.

6. The defendants filed statement of objection and contented that, the plaintiff has failed to file the present application at the time of the filing of the suit as required under law and he has also failed to explain the reason regarding why he had not filed said application at the time of the filing of the suit in his affidavit and also not sought for the delay condonation. The defendant No.1 has filed an application under order 7 Rule 11(d) as the suit is barred by law, on the ground that as the plaintiff failed to appoint the guardian for the defendant No.2 and 3 who are minors at the time of filing of the application and also at present, after which the plaintiff instead of filing the objection to the above said application has filed the present application on 08.02.2024. Thereafter he filed objection to the IA No. IV under Order 7 Rule 11(d) and this clearly goes to show that the plaintiff intended to protract the proceedings of the court. Hence, prays to dismiss the application.

7. Heard arguments from both side on IA IV and V. Perused the records. Upon perusal, the following points would arise for my determination:

POINTS

- 1. Whether the plaint can be rejected on the ground that suit is barred by law and the suit is undervalued by the plaintiff?**

2. Whether IA.V filed by the plaintiff seeking appointment of D.No 1 as natural guardian deserves to be allowed?

3. What order?

8. This court answers the above points as follows:

Point no.1: In the Negative

Point no.2: In the Affirmative

Point No.3: As for final orders

REASONS

9. POINT NO.1 : When the case is posted for cross of PW.1, the defendant has filed IA.No.IV seeking the order of the court reject the plaint as the suit is barred by law and also the suit is under valued by the plaintiff. Upon perusal of the contentions raised in the affidavit as the objection filed by the plaintiff for the said application, the defendant urged two grounds for the rejection of plaint. Firstly, that the plaintiff has filed this present suit for recovery of money against the defendants wherein the defendant No.2 and 3 are the minors and he had not made any effort to appoint natural guardian to them by way of application. Hence, the suit against the minors without the guardian is not maintainable and barred by law.

10. On perusal of the entire records this court notices that, the defendant No.1 who is the mother of defendant No.2 and 3 as admitted the relationship in the written statement para No.2 as asserted by the plaintiff in his plaint. Moreover, the counsel had filed vakalath on 02-01-2024 before this court to defend the case on behalf of D.No. 1 to 3 also. The said D.No.1 /mother of minor children who are defendant No.2 and 3 as

also signed on the vakalath as Guardian of D.No. 2 and 3. This goes to show that, under taking by the D.No.1. Though expressly not sought by the defendants. She being the natural guardian of the defendant No.2 and 3 has no contrary interest in the suit. The said defect can be curable one. However, Subsequent to the said application the learned counsel for plaintiff has preferred IA No.V seeking appointment of guardian to the defendant No.2 and 3 in the present suit. Hence the said contention not take away of the right of the plaintiff to sue against the defendants.

11. The second ground urged by the defendant is that the plaintiff has under valued the suit. he has sought for the relief of Rs.4,44,000/- along with the interest but he has valued the suit for Rs.,3,00,000/- only. The said issue can be resolved by framing necessary issue and it can be considered at the time of judgment also. Hence no sufficient grounds made out to reject the plaint. Wherein this court already framed necessary issues in the present suit. In view of the above said discussion this court answered the **point No.1** in the **Negative and point No.2** in the **Affirmative**.

13. **Point No.3:-** In the result, this court proceeds to pass the following;

ORDER

The IA No.IV filed by the defendant U/o 7 Rule 11(b) and (d) R/sec. 151 of CPC., is hereby rejected without cost.

The IA No.V filed by the plaintiff U/o 32 Rule 3 of CPC., is here by allowed with cost of Rs.200/-.

**Accordingly, The D.No.1 is
appointed as guardian of D.No.2
and 3 who is their mother to
defend the case on their behalf.**

For cross of PW.1.

(Dictated to the stenographer typed by her, corrected by me and then pronounced in the open court on
this the 28th Day of November 2024)

**Sd/-
(Smt Mahalakshmi G)
II Addl Civil Judge & J.M.F.C.,
Channagiri.**

