

**IN THE COURT OF THE I ADDL. CIVIL JUDGE AND
J.M.F.C., CHANNAGIRI**

:: Present ::

Smt. Mahalakshmi. G

M.A., LL.B.,

**I Addl. Civil Judge & J.M.F.C.,
Chanangiri.**

O.S.No.283/2025

Dated this the 7th Day of January 2026

PLAINTIFF : Smt. B.M.Geetha

V/s

DEFENDANTS : Sri. K.M Suresha and Others

I.A.NO.II

Applicant/defendant : Sri. K.M Suresha and Others

V/s

Opponent/plaintiff : Smt. B.M.Geetha

1.	Provision under which the application is filed	Under Order 7 Rule 11(d) R/w Sec.151 of CPC
2.	Relief sought for	Rejection of plaint
3	Date on which the application is filed	19.10.2025
4.	Number of the application	I.A.No.II
5.	Date on which the objections are filed by different opponents	-----
6.	The date on which the orders is passed	07.01.2026

ORDER ON I.A.No.II

The present application preferred by the defendant No.1 Under Order 7 Rule 11 (d) R/w Section 151 of CPC for rejection of plaint on the ground of principles of resjudicata.

2. In support of the application the defendant No.1 sworn an affidavit and stated that, the plaintiff and defendant No.2 are his sisters and Maheshwarappa and Veeramma are their parents. They constituted Hindu Undivided Joint Family. The property bearing Sy.No. 106/3 measuring 2 Acres 19 Gunta situated at Kagaturu Village, Channagiri Taluk, Davanagere District, the property bearing Sy.No. 153/2 measuring 1 Acre 5 Gunta and property bearing Sy.No.199/2 measuring 2 Acres 39 Gunta are situated at Hirevuda Village, Santhebennuru Hobli, Channagiri Taluk, Davanagere District are their ancestral and joint family properties. The defendant No.2 herein filed suit for partition and separate possession of her 1/3rd legitimate share in the suit schedule property before the court bearing O.S No.163/2018 against him and present plaintiff which was decreed on 19.01.2019 by declaring 1/3rd share of plaintiff and defendants in the suit schedule properties.

3. As per the said preliminary decree the defendant No.2 filed FDP bearing No. 5/2019 and obtained final decree wherein the commissioner appointed by the court submitted report by demarcating the suit schedule

properties as per the preliminary decree declared by the court and final decree passed on 11.09.2019 by the court. Due to non appearance of present applicant and as well plaintiff, their shares determined by the court in their favour kept jointly. there after he preferred FDP 20/2023 for his share and drawn final decree on 08.08.2024 with respect to his share by separating the joint hissa share with the present plaintiff. To perform the marriage of his daughter he has obtained loan for which he has sold out his hissa share to defendant No. 3 through registered sale deed for repayment of said loans on 06.08.2025 which fallen to his share only. Thus, the present suit filed by the plaintiff is not maintainable and same is hit by the provisions of principles of resjudicata. Thus, prays to reject the plaint. As the parties of the previous suit, relief sought by the parties on the subject matter of the suit are one and the same which are finally heard and decided by the court. Hence, the subsequent present suit filed by one of the party of the previous suit seeking the same relief in the same suit schedule property is not maintainable under law. Thus, prays to reject the plaint.

4. Though this court provided sufficient opportunity, the plaintiff not filed objections to I.A No. II.

5. Based on the rival contentions raised by the defendant No. 1 in the application, the following points would arise for my determination.

POINTS

1. Whether the defendant No.1 as made out sufficient grounds to reject the plaint on the basis of resjudicata?

2. What Order?

6. Heard the learned counsel for defendant No.1, despite providing sufficient opportunity the learned counsel for plaintiff had not addressed arguments on I.A No.2.

7. Perused record. On perusal of the same my answer to the above points are as under:-

POINTS

Point No.1 : In the Negative,

Point No.2 : As per final order

for the following:

:: REASONS ::

8. **Point No.1:-** It is needless to point out that, while considering the application filed Under Section 7 Rule 11 of CPC for rejection of plaint the court is constrained look into the averments of the plaint and plaint averments only. the court is barred to look into the averments of the written statements and such other documents placed on record while deciding the application of this provision.

9. Admittedly, the present suit filed by the plaintiff seeking the relief of partition and separate possession of her 1/3rd legitimate share in the suit schedule properties from the defendants. She pleaded that, the defendant No. 1 is her brother and defendant No.2 is her sister. The

plaintiff and defendant No. 1 and 2 are the children's of Maheshwarappa, Who died intestate living behind present plaintiff and defendants as his legal heirs. The plaintiff asserted that, she and defendants are the joint family members and suit schedule properties are their join family properties which belongs to deceased Maheshwarappa. After the death of Maheshwarappa, the suit schedule item No. 1 property is stands in the name of defendant No. 1 and the suit schedule item No. 2 property stands in the name of plaintiff and defendants jointly. The said properties are not partitioned among them till date. According to the plaintiff, the cause of action arisen on 25.07.2025.

10. Nevertheless, the defendants put their appearance through their counsel and filed written statement and their written statement is nothing but application averments sworn by the defendant No.1. Where in the applicant sought rejection of plaintiff on the basis of principles of resjudicata.

11. In this regard this court would like to relay upon the recent judgment of the Supreme Court of India in

PANDURANGAN versus T. JAYARAMA CHETTIAR & ANR. In CIVIL APPEAL No. 7743 OF 2025 ARISING OUT OF SLP (C) No. 18230 OF 2025 dated: 14.07.2025 wherein the Apex Court clearly observed at para No.12 to 18 as follows:

8. *In Srihari Hanumandas Totala v. Hemant Vithal Kamat & Ors*⁸, this court held that the

adjudication of the plea of res judicata is beyond the scope of Order VII, Rule 11 CPC, the court held:

“25. *On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarised as follows:*

25.1. *To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to.*

25.2. *The defence made by the defendant in the suit must not be considered while deciding the merits of the application.*

25.3. *To determine whether a suit is barred by res judicata, it is necessary that (i) the "previous suit" is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit.*

25.4. *Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues, and decision in the "previous suit", such a plea will be beyond*

the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused."

9. *Issue relating to whether the ex parte decree is obtained by collusion, or whether the defendant No. 1, as alleged, has played fraud by filing a suit in a court having no jurisdiction or whether the appellant is a bonafide purchaser or not need to be examined in detail. This Court has held that such circumstances require an in-depth examination of the previous decree, and its impact on the second suit. Res judicata cannot be decided merely on assertions made in the application seeking rejection of plaint. As held by this Court in V. Rajeshwari v. T.C. Saravanabava,⁹ identifying similarity in causes of action should be a matter for trial where documents from the first suit are studied and analysed. Res judicata cannot be a matter of speculation or inference. In Keshav Sood v. Kirti Pradeep Sood,¹⁰ this Court took a strong view against the plea of res judicata being raised in applications seeking rejection of plaint and held as follows:*

"5. *As far as scope of Rule 11 of Order VII of*

CPC is concerned, the law is well settled. The Court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of a defendant and documents relied upon by him cannot be looked into while deciding such application. Hence, in our view, the issue of res judicata could not have been decided on an application under Rule 11 of Order VII of CPC. The reason is that the adjudication on the issue involves consideration of the pleadings in the earlier suit, the judgment of the Trial Court and the judgment of the Appellate Courts. Therefore, we make it clear that neither the learned Single Judge nor the Division Bench at this stage could have decided the plea of res judicata raised by the appellant on merits.”

12. Having Taken note of the observation made by the Hon’ble Apex court it aptly applicable to the case at hand also to decide the instant application. Wherein they Apex court clearly expressed its opinion that, the principles of resjudicata is beyond the scope of order 7 Rule 11 CPC and plaint cannot be rejected and it requires trial to decide the point of resjudicata. Thus, this court keeping the above said decision in mind and the present facts and circumstances of the case answered the **point No. 1** in the

Negative.

13. Point No.2:- As a result, I proceed to pass the following;

ORDER

**I.A No.II filed by the defendant
No.1 under Order 7 Rule 11 (d) R/w
Sec.151 of CPC is hereby rejected.**

For hearing on I.A No.1.

(Dictated to the stenographer typed by her directly on computer, corrected and then pronounced by me in Open Court on this 07th day of January, 2026.)

**(Smt. Mahalakshmi. G)
I Addl. Civil Judge & J.M.F.C.,
Channagiri.**