

IN THE COURT OF IV ADDL. SENIOR CIVIL JUDGE
AND J.M.F.C., DHARWAD.

PRESENT: SRI.ANAND S KARIYAMMANAVAR

B.A., LL.B(Hon's)

IV Addl. Senior Civil Judge
& J.M.F.C., Dharwad.

OS No.111/2019

Dated : 22nd day of January 2025

Plaintiff/s : Smt.Shivakka W/o Basappa Shigihalli and others.

(R/by Sri.K.G.M, Adv)

V/s.

Defendant/s: Yallappa S/o Kalappa Dubbanamaradi.
And others.

(D1 R/ by Sri.S.H.B, Adv)

PARTIES TO IA NO.XI

Applicant/s : Yallappa S/o Kalappa Dubbanamaradi.
(Org D1)

V/s.

Opponent/s: Smt.Shivakka W/o Basappa Shigihalli and others.
(Org Plfs)

ORDER ON IA No.XI

The counsel for defendant No.1 filed this application under Order 7 Rule 11(A) & (D) R/w Section 151 of CPC thereby sought to reject the plaint as the same is barred by limitation and defendant No.1 is sole successor by virtue of

adoption.

2. Further the defendant No.1 filed his affidavits in support of these applications and submitted that, plaintiffs are no way concerned to suit schedule properties and they are not having any rights and interest over the suit properties. After the marriage of plaintiffs, one Irappa Dubbanamaradi has adopted defendant No.1 on 07.02.1990 as he was not having male issues and plaintiffs also agreed and accepted the said adoption and they also accepted defendant No.1 as their brother and in the genealogy the plaintiffs are wrongly mentioned defendant No.1 as son of Kalappa. Further he submitted that suit property is self acquired property of his adopted father and initially the plaintiffs have filed similar suit in OS No.584/2011 which came to be dismissed for non-prosecution, later he also filed one more suit in OS No.10/2018 before Prl.Civil Judge, Dharwad, the said suit also came to be dismissed, therefore there is no cause of action to file present application and plaintiffs have filed false suit against defendants, thereby sought to reject the plaint.

3. On the contrary, the plaintiffs filed their objection to this applications and contended that, the OS No.10/2018 was not dismissed by the Prl.Civil Judge, Dharwad, but it has ordered to return the plaint and in OS No.119/2023 the present plaintiffs are not parties in the said suit and the plaintiffs being the daughters of deceased Irappa, they are having their legitimate share over the suit properties and the defendants by filing false application attempting to mislead the Court, thereby sought to dismiss the application.

4. Heard both side on I.A No.XI and perused the material available on record.

5. Now the following points arise for my consideration.

1.	Whether the application filed by the defendant No.1 deserves to be allowed ?
2.	What order ?

6. My answers to the above points are as under.

Point No.1 : In Negative.

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

REASONS

7. **Point No.1:-** The plaintiffs instituted this suit against the defendants for the relief of partition of their half share and also for the relief of declaration that the entries made in suit properties by virtue of adoption deed are not binding on them and such other reliefs. On perusal of the material on record, it is the case of the plaintiffs that the suit schedule properties are ancestral joint family properties of plaintiffs and defendants and defendant No.1 to 5 are the children of plaintiffs uncle by name Kalappa, as there was no partition by metes and bounds, therefore present suit has been filed.

8. On perusal of the present application, the defendant No.1 contending that, there is no cause of action to file this case and same is barred by limitation. As it is settled law that the cause of action is bundle of facts, on careful reading of the plaint, it appears that there is cause of action. Further defendant No.1 contending that, he is the adoptive son of deceased Irappa and plaintiffs are daughters of the said Irappa, however plaintiffs are denying the said facts. Therefore, in order to ascertaining the truth about adoption, the detail trial has to be conducted, therefore, on perusal of

the plaint it appears that there is cause of action and suit is also not barred by limitation. Hence, for the above stated reasons, I have answered **point No.1 "In Negative"**.

9. **Point No.2:-** For the reasons stated while discussing **point No.1**, I proceed to pass the following:-

ORDER

***IA No.XI filed by the defendant No.1
under Order 7 Rule 11(A) & (D) R/w
Section 151 of CPC is hereby rejected.***

*(Dictated to stenographer, typed by her, corrected and then pronounced by me
in the open court on **22nd day of January 2025**)*

(Anand S Kariyammanavar)
IV Addl. Senior Civil Judge,
& J.M.F.C., DHARWAD.

For order
22-01-2025

(Order pronounced in the open Court vide separate order)

ORDER

***IA No.XI filed by the defendant No.1
under Order 7 Rule 11(A) & (D) R/w
Section 151 of CPC is hereby rejected.***

(Anand S Kariyammanavar)
IV Addl. Senior Civil Judge,
& J.M.F.C., DHARWAD.

Further cross of PW.1, call on **25.01.2025**.