

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL
JUDGE & J.M.F.C., HUBBALLI

Present:

SMT. SARVAMANGALA K.M.,
B.A. LL.B.,
I Additional Senior Civil Judge and JMFC.,
Hubballi.

O.S. No.226/2005

Dated this the 13th day of October, 2025

Plaintiff/s : Husainsab S/o Rajesab
Kotagunashi and others.

.Vs.

Defendant/s : Sri. Ananth S/o Bhimarao Desai
and others.

PARTIES TO I.A. No.XI

Applicant/s : Gurusiddappa S/o Mahadevappa
(Def. No.6 to 8 Koppad and others.
& 10)

.Vs.

Opponent/s : Husainsab S/o Rajesab
(Plaintiff) Kotagunashi and others.

- i. Provision under which : Under Order VII Rule 11(a)
application is filed and (d) R/w Sec.151 of
CPC
- ii. Relief sought for : Seeking for rejection of the
plaint filed by the
plaintiffs.

- iii. *The date on which : 29.07.2025
application is filed*
- iv. *Number of the : XI
application*
- v. *The date on which : 01.08.2025
objections are filed by
different opponents*
- vi. *The date on which : 13.10.2025
orders were passed on
the said application*

ORDERS ON I.A. No.XI

The defendant No.6 to 8 and 10 have filed an I.A. No.XI under Order VII Rule 11(a) and (d) R/w Section 151 of C.P.C., seeking for rejection of the plaint filed by the plaintiffs.

2. *In the annexed affidavit the defendant No.6 averred that the plaintiffs have filed the top noted suit against the defendants for the relief of declaration that they are the owners of the suit property by way of adverse possession and for permanent injunction to restrain the defendants No.5 to 11 from obstructing the alleged possession and enjoyment of the suit property. The suit property is an agricultural land bearing R.S. No.95/2 measuring 18 acres 33 guntas situated at Channapur Village, Hubballi Taluk. It if further averred that on behalf of the plaintiffs, the plaintiff No.3 examined as P.W.1. In his examination-in-chief also*

P.W.1 has stated in para No.6 that the defendants No.5 to 11 are falsely claiming the tenancy rights over the suit property. The P.W.1 in his cross-examination at para No.4 has stated that there was an entry in the Record of Rights of the suit property pertaining to Mahadevappa Shivappa Koppad as the tenant and said Mahadevappa Shivappa Koppad had filed the Form No.7 before the Land tribunal claiming occupancy rights of the suit property and since the land tribunal had granted him the occupancy rights the matter went up to the High Court of Karnataka. He has also stated that the legal heirs of Mahadevappa Shivappa Koppad are in possession of the suit property and the names of the defendants No.5 to 11 are entered in the Record of Rights of the suit property. He has also admitted in his cross-examination that as per the order passed by the land tribunal the defendants No.5 to 11 have continued in possession of the suit property from the year 1973 onwards.

3. *It is further averred that the land tribunal Hubballi by the order dated:16-05-2003 in KLR/Channapur/SR/3+6 has granted the occupancy rights in favour of the L.R.'s of the original tenant namely Mahadevappa Koppad, who are the present defendants No.6 to 9. The present defendants No.1 to 4 had filed W.P. No.4063/2014 before the Hon'ble High*

Court of Karnataka Dharwad Bench challenging the order passed by the land tribunal dated:16-05-2003. In turn the Hon'ble High Court of Karnataka Dharwad Bench by the order dated: 09-12-2020 has disposed the said writ petition by accepting the compromise petition wherein the present defendants No.1 to 4 have stated that they have no objection in granting the occupancy rights in respect of the suit land in favour of the present defendants No.6 to 11. Hence the order passed by the land tribunal Hubballi has attained finality. It is further averred that since the defendants No.6 to 11 are the tenants of the suit property and the occupancy rights are conferred on them, the question as to whether the defendants No.6 to 11 are the tenants in possession of the suit property has to be decided by the land tribunal only. It is further averred that there is a bar under Sec.132 and 133 of the Karnataka Land Reforms Act, 1961 to try the Civil suit in regard with the issue involving the rights of the tenancy. Hence, the instant suit is not at all maintainable under the provisions of the Karnataka Land Reforms Act, 1961 and the cause of action pleaded by the plaintiff in this case is illusory cause of action created for the purpose of this suit. Hence, the suit is also not maintainable for want of cause of action and prayed to allow the I.A.

4. On the other hand, the counsel for plaintiffs filed objections to the said I.A. contended that the entire contents of application paras are false, frivolous, concocted and vexatious. Hence it is neither tenable in law, nor on the facts, as such the IA filed by defendants is liable to be dismissed. That the plaintiffs filed suit for the relief of declaration against defendants in respect of suit schedule property and the plaintiffs are having right, title and interest over the suit schedule property. It is further contended that the defendants have filed this application on the ground of cross examination of plaintiff No.3 and also on the statement made in the said cross examination the defendants had filed this false application. Hence at this stage it is required to trial to prove rights of the parties and without oral and documentary evidence on record, it is not possible to decide the right, title and interest over the suit schedule property in threshold.

It is further contended that, there were several litigations were pending for disposal and some of the cases are disposed off and the defendant had taken contention in his affidavit that the dispute between tenant and owner came to be ended by compromise, but the plaintiffs are not party to the said compromise as the defendant alleged. Hence at this stage it is required to full trail to prove said contention. The defendants with an intention to engulf the suit schedule property filed

this false application, which the application is not tenable under the provision of law. That considering the documents which are available before this Hon'ble court it is shows that the plaintiffs are having right and title over the suit schedule property and the Hon'ble court was granted possession of the suit schedule property by way of adverse possession in respect of suit schedule property. The plaintiffs had taken pleadings regarding possession of the suit schedule property and as per the provisions of under Order VII Rule 11 of CPC is clear that while deciding application for rejection of plaint the averments of the plaint should be looked into, not on bases of written statement or development of case. That in respect of cause of action is concern the above said case is remand back from Hon'ble High Court of Karnataka Bench At: Dharwad for fresh consideration and after restoration of suit the case is posted for cross examination and the defendants had cross examined to the plaintiff witness and at this stage the defendants had filed this false application to drag on the matter. Hence, prayed to dismiss the I.A.

5. *Heard arguments.*

6. *The points for consideration are as follows:*

1. *Whether the defendant No.6 to 8 and 10 have made out grounds enunciated under order 7 Rule 11(a)*

and (d) to reject the plaint filed by the present plaintiffs?

2. What order ?

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

Point No.1 : In the Negative

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

REASONS

*8. **Point No.1:** This suit is filed by the plaintiffs for the relief of declaration declaring that they are the owner of the suit property by way of adverse possession and consequential relief of permanent injunction against the defendant No.5 to 11 restraining them from obstructing the peaceful possession and enjoyment of the suit schedule property.*

9. When the matter is set down for cross of P.W.1, the counsel for the defendant No.6 to 10 filed present application seeking an order to reject the plaint, on the ground that, the suit property is an agricultural land bearing R.S. No.95/2 measuring 18 acres 33 guntas situated at Channapur Village, Hubballi Taluk. It is further averred that on behalf of the plaintiffs, the plaintiff No.3 examined as P.W.1. In his examination-in-chief also P.W.1 has stated in para No.6 that the defendants No.5 to 11 are falsely claiming the tenancy

rights over the suit property. The P.W.1 in his cross-examination at para No.4 has stated that there was an entry in the Record of Rights of the suit property pertaining to Mahadevappa Shivappa Koppad as the tenant and said Mahadevappa Shivappa Koppad had filed the Form No.7 before the Land tribunal claiming occupancy rights of the suit property and since the land tribunal had granted him the occupancy rights the matter went up to the High Court of Karnataka. He has also stated that the legal heirs of Mahadevappa Shivappa Koppad are in possession of the suit property and the names of the defendants No.5 to 11 are entered in the Record of Rights of the suit property. He has also admitted in his cross-examination that as per the order passed by the land tribunal the defendants No.5 to 11 have continued in possession of the suit property from the year 1973 onwards.

10. It is further averred that the land tribunal Hubballi by the order dated:16-05-2003 in KLR/Channapur/SR/3+6 has granted the occupancy rights in favour of the L.R.'s of the original tenant namely Mahadevappa Koppad, who are the present defendants No.6 to 9. The present defendants No.1 to 4 had filed W.P. No.4063/2014 before the Hon'ble High Court of Karnataka Dharwad Bench challenging the order passed by the land tribunal dated:16-05-2003. In

turn the Hon'ble High Court of Karnataka Dharwad Bench by the order dated: 09-12-2020 has disposed the said writ petition by accepting the compromise petition wherein the present defendants No.1 to 4 have stated that they have no objection in granting the occupancy rights in respect of the suit land in favour of the present defendants No.6 to 11. Hence the order passed by the land tribunal Hubballi has attained finality. It is further averred that since the defendants No.6 to 11 are the tenants of the suit property and the occupancy rights are conferred on them, the question as to whether the defendants No.6 to 11 are the tenants in possession of the suit property has to be decided by the land tribunal only. It is further averred that there is a bar under Sec.132 and 133 of the Karnataka Land Reforms Act, 1961 to try the Civil suit in regard with the issue involving the rights of the tenancy. Hence, the instant suit is not at all maintainable under the provisions of the Karnataka Land Reforms Act, 1961 and the cause of action pleaded by the plaintiff in this case is illusory cause of action created for the purpose of this suit. Hence, the suit is also not maintainable for want of cause of action and prayed to allow the I.A.

11. On the otherhand, the plaintiffs taken contention that the application is not maintainable, for the reason that the defendants have filed this

application on the ground of cross examination of plaintiff No.3 and also on the statement made in the cross examination the defendant had filed the false application. Hence at this stage it is required to trial to prove rights of the parties and without oral and documentary evidence on record, it is not possible to decide the right, title and interest over the suit schedule property in threshold.

It is further contended that, there were several litigations were pending for disposal and some of the cases are disposed off and the defendant had taken contention in his affidavit that the dispute between tenant and owner came to be ended by compromise, but the plaintiffs are not party to the said compromise as the defendant alleged. Hence at this stage it is required to full trail to prove said contention. The defendants with an intention to engulf the suit schedule property filed this false application, which the application is not tenable under the provision of law. That considering the documents which are available before this Hon'ble court it is shows that the plaintiffs are having right and title over the suit schedule property and the Hon'ble court was granted possession of the suit schedule property by way of adverse possession in respect of suit schedule property. The plaintiffs had taken pleadings regarding possession of the suit schedule property and as per the provisions of under Order VII Rule 11 of CPC is clear

that while deciding application for rejection of plaint the averments of the plaint should be looked into, not on bases of written statement or development of case. That in respect of cause of action is concern the above said case is remand back from Hon'ble High Court of Karnataka Bench At: Dharwad for fresh consideration and after restoration of suit the case is posted for cross examination and the defendants had cross examined to the plaintiff witness and at this stage the defendants had filed this false application to drag on the matter.

12. Before discussing the merits of the application I would like to refer Order 7 Rule 11 of CPC in order to come to the conclusion that, when the plaint can be rejected- the order 7 Rule 11 reads thus;

*11. **Rejection of plaint;** the plaint shall be rejected in the following cases;*

- a) Where it does not disclose a cause of action,*
- b) Where the relief claimed is under valued, 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,*
- c) 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,

d) Whether the suit appears from the statement in the plaint to be barred by any law,

e) Where it is not filed in duplicate

f) Where the plaintiff fails to comply with the provisions of Rule 9.

13. On careful perusal of the affidavit of the defendant No.6 to 10 it is noticed to the court that, the relief claimed under said IA is not comes under the purview of said provision and only on this ground the plaint cannot be rejected, more over entire contents taken by the defendant No.6 to 10 is to be adjudicated by the court on the basis of evidence and supported documents by the parties, moreover, it is well settled law that, while deciding order 7 Rule 11 application, plaint averments alone must be considered and not the defence of the defendant. In this regard I would like to refer the following decisions **reported in 2009(4) Civil LJ 623 of Hon'ble High court of Andra Pradesh,** wherein this decision the Hon'ble Andra Pradesh High court held that, on the basis of plaint averments plaint

could not be set to be barred either for lack of cause of action or by virtue of any legal bar.

*Further a decision reported in **2009 (3) KCCR 1969 of our Hon'ble High court of Karnataka**, wherein this decision the Hon'ble High court of Karnataka held that, the court to consider all aspects while deciding order 7 Rule 11 application by examining the prayer for by the plaintiff and cannot act in a mechanic way.*

*Further a decision reported in **2021(4) KCCR 2940 of our Hon'ble High court of Karnataka**, wherein this decision the Hon'ble High court of Karnataka clearly held that, while deciding order 7 Rule 11 application, plaint averments alone must be considered and not written statement.*

More over on the basis of their own defense and the copy of documents the plaint filed by the plaintiffs cannot be rejected, what are the contention taken by the plaintiffs can be proved or disproved after the full

pledged trial and prima-facie reveals in favor of the plaintiffs to proceed the case.

In this stage the defendant No.6 to 10 cannot agitate that, on the basis of cross examination of plaintiff No.3. As per their contention the Land Tribunal, Hubballi passed Order and granted occupancy rights in favour of the legal heirs of the original tenant namely Mahadevappa Koppad, who are the present defendant No.6 to 9. Further the defendant No.1 to 4 in W.P.4063/2014 before the Hon'ble High Court of Karnataka, Dharwad Bench challenging the Order passed by the Land Tribunal dated:16.05.2005. The Hon'ble High Court of Karnataka, Dharwad Bench has disposed the said Writ Petition by accepting the compromise petition in between defendant No.1 to 4 and 6 to 9, they have stated that they have no objection in granting the occupancy rights in favour of defendant No.6 to 11. Therefore, defendant No.6 to 11 are the tenants of the suit property and occupancy rights are conferred on them. Further, they have taken specific

contention that the question as to whether the defendant No.6 to 11 are the tenants in possession of the suit property as to be decided by the Land Tribunal only and there is a bar under Sec.132 and 133 of the Karnataka Land Reforms Act, 1961 to try the Civil suit in regard with the issue involving the rights of the tenancy. Hence, they prayed for dismissal of the plaint as not at all maintainable before the Civil Court.

14. On careful perusal of the entire materials available on record and applications and objections raised by both side and decisions relied by the counsel for plaintiff and argument canvassed by both side, it is noticed to the Court that the application filed by the defendant No.6 to 8 and 10 is not maintainable. The Land Tribunal Order usually under the Land Reforms Act confer ownership / occupancy rights to tenants or cultivators. Once the Tribunal grants occupancy rights and issue a certificate, it amounts to statutory ownership. Such title is conclusive unless set aside in

appeal / revision under the Act. A Civil Court generally cannot go behind such an order.

Admittedly, in the present suit on hand the plaintiff claim is title by way of adverse possession.

The law of adverse possession requires proof that the plaintiff has been in open, hostile, continuous possession against the true owner for atleast 12 years as per Article 65 of Limitation Act.

But, in cases where ownership is derived from a statutory grant / order, adverse possession against such an owner is difficult unless, the plaintiffs possession started after the grant and they prove clear hostility against the owner for the statutory period. In such circumstances, if plaintiff can file a suit for declaration of ownership by adverse possession or to protect possession.

However, if the plaintiff sues the defendant, who got land under Tribunal order claiming ownership by adverse possession the suit is maintainable before the Civil Court.

Admittedly, in the present suit on hand the defendant No.6 to 10 taken contention that they are the title owner under the Land Tribunal Order and it is strong and statutory. Plaintiff cannot file a suit for declaration of ownership by way of adverse possession, but some of the decisions of Apex Court clearly held that suit of the plaintiff by way of adverse possession seeking the relief of declaration is maintainable. In such circumstance, this Court is of the opinion that the plaintiff has not challenging the Order passed by the Land Tribunal nor Hon'ble High Court of Karnataka in view of granting occupancy rights in favour of original tenant by name Mahadevappa Koppad who are the present defendant No.6 to 9 are his Lrs. Therefore, they seeking the relief of declaration of title of the suit property by way of adverse possession and consequential relief of injunction. They are not challenging the occupancy rights conferred on the defendants. Therefore, suit of the plaintiff is maintainable and it should be adjudicate before the

Court. Moreover, in the present case on hand matter is in the stage of evidence of the parties, in this stage the application filed by the defendant No.6 to 8 and 10 is not maintainable. Further, the counsel for plaintiff relied upon a decision reported in AI 2024 (NOC) 703 (PAT) AIROnline 2024 PAT 471 in between State Bank of India Supervising Staff Cooperative Housing Society Limited, Patna Vs. Pravin Kumar Singh, wherein it is held that;

(A) Civil P. C. (5 of 1908), O.7 R.11(a) – Rejection of plaint- non-disclosure of cause of action-Suit for possession, injunction and removal of encroachment-plaintiff claimed title over schedule-1 land and provided sale deeds as evidence-Trial Court should have sought clarification on doubts regarding sale deeds, mutation entries and payment of land revenue rather than rejecting plaint-Lack of mutation did not result in denial of title – Revenue records do not create or extinguish title- Court failed to address evidence properly, including sale deeds and Malguzari receipt – Order rejecting plaint was perverse due to improper assessment of evidence – Plaint was not liable to be rejected.

Further relied upon the decision in AIR 2025 (NOC) 465 (SK): AIROnline 2024 SK 9 in between Sarad Ghalay Vs. Chewang Lhamu Bhutia and others - wherein it is held that,

Civil P.C. (5 of 1908), O.7 R.11(d) -Rejection of plaint-Bar of limitation-Suit for declaration and recovery of possession-defendants pleaded that plaintiff had knowledge about reduction in area of ancestral property-Statements made in plaint to be considered in its entirety-Merely reading one word from plaint cannot impute knowledge on plaintiff – Question of limitation is a mixed question of law and facts -Suit cannot be dismissed as barred by limitation without proper pleadings, framing of issues and recording of evidence – Application of rejection of plaint cannot be entertained.

Further relied upon the decision in 2012 SAR (Civil) 648 in between Charitable Society Vs. M/s Ponniamman Education Trust - wherein it is held that,

“9. A perusal of Order VII Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.....”

It is clear that in order to consider Order VII Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial

Court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. vs. Ganesh Property (1998) 7 SCC 184 and Mayar (H.K.) Ltd. and Others vs. Owners & Parties, Vessel M.V. Fortune Express and Others (2006) 3 SCC 100.

Wherein this decisions the Hon'ble Apex Courts clearly held that the facts of the plaint is to be taken into consideration while deciding an application under Order 7 Rule 11 of CPC. On perusal of the entire plaint of the plaintiff it is noticed to the Court that there is no any grounds in order to reject the plaint without providing opportunity to prove their case. Therefore, the prayer sought by the plaintiff is different from the contention taken by the defendant No.6 to 8 and 10 in their application. Therefore, without adjudicating the matter fairly question of rejecting the plaint does not arise. Therefore on the strengthen of the decisions referred by this court and the materials available on record it is noticed to the court that, the defendant No.6 to 8 and 10 have not made out sufficient grounds to reject the plaint against them, therefore the suit of

*the plaintiffs is fit for further proceedings, hence I answer to the **point No.1 in the Negative.***

15. **Point No.2** :- *On the basis of my reasons on point No.1, I proceed to pass the following :*

ORDER

I.A. No.XI filed by the Defendant No.6 to 8 and 10 under Order VII Rule 11(a) and (d) R/W Sec.151 of CPC is hereby rejected.

No order as to costs.

*(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the **13th day of October, 2025**)*

sd/-

*(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge and JMFC.,
Hubballi.*