

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.199/2025

Dated this the 13th day of February, 2026

Plaintiff/s : Smt. Neelavva W/o Fakirappa @
Mudakappa Navalgund.

.Vs.

Defendant/s : Smt. Parvatevva W/o
Sannahanamappa Bhagavati
and others.

PARTIES TO I.A. No.V

Applicant/s : Shantayya S/o Veerayya
Hasamath.

.Vs.

Opponent/s : Smt. Neelavva W/o Fakirappa @
Mudakappa Navalgund.

- i. Provision under which : Under Order VII Rule 11(d)
application is filed R/w Sec.151 of CPC
- ii. Relief sought for : Seeking for rejection of the
plaint filed by the plaintiff.
- iii. The date on which : 10.12.2025
application is filed

- iv. Number of the : V application
- v. The date on which : 12.01.2026 objections are filed by different opponents
- vi. The date on which : 13.02.2026 orders were passed on the said application

ORDERS ON I.A. No.V

The defendant No.23 to 25 have filed an I.A. No.V under Order VII Rule 11(d) R/w Section 151 of C.P.C., seeking for rejection of the plaint filed by the plaintiff.

- 2. The plaintiff has filed objections.
- 3. Heard arguments.
- 4. The points for consideration are as follows:
 - 1. Whether the defendant No.23 to 25 have made out grounds enunciated under Order 7 Rule 11(d) to reject the plaint filed by the present plaintiff?
 - 2. What order ?
- 5. 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

6. **Point No.1:** *This suit is filed by the plaintiff for the relief of partition and separate possession and declaration is concerned. The present application is supported by affidavit. It is stated by the defendant No.25 that the plaintiff has filed the above suit against the defendants No. 23 to 25 for the relief of declaration on the ground that the sale transaction was not binding on her and against the other defendants for the relief of partition and separate possession. The plaintiff in her plaint showing cause of action that the plaintiff demanded her share to the defendant No.2 and 3 in respect of suit schedule properties, but the defendant No.2 and 3 are denied her share, when she has obtained the documents pertains to suit schedule property then only she got knowledge about the transaction in respect of suit schedule property, thereafter she has filed a suit for partition in O.S. No.17/2024 at I Addl. Senior Civil Judge, Hubballi, but it was withdrawn and filed the present suit seeking her share in the suit schedule property. Further, shown cause of action to file the present suit that again she has obtained some other documents in respect of the suit schedule property. Therefore, the cause of action is*

arise to file the present suit on hand. But, in O.S. No.17/2024 this Court has allowed the I.A. No.17 filed by the plaintiff in part and permitted to the plaintiff to withdraw the suit and to file fresh suit. But, liberty to file fresh suit on same cause of action was declined. Therefore, on the set of same cause of action the plaintiff has no right to file the present suit on hand. Therefore, they prayed for allow the application.

7. *The objections of the plaintiff is that the application and affidavit are false, frivolous, vexatious and not tenable in law. Further contended that the plaintiff had earlier filed O.S. No.17/2024 in this Court seeking declaration and partition and separate possession in the suit properties. In the said suit, the defendants pleaded that the suit is suffers from non joinder of necessary parties and non inclusion of available properties for partition in his written statement. Therefore, the plaintiff filed the application in the said suit seeking withdraw the suit with liberty to file fresh suit on same cause of action. But, this Court granted permission to withdraw the suit and to file fresh suit and liberty to file fresh suit on same cause of action was declined. Further, taken contention that the plaintiff demanded her share to the defendant No.2 and 3, but they have specifically denied to allot the same. Therefore, the plaintiff obtained the documents in*

respect of the suit schedule property then only she noticed regarding transactions in respect of the suit schedule property. Therefore, earlier suit was filed and said suit was withdrawn. Thereafter, once again some of the documents has been obtained from the concerned authority, then the cause of action to file the suit is arise.

8. *Further, taken contention that there is no bar under the law regarding withdrawal of suit and filing fresh suit as per their relief, and suit is not barred under any law. Therefore, the application filed by the defendant No.23 to 25 is not sustainable under law and liable to be dismissed in limine, only in order to grab the precious time of the Court and protract the proceedings they have filed the present application on hand. Therefore, they prayed for dismiss the application with costs.*

9. *On careful perusal of the entire materials available on record it is noticed to the Court that, admittedly, if a plaintiff withdraws a suit without liberty to file a fresh suit on the same cause of action he is barred from instituting another suit on the same cause of action as per Order 23 Rule 1 (4), if the Court refused liberty the bar is absolute, this bar applies only when the cause of action is identical. It is well settled law that the nature of the partition suits continuing cause of*

action, partition is a recurring / continuous cause of action because every co-sharer is deemed to be in joint possession until partition, denial of share or exclusion gives rise to a fresh cause of action each time it continues.

10. The Hon'ble Apex Courts consistently hold that a fresh partition suit is maintainable despite earlier withdrawal, provided the claim is based on continued joint status or continued denial of share, not merely repetition of the old plaint.

11. Further, it is well settled principle of law that withdrawal of an earlier partition suit without liberty does not bar a fresh partition suit, since the right to partition is a continuing right unless partition is effected by metes and bounds. Therefore, maintainability test the second suit is maintainable only if the plaint discloses a fresh or continuing denial of share and it is not merely a verbatim relitigation of the earlier pleadings. On perusal of the earlier plaint and withdrawal order present plaint cause of action paragraph it is noticed to the Court that a fresh partition suit after withdrawal of an earlier suit is generally maintainable. Admittedly, in plaint para No.13 the plaintiff has pleaded earlier cause of action as well as including present cause of action. Therefore, said suit for partition is maintainable because partition is a

*continuing cause of action. In this aspect I would like to refer para No.13 of the page No.8 of the plaint last 3 lines “ವಾದಿಯು ದಾವಾ ಆಸ್ತಿಗಳಲ್ಲಿ ತನಗೆ ವಾರಸಾ ಪ್ರಕಾರ ಬರುವ ಕಾನೂನುಬದ್ಧ ಹಿಸ್ಸೆಯನ್ನು ಪಡೆದುಕೊಳ್ಳಲು ಅನಿವಾರ್ಯವಾಗಿ ಕೆಲ ದಾವಾ ಆಸ್ತಿಗಳ ಕುರಿತು ಮತ್ತೆ ದಾಖಲಾತಿಗಳನ್ನು ತೆಗೆಯಿಸಿದ ನಂತರ ಪ್ರತಿ ದಿವಸ ದಾವಾಕ್ಕೆ ಕಾರಣ ಉಂಟಾಗಿದ್ದು ಇರುತ್ತದೆ.” Admittedly, whether the plaintiff obtained documents in respect of the suit schedule property or not cannot be decide here only. The burden of prove of the above said cause of action is on the plaintiff and it requires full fledged trial. This is why the court presumes a prima facie case in favour of the plaintiff. Not because the plaintiff has proved fraud, but because the material placed shows that the claim is plausible and requires evidence. When the court is only satisfied that the issue cannot be decided without trial, in such circumstances, rejection of the plaint or denial of opportunity would be premature. Hence, this court answered **point No.1 in the Negative.***

12. **Point No.2:** *On the basis of my reasons on point Nos.I. I proceed to pass the following :*

ORDER

The I.A. No.V filed by the defendant No.23 to 25 under Order VII Rule 11(d) R/W Section 151 of CPC

*praying for reject the plaint filed by the
plaintiff 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 February,
2026**)*

sd/-

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