

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.266/2025

Dated this the 06th day of June, 2026

Plaintiff/s : Jalaluddin Boudiwale S/o
Khalandarsab and others.

.Vs.

Defendant/s : Smt. Hajranbi @ Hajrabi W/o
Siraj Ahmed.

PARTIES TO I.A. No.I

Applicant/s : Smt. Hajranbi @ Hajrabi W/o
Siraj Ahmed.

.Vs.

Opponent/s : Jalaluddin Boudiwale S/o
Khalandarsab and others.

- i. Provision under which : Under Order VII Rule 11
application is filed 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 : 01.12.2025
application is filed

- iv. Number of the : I application
- v. The date on which : 10.12.2025 objections are filed by different opponents
- vi. The date on which : 06.06.2026 orders were passed on the said application

ORDERS ON I.A. No.I

The defendant has filed an I.A. No.I under Order VII Rule 11 R/w Section 151 of C.P.C., seeking for rejection of the plaint filed by the plaintiffs.

- 2. *The plaintiffs have filed objections.*
- 3. *Heard arguments.*
- 4. *The points for consideration are as follows:*
 - 1. *Whether the defendant has made out grounds enunciated under Order 7 Rule 11 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 is concerned. The present application is supported by an affidavit. It is stated by the defendant that the Plaintiffs are filed this suit for Partition and Separate Possession, claiming that plaintiffs are being the brother and sister in law and nephew are the legal heirs and succeeded to the estate of defendant father late. Dadapeer K. Boudiwale along with defendant and they are having 2/3rd share together in suit schedule property on false and flimsy ground. It is further submitted that suit schedule property was originally belongs to one late Rehmankhan Hussainkhan Karikatti, then the father of the defendant had purchased the suit schedule property from the above owner for valuable sale consideration by way of registered sale deed dated:27.01.1976. Which is registered in the office of Senior Sub-Registrar, Hubballi under the document No.2501. Hence, the suit schedule property is self-acquired property of father of the defendant Dadapeer Boudiwale. The father of the defendant by name Sri. Dadapeer Boudiwale was died On 08.05.2019, leaving behind her as his sole legal heir and after death of her father she has succeeded and her name is mutated in the CTS Record as absolute holder and owner of the suit schedule property as his lonely*

daughter. Hence, she is the absolute owner to the suit schedule property. It is further submitted that suit property is the self-acquired property of her father late. Dadapeer Khalandar Boudiwale, who died On 08.05.2019, leaving behind her as his sole legal heir and as per the Mohammadan law she is the only class-1 legal heir being succeeded to the suit schedule property and the Plaintiff No.1 is younger brother and the Plaintiff No.2 and 3 are the wife and son of her father elder brother Late. Mohammad Hanif, who are not came under the purview as legal heir as per Mohammadan law and also there is no Joint family concept is existence in Mohammadan law and the Plaintiffs are not inherit the suit schedule property as legal heirs of deceased defendant father and plaintiffs are recognized under the Mohammadan law as residuary heirs and not the legal heirs and she is the only person being his daughter succeeded to the suit schedule property. Therefore, Plaintiffs are not the tenant-in-common or not having any share in the suit property. Hence, on this true facts there is no cause has arose the plaintiffs to file this Suit.

It is further submitted that the plaintiffs are neither the legal heirs of deceased Dadapeer Khalandarsab Boudiwale nor having any share in the suit schedule property as per the law of inheritance under the Mohammadan law and it is submitted that the plaintiffs

are without having any right, title, share and interest over the suit schedule property are got filed this false, vague and baseless suit. There is absolutely no cause has arose to the Plaintiff to file this suit and one mentioned in this suit is totally is a figment of imagination created by the plaintiff only with malafide intention to grab the property from defendant and cause loss, injury and harassment to her. Therefore, the suit of the plaintiffs is deserves to be nipped in the bud as suit of the plaintiffs is not maintainable for want of cause of action. If her application is allowed absolutely no injury, hardship and injustice shall be caused to plaintiffs and to save the precious time, energy of this Court, if the application dismissed naturally hardship and precious time of this defendant shall loss and cause hardship. Hence, prayed to allow the application.

7. *The objections of the plaintiffs is that the application is neither tenable in law, nor on facts. It is further contended that it is well within the knowledge of the Defendant that, she is the only daughter of the deceased Dadapeer Boudiwale. As such the Defendant is entitled for lonely $1/3^{\text{rd}}$ share of the property of the deceased as per Mohammedan law. Hence the question of law is involved. It required to be duly adjudicated by evidence, and the dismissal or rejection of the suit at this initial stage, as dreampt by the Defendant, will*

cause huge irreparable loss and injustice to the Plaintiff. There is genuine and legal cause of action arose to file this suit which mentioned in the plaint. It is also well within the knowledge of the Defendant the suit property was originally acquired by the brother of the Plaintiff No.1, 2 and 3 are wife and son of his elder brother Mohammed Hanif Bowdiwale who is expired. That as contended in the plaint, the father of the Defendant Dadapeer Budiwale during his life time has given on mortgage the suit property to one Shri. Azizahmed Abdulrahiman Betwale on 05.02.2019 for the mortgage amount of Rs.50,000/-. Subsequently the said Azizahmed expired leaving behind his L.R. Imtiyazahmed Betawale and Shri Shanawaz Betawali. The suit property is in possession of the said mortgagees in possession and they are residing there till today. The Plaintiffs and Defendant and deceased Dadapeer being Muslim governed by Mohammedan law of succession. As such the Plaintiff and Defendant are tenant-in-common of the suit property. That since Dadapeer died leaving behind only daughter and since the Plaintiff No.1 is the own brother and Plaintiff No.2 and 3 are wife and son of his own brother Mohammed Hanif respectively. The Defendant being the only daughter shall inherit 1/3rd share in the suit property and the remaining will go to the brothers of Dadapeer as

successors. Since the Plaintiffs are entitled for 2/3rd share in the suit property as per the Mohammedan Law.

It is further contended that right from the date of death of the said Dadapeer, the Plaintiffs are repeatedly requesting the Defendant to make partition and give their 2/3rd share in the suit property by metes and bounds. But the Defendant went on postponing the matter under one or other false pretexts. The defendant, even though has not succeeded to the entire suit property, she by giving false Wardi to the City Survey Authorities and by suppressing the truth of the matter has got mutated her name only as successor to the entire suit property on 01.06.2024 without the knowledge of the Plaintiffs. However, the suit property is in possession of the above named Possession. Mortgagees-in-possession. Knowing all these facts, the defendant knowing full well and being afraid of the fact that, the plaintiff will definitely succeed in this suit the Defendant with a view to brake the will power of the plaintiff has filed such an application, by taking up false contentions. Hence, prayed to dismiss the application.

8. On careful perusal of the entire materials available on record it is noticed to the Court that, The defendant has filed the present Application and Order VII Rule 11 r/w Section 151 of CPC seeking rejection of

the plaint. On the ground that the suit property is the self-acquired property of the father of the defendant and after his death the defendant alone succeeded to the property as sole class-I legal heir and therefore the plaintiffs have no right, title or share in the suit property under Mohammedan law. The plaintiffs have filed objections contending that the plaintiff No.1 is the daughter of the deceased and plaintiff No.2 and 3 are the wife and son of late Mohammed Hanif, who are also entitled to succeed to the estate under Mohammed Hanif. Further contented that the question involved in suit relates to succession and entitlement of shares under Mohammedan law. And the same requires full-fledged trial and adjudication on evidence. Hence they sought dismissal of the application. At the outset, it is well settled that while considering an application under Order VII to 11 of CPC, the court has to look only into the averments made in the plaint and the documents produced by the plaintiff. The defence taken by the defendant in the written statement or in the application cannot be considered a part. Deciding an application under Order VII Rule 11 of CPC. Rejection of plaint can be ordered only when the plaint does not disclose cause of action appears barred by law or falls within any of the contingencies contemplated under Order VII Rule 11 of CPC.

9. In the present case, the plaintiff discloses that the parties are governed by Mohammedan law and that the plaintiffs claim share in the suit properties as legal heirs of the deceased. The plaintiff specifically contented that they are entitled to succeed to the estate of the deceased and claim 2/3rd share in the suit property. Whether the suit property is self-acquired Property of the deceased father. Whether the plaintiffs are legal heirs entitled to succeed under Mohammedan law and what would be their respective shares are all disputed questions of fact and law, which require adjudication of the recording evidence. The contention of the defendant that she alone is entitled to succeed to the property and that the plaintiffs are not legal heirs under Mohammedan law is a matter of defense. Such defense cannot be examined in detail while exercising powers under Order VII to XI of CPC. The plaint on its case discloses a cause of action for partition and separate possession, and the suit cannot be said to be barred by any law at this stage. Therefore, this court is of the opinion that the grounds urged by the defendant do not fall within the ambit of Order VII Rule 11 of CPC. Accordingly, the application filed by the defendant under Order VII Rule 11 R/W Section 151 of CPC is liable to be dismissed. In such circumstances, rejection of the plaint or denial of opportunity would be

premature. Hence, this court answered **point No.1 in the Negative.**

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

ORDER

The I.A. No.I filed by the defendant under Order VII Rule 11 R/W Section 151 of CPC praying for reject the plaint filed by the plaintiffs 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 **06th day of June, 2026**)*

sd/-

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