

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.143/2024

Dated this the 17th day of April, 2026

Plaintiff/s : Smt. Kavya W/o Anand
Menasigi and another.

.Vs.

Defendant/s : Sri. Anand S/o Sangappa
Menasigi and others.

PARTIES TO I.A. No.VIII

Applicant/s : Sri. Anand S/o Sangappa
Menasigi and others.

.Vs.

Opponent/s : Smt. Kavya W/o Anand Menasigi
and another.

- 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 : 02.12.2025
application is filed*
- iv. *Number of the : VIII
application*
- v. *The date on which : 20.01.2026
objections are filed by
different opponents*
- vi. *The date on which : 17.04.2026
orders were passed on
the said application*

ORDERS ON I.A. No.VIII

The defendants have filed an I.A. No.VIII under Order VII Rule 11(a) and (d) of C.P.C., seeking for rejection of the plaint filed by the plaintiffs.

2. *The plaintiffs have filed objections to this application.*

3. *Heard arguments.*

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

1. *Whether the defendants 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 ?*

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 is the suit filed by the plaintiffs against the defendants for the relief of partition and separate possession is concerned. The present application is supported by affidavit. It is stated by the defendant No.1 that, the suit properties are not ancestral and joint family properties. Hence there is no right accrued to the plaintiffs to file the present suit. The Sl. No.1 of the suit property is self acquired property of the Sangappa Menasigi. After his death the said property has been mutated by defendant No.1 and other defendants. The said property which is mutated is not joint family property at all. Hence the plaintiffs have no manner of right, title, and interest in or over the suit property. The Sl. No.2 property is self-acquired property of the defendant No.2. The said property is purchased by the defendant No.2 through registered sale deed. Hence the said property is not joint family property. The plaintiffs have no manner right, title, interest in or over the said property. The Sl. No.3 property is the self-acquired property of defendant No.1. The said property is purchased by defendant No.1 out of his own earnings and savings. The said property is not joint family*

property. Hence the plaintiffs have no manner right, title, interest in or over the said property.

7. It is further submitted that, all these transaction are taken place prior to marriage. There is no any ancestral property lies to the family. Hence there is no birth right or coparcenary right to the plaintiffs to file the present suit. In the earlier point of time there is partition between the Sangappa Menasagi and his brothers and the property fallen in the partition has been sold prior to plaintiff No.1 marriage. Hence there is no any ancestral and joint family properties are in existence. Hence the suit of the plaintiffs is not tenable. It is further submitted that, there is vexatious and malafide intention behind the present suit. There is no cause of action accrued to the plaintiffs to file the present suit. It is only created cause of action just to file the above false suit. Admission given in the cross examination of P.W.-1 clearly goes to show that, the plaintiffs have no manner of right, title over the suit properties. The plaintiffs have approached with unclean hands by suppressing true material facts and without there being clear right to sue. All the sale deeds in respect of the suit properties are prior to marriage of the plaintiff No.1 birth of the plaintiff No.2. Hence there is no properties are available to show the joint family properties. Further mere by marriage and by birth the

plaintiffs cannot become joint family members or get share in the suit properties unless there being any ancestral properties. There is no joint family properties are in existence. When there is no joint family properties are available, seeking partition by pleading the properties as joint family properties is just to create unnecessary litigation. The plaintiffs have no manner of right to question or ask for partition. Hence, this application and prayed to allow the application.

8. *The objections of the plaintiffs is that the application filed by the defendants is false, frivolous and vexatious and same, misleading, misrepresenting one and not tenable either in law or on facts. The present application is mischievous and without bonafide one. Defendants did not approach this Court with clean hands. The present application is filed by defendants with ulterior motive to harass and cause loss and injury to the plaintiff. Said application also filed with malafied intention to defraud the plaintiffs legitimate and legal right and interest in the suit property and escape from the liability and responsibility of the defendant No.1. Therefore, application is not bonafide one, same is mischievously filed. It is settled proposition of law that, Plaint averments shall only considered to decide the application under Order VII Rule 11(a) or (d) of Code of Civil Procedure and not the averments of Written*

Statement or Evidence on Record. Hence, averments of application and affidavit are beyond the scope of said provision. It is further contended that, plaint averments clearly discloses the cause of action and maintainability of suit. Hence, application of the plaintiff not tenable in the eye of law and liable to be rejected with compensatory cost. The Defendants with an intention to avoid the trial and deprived here the full opportunity of hearing to the plaintiff hearing, filed present application. The present application of the defendant No.1 is against his own statement made in Cri. Misc No.41/2022 on the file of Principal Civil Judge and J.M.F.C., Badami. The Defendants did not approach this Court with clean hands. They are trying to avoid the trial of the issues by entering into witness box and also prolong the matter for longer period with malafied intention to dupe and defraud the legitimate rights and share of the plaintiff. Hence, prayed to dismiss the application with costs.

9. The learned counsel for the defendant has relied upon the following decisions.

- 1) *Koshy Abraham Vs. B.K. Jayalakshmi.*
- 2) *(2016) 4 Supreme Court cases 68;(2016) Supreme Court cases (Civ) 545:2016 SCC online SC 212.*

3) *Civil Appeal No.1233/2008 (arising out of SLP © No.9503/2007).*

10. *On the otherhand, the learned counsel for the plaintiff has relied upon the following decisions:*

- 1) *2016 Law suit (SC) – R.K. Raja Vs. Rayudu and another.*
- 2) *2025 Law Suit (SC) – G. Sankarabushanam and others Vs. E. Dhavamani and others.*

11. *Further the plaintiff relied upon the documents i.e., RTC extracts, mutation extract, sale deed, birth certificate, deposition in Crl. Misc. No.41/2022 and Aadhaar cards.*

12. *On careful perusal of the entire materials available on record it is noticed to the Court that this is a suit filed by the plaintiff against the defendant for the relief of partition and separate possession. When the matter is set down for defendant evidence as last chance the counsel for defendant filed present application under Order 7 Rule 11(a) and (d) R/w Sec.151 of CPC seeking rejection of the plaint on the grounds that the suit is barred by law.*

13. *The contention of the defendant No.1 is that the suit schedule property is not an ancestral property, but the self acquired property of his predecessor. It is further contended that the property had fallen to the*

share of one Sangappa Melsigi in an earlier partition and the same was sold much prior to the marriage of the plaintiff No.1. Hence, according to the defendant the plaintiff has no birth right or coparcenary interest and therefore, the suit is not maintainable.

14. Per contra, the plaintiffs have contended that the plaint clearly discloses cause of action and the present application is beyond the scope of Order 7 Rule 11 of CPC. It is further contended that the application is filed after belated stage after completion of plaintiff evidence and when the matter is posted for defendants evidence with malafide intention to protract the proceedings.

15. The learned counsel for the plaintiff relied upon the decision of the Hon'ble Supreme Court reported in R.K. Raja Vs. V.S. Rayudu and others, wherein it is held that while considering an application under Order 7 Rule 11 of CPC the Court has to confine itself to the averments made in the plaint and cannot go into the defence raised by the defendant. It is further held that if the plaint discloses a cause of action, the same cannot be rejected merely on the basis of disputed questions raised by the defendant.

16. The learned counsel for plaintiff also relied upon the decision reported in Chanakanabhushanam

and others vs. Doyamani and others, wherein the Hon'bel Apex Court reiterated that the power under Order 7 Rule 11 CPC is a drastic power and must be exercising sparingly, and only when the plaint on its face does not disclose cause of action or is barred by law. It is further held that issues involving adjudication of facts and evidence cannot be decided at the stage of order 7 Rule 11 of CPC.

17. Per contra, the learned counsel for defendant No.1 relied upon the judgment in Koshy Abraham Vs. B.K. Jayalakshmi contending that if the plaint does not disclose a clear right to sue or where the suit is manifestly vexatious and meritless, the Court is empower to reject the plaint at the threshold. Reliance is also placed on the decision reported in (2016) 4 SCC 688 (arising out of Civil Appeal No.1233/2008), wherein it is held that clever drafting creating an illusion of cause of action should not be permitted and the Court must nip in the bud such frivolous litigation.

18. I have carefully considered the rival submissions and materials on record it is a settled principal of law as laid down in the judgments relied upon by both parties, that for the purpose of deciding an application under Order 7 Rule 11 of CPC only the averments made in the plaint are to be looked into and not the defence set up by the defendant. The Court

cannot embark upon a roving enquiry into disputed questions of fact at this stage.

19. In the present case a plain reading of the plaint discloses that the plaintiffs have asserted that the suit schedule property is joint family property and that they are entitled for a share therein. Necessary averments constituting cause of action have been made whether the property is ancestral or self acquired. Whether there was a prior partition, and whether the property was alienated prior to the marriage of plaintiff No.1 are all matters which require evidence and adjudication during trial.

20. The contention of the defendant that the plaintiff has no birth right or coparcenary right is a matter of defence. The same cannot be adjudicated at this stage in view of the ratio laid down in R.K. Raja's case and Janakanabhushanam case.

21. Even applying the principles laid down in Koshy Abraham case and the decision of Hon'ble Supreme Court in (2016) 4 SCC 688 this Court does not find that the plaint is vexatious or that it is a case of clever drafting creating an illusion of cause of action. On the contrary, the plaint discloses a clear assertion of right and corresponding denial which gives rise to a triable issue.

22. Further, for invoking order 7 Rule 11(d) of CPC, the bar of law must be apparent on the face of the plaint, in the present case no such statutory bar is evident from the plaint averments. The plea of prior partition and earlier sale are matters to be established by evidence and do not constitute a bar apparent on the face of the plaint.

23. It is also pertinent to note that the suit has already progressed to the stage of defendants evidence, after completion of plaintiff evidence entertaining the present application at such a belated stage, particularly when it involves disputed questions of fact, is not warranted.

24. In view of the above discussion and in the light of the principles laid down by the Hon'ble Supreme Court in the above said decisions cited supra, this Court is of the considered opinion that the application filed by the defendant N.1 is devoid of merits and is liable to be rejected. Hence, I answered **point No.1 in the Negative.**

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

ORDER

The I.A. No.VIII filed by the defendants under Order VII Rule 11(a)

*and (d) R/W Section 151 of CPC praying
for reject the plaint filed by the plaintiffs
is hereby dismissed.*

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 **17th day of
April, 2026**)*

sd/-

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