

**IN THE COURT OF SENIOR CIVIL JUDGE AND
JMFC, KALAGHATAGI**

PRESENT

**SRI. RAVINDRA L. HONOLE., B.A., LL.B. (Spl)
SENIOR CIVIL JUDGE & JMFC, KALAGHATAGI**

DATED THIS 21ST DAY OF APRIL 2026

O.S.No.132/2024

PLAINTIFFS:

1. Smt. Leelavati @ Yellavva M. Patil
and others

(Sri. S.M.K.,Adv)

Vs

DEFENDANTS:

1. Akkamma E. Patil and others

(D-1 to 6: Sri. A.A.B., Adv)

(D-8: Sri.S.K.D., Adv)

(D-9 to 11: Sri. B.S.H., Adv)

(D-13 to 18, 20 Exparte)

PARTIES TO IA NO.4

APPLICANT:

1. Venkappa R. Hosmani and others

Vs

OPPONENTS:

1. Smt. Leelavati @ Yellavva Patil and others

ORDER ON I.A. NO.4

Applicant/defendant No.12 has filed this application u/o 7 rule 11 (a) and (d) r/w.sec.151 of CPC for rejection of plaint.

2. This application is supported with affidavit of defendant No.12. In the application it is contended that the plaintiffs have filed suit for partition and separate possession and also they have challenged sale deed executed in his favour in respect of schedule 'A' item No.5 Sy.No.29/2 measuring 5 acre 27 guntas. His vendor Gangadhar Kantre was the absolute owner has sold the said property in his favour under registered sale deed dated 31.07.2008 executed by Smt. Savitravva Patil and her sons who are mother and brothers of plaintiff. It is contended that he purchased said land under registered sale deed dated 16.02.2010 and from the date of possession he was in use and enjoyment of said property more than 12 years and his vendor was title holder from 21.07.2007 till today. The plaintiffs intentionally have suppressed the facts and suit is hit by order 6 rule 4 of CPC. The suit is also barred by law of limitation and liable to be rejected u/o 7 rule 11(b) of CPC. It is submitted that suit of the plaintiffs is suffers from non-joinder of necessary parties. The averments of plaintiff disclose

that suit is vague and without cause of action. The plaintiff is liable to be rejected. Therefore, prays for rejection of plaint.

3. The plaintiffs have filed objection to the applications denying the contents of application are false, baseless and same is liable to be dismissed. It is contended that the evidence of parties not yet commenced at this stage without verifying plaint cannot be rejected. The contents of application are false. The contention taken by the defendant is to be considered at the time of trial. Therefore, prays for dismissal of application with cost.

4. Heard arguments.

5. The points that arise for my consideration

are:

1. Whether the applicant /defendant No.12 shows that suit is filed without cause of action and barred by law of limitation and same is liable to be rejected?

2. What order?

6. My finding on the points are as under:

POINT No.1: In the negative

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

REASONS

7. **POINT No.1:** The plaintiffs have filed suit for partition and separate possession. The matter is posted for evidence of plaintiffs at that time the defendant No.12 has filed this application for rejection of plaint and same is filed without cause of action and barred by limitation.

8. Learned counsel for defendant No.12 argued that the defendant No.12 was the purchaser of schedule 'A' item No.5 Sy.No.29/2 measuring 5 acre 27 guntas from its original owner and from the date of sale he was in possession and enjoyment of said property. The plaintiffs by suppressing material facts without disclosing true facts have filed this suit. The suit is filed without cause of action and one stated in the plaint is imaginary and same is also barred by law of limitation. It is submitted that the entire suit of the plaintiffs is liable to be rejected. In support of arguments has relied the decisions of Hon'ble Supreme Court of India reported in 2025 SAR (Civ) 1237, 2025 (4) KCCR 3157 (SC).

9. Learned counsel for plaintiffs argued that the plaintiffs have filed suit for partition and separate possession in respect of their legitimate share. There is no partition in the suit properties. The plaintiffs being co-parceners are having legitimate right over the said property. The alienation made by defendants in favour of defendant No.12 is not binding on share of the plaintiffs.

10. I have gone through the provisions of order 7 rule 11 of CPC. The provisions are clear that, the plaint shall be rejected a) where it does not disclose cause of action, b) the relief claimed is under valued and the plaintiff has failed to comply the order of court, c) whether the relief claimed is properly valued but suit is written on insufficiently stamp paper and not complied the order of court to supply the requisit stamp paper within a time fixed by the court d) whether the suit is barred by any law, e) whether it is not filed in duplicate, f) where the plaintiff failed to comply the provisions of rule 9.

11. The object behind order 7 rule 11 is to keep out of court irresponsible suits. It is the duty of court exercise the power u/o 7 rule 11 at any stage of the suit. The plaint can be rejected when on a meaning full but not formal reading of the plaint. If the court discovers that the plaint is manifestly vexatious and without merit and further no right to sue is disclosed the court can dismissed the suit exercising power u/o. 7 rule 11 of CPC. Even there is no need to file application to the other side for rejection of plaint. In the context of above provision I have gone through the averments of plaint. The plaintiffs in the plaint para No.9 it is pleaded that on 05.11.2024 in the presence of elders they have sought their share from defendant No.1 to 7 and they have refused, therefore, they have filed the suit. It is clear from perusal of pleadings of plaint that after refusal by defendant No.1 to 7 to effect partition in the suit schedule properties, the plaintiffs have filed the present suit. The cause of action is the bundle of rights and para No.9 of the plaint that denial of right of plaintiffs over the suit properties is sufficient

and it cannot be said that same is false and frivolous. The plaintiffs have specifically pleaded the cause of action in the plaint and I do not find any merits in the contention taken by defendant No.12.

12. Further defendant No.12 contended that suit of the plaintiffs is also barred by law of limitation. The plaintiffs have filed suit for partition and separate possession. No fixed period of limitation for filing partition suit and the Hon'ble Supreme Court in catena of decisions held that, limitation is not applicable to the partition suits. The contention of defendant No.12 that the defendant No.6,7 and Smt. Savitravva Mallanagouda Patil and Ishwargouda Mallanagouda Patil have executed sale deed in favour of the vendor of defendant No.12 by name Gangadhar Kathare is for family and legal necessity is to be considered at the time of full pledged trial, it requires evidence. Defendant No.12 is the purchaser of one of the joint family property under suit. At this stage without going through evidence of parties and records it cannot be said that the suit of the plaintiffs is barred

by limitation and same is liable to be rejected. Further apart from schedule 'A' item No.5 the plaintiffs have sought their legitimate share in other landed and house property belongs to their family. Therefore, whole suit cannot be rejected. There was serious question of law and facts is involved. The question of limitation is mixed question of law and fact, requires evidence to decide the same. Before recording evidence of parties without going through the material evidence it cannot be held that the suit of the plaintiffs is barred by limitation. The defendant No.1 to 7 who are members of joint family have not denied their relationship with plaintiffs and there is no contention that the plaintiffs are ousted from the suit properties. Under such circumstances, mere contention taken by the defendant No.12 plaintiff cannot be rejected.

13. The averments of plaintiff and material evidence placed on record shows that the suit schedule properties are the joint family properties of plaintiffs and defendant No.1 to 7. The legality and validity of sale deed is to be decided and it requires evidence. At

this stage the grounds urged in the application are not sufficient to reject the plaint. The defendant No.12 has filed this application on untenable grounds without sufficient grounds and same is liable to be rejected.

14. I have also gone through the decisions relied by learned counsel for defendant No.12. The Hon'ble Supreme Court in its decision reported in 2025 SAR (Civ) 1237, observed that the plaintiff was challenged the sale transaction after 5 years and there are no bonafide reasons to challenge the alienation. Therefore, upheld the order of trial court dismissing the suit. In the present case on hand the plaintiffs are also the co-parceners having share in the ancestral joint family properties. The plaintiffs are the married daughters and they are not party to the alienation made in favour of vendor of defendant No.12. The legality and validity of sale deed is to be considered at the time of trial. Further Hon'ble Supreme Court in a decision reported in 2025 (4) KCCR 3157 held that, the partition suit filed by the grand children of executant have been challenged and same has been dismissed as

barred by limitation and lacking of cause of action u/o 7 rule 11 of CPC. In the present case on hand, the plaintiffs are claiming their right over the suit properties wherein one of the property has been alienated behind their back in favour of the vendor of defendant No.12 in the year 2007-08 was in question. It is burden upon the plaintiffs to prove that whether the alienation made in favour of vendor of defendant No.12 is not for legal and family necessity. Before commencement of evidence and without recording of findings at this stage the plaint cannot be rejected as barred by limitation. With due respect to the above decisions of Hon'ble Supreme Court, this court is of the opinion that the above decisions are not helpful to the case of the defendant No.12.

15. The defendant No.12 has failed to make out sufficient grounds to reject the plaint as same is filed without cause of action and same is barred by limitation. Accordingly, I have answered point No.1 in the negative

16. **POINT No.2:** As discussed above, court proceed to pass the following:

ORDER

I.A.No.4 filed by the defendant No.12 U/o 7 Rule 11 (a) and (d) of CPC is hereby rejected.

No order as to cost.

(This Order is directly typed by stenographer on computer, then corrected and pronounced by me in the open court on this 21st day of April 2026)

(R.L.HONOLE)
SENIOR CIVIL JUDGE & JMFC,
KALAGHATAGI