

**IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C.
NAVALGUND**

O.S.No.180/2020

Dated this the 08th day of July, 2025

Present : Sri. Naveen F. Dsouza

B.B.A., LL.B., (Spl).,

Civil Judge and JMFC., Navalgund.

Plaintiff : Shankrappa S/o. Basavanneppa Umnabadi,
Age: 55 years, Occ: Agriculture,
R/o.Basti Oni, Annigeri, Tq: Navalgund,
Dist: Dharwad.

(By Sri.RBH., Advocate)

Versus

Defendants : Smt. Basalingawwa @ Basavanneppa
W/o. Basavanneppa Umanabadi,
Age: 77 years, Occ: Household,
R/o.Hebbal, Tq: Navalgund,
Dist: Dharwad and others.

(D-1-5 Exparte,
D-6 By Sri.CMP/JKJ/ SSA., Adv.)

PARTIES TO I.A.

Applicant(D-6): 1. Suresh S/o. Lakshman Hubli

Versus

Opponents : 1. Shankrappa S/o. Basavanneppa Umnabadi

ANNEXURES

i	Provision of application	U/o.7 Rule 11 of CPC.
ii	Relief sought	Rejection of plaint
iii	The date of application	16.03.2021
iv	Number of the application	-
v	The date of objections	19.03.2021
vi	The date of order	08.07.2025

ORDERS ON I.A. FILED BY THE DEFENDANT NO.6
UNDER ORDER VII RULE 11 OF CPC.

The application is coming for disposal wherein the defendant no.6 has sought for the rejection of the plaint on the ground of the cause of the plaintiff being devoid of law, and upon consideration this court has disposed of the application accordingly.

SYNOPSIS:

2. The plaintiff is before this Court seeking to declare his pre-emptory right to purchase the suit properties and to nullify the sale of suit property by the defendant no.1 to 5 in favour of D6 and further an injunction directing the D1 to D5 to convey the suit property to the plaintiff for consideration.

3. The defendant no.6 is before this court through the application stating that the cause set out by the plaintiff would not be adjudicable as the same is barred by law of limitation and also by the law of succession among Hindus, thus the suit being barred the plaint is sought to be rejected.

4. To the contrast the application is opposed by the plaintiff on the ground that the application is mute on the provision that bars the cause. And further that the cause raised by the plaintiff was prior to the sale and that the defendants have misconceived the pleadings and thus sought for the dismissal of the application.

5. Upon receipt of the submissions advanced by the rival sides and on perusal of the pleadings, this court has narrowed down the dispute to definite points and has accorded the answer to the points for the underlying reasons:

Sl. No.	Points	Answers
1.	Does the plaint qualifies for its rejection for being devoid of cause to sue?	In the Negative ,
2.	What order?	As per final order, for the following;

REASONS

6. **Point No.1:-** Before proceeding with the evaluation of the point it would be imperative that the facts be narrated in a nut shell. The plaintiff has pleaded that himself and defendant no.1 to 5 are brother and sisters and the suit properties were parted between them by the virtue of the O.S.No.187/2008. Whereafter in pursuance of the decree the properties have come to be demarcated in FDP.No.39/2012 and the exclusive possession of the share of defendants has been delivered to them through Ex.Pt.No.162/2015. This is the suit property.

7. That after having secured the possession the defendants intended to convey the property and the plaintiff having come to the knowledge of this fact has approached the defendant to purchase the same for fair price. That however the defendants precipitated to alienate the and the plaintiff placed an objection before the Registrar. But unfortunately the defendants to defeat the claim of the plaintiff alienated the suit property to the D6 on 07.09.2020.

8. The plaintiff being now in the exclusive possession of the suit property the defendants have violated the preferential right of the plaintiff envisaged under Sec.22 of HSA and thus upon the refusal of the defendants to adhere to the provision, being aggrieved the plaintiff is before this court seeking the various relief.

9. On the contrary the defendant no.6 having cast his appearance before the court has filed this application along with the written statement. In the affidavit accompanying the application it is the plea of applicant that he is in the exclusive possession of the suit property and the suit is misconceived and

barred by law. The defendant being the purchaser for valuable consideration has sought for the rejection of the plaint.

10. Having given a brief consideration to the submissions and the pleadings this court has a limited issue for adjudication. The plaintiff has brought a cause inclining upon Section 22 of the HSA. The cited provision ensues that in the course of succession and devolution of property of an intestate, the successor would acquire a preferential right to acquire the property of co-successor should the co-successors intend to alienate the same.

11. It is the assertion of the learned counsel for the D6 that the benefit of the provision of HSA is not an absolute right rather a qualified right available only for the Class I heirs. He has placed his reliance upon the source of Hindu Law by Mulla. It is his further assertion that should the claim be entertained then it would be surpassing the time prescribed under Article 97 of Limitation Act.

12. It is urged that the D6 being a bonafide purchaser has purchased the suit property for valuable consideration. And the claim of the plaintiff would not maintain against the defendants as they are Class II heirs. Thus the cited law bars the cause of the plaintiff which the D6 has invoked to reject the plaint of the plaintiff.

13. To the contrary, the learned counsel for the plaintiff has asserted that the application of the D6 has no reference to any provision and furthermore that the question of limitation is a mixed question of law and fact which mandates the trial based on the evidence. It is his further assertion that the plaintiff is in possession of the suit property and the trial is necessary.

14. On perusal of the records the application is filed on 16.03.2021. Thereafter the issues are settled on 13.01.2023 and P.W-1 is examined on 17.02.2023. On 17.06.2023 the cross of P.W-1 is taken as nil owing the absence of the defendants. On 12.07.2024 the defence evidence was taken as nil and it was only on 23.08.2024 this court was brought to the knowledge of the pendency of this application.

15. The trial having commenced the question arises whether the plaint can be rejected in this regard reliance is placed upon the precedent in ***State of Karnataka Vs. V.H. Agarked & Kavita Podwal Vs. The BBMP*** wherein their lordships have held that the plaint can be rejected at any stage of the proceedings should the ingredients of Order 7 Rule 11 are satisfied. Suffice that it is imperative that the court has power to reject the plaint even though the trial has commenced.

16. The learned counsel for the D6 has placed in reliance upon the precedent in ***Ganeshappa and others Vs. Krishnamma & others*** wherein his lordship has been pleased to hold that the brother of the plaintiff would not have the right of preemption in case of alienation. Further the reliance is also placed by him in the precedent ***Anant Hegde Vs. Ramchandra Khod & others*** wherein his lordship has been pleased to analyze the provision of Section 22 HSA.

17. It is the assertion of the counsel for the D6 that the cited precedents would be law and the law that bars the cognizance of a cause qualifies for rejection. This court has given its consideration to the cited precedents. They pertain to the distinct facts and circumstances of the matter before their lordship and would not be imposing any precedent upon this

case for rejection of plaint perhaps they pertain to the matters which are adjudicated after a brief trial.

18. To the contrary learned counsel for the plaintiff has placed his reliance upon the precedent in **P.Kumarkurubaran Vs. P.Narayan** wherein their lordships have been pleased to hold that the trial courts to be conscious enough to fairly consider the application for rejection of plaint on the ground of limitation.

19. Having perused the materials and the submissions and the precedents this court opines that the cause brought in by the plaintiff is one that warrants a trial. Should the suit be barred by limitation then the same could be the after a brief trial. Nevertheless the cause of the plaintiff is not specifically barred by any law. The learned counsel for the plaintiff although has raised grounds which goes to the merits of the case.

20. The cause of the plaintiff involves ascertainment of possession and preferential right. The cited provision is a qualified remedy which warrants a trial and the plea of rejection of plaint on the ground of limitation is misconceived.

21. The court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of a defendant and documents relied upon by him cannot be looked into while determining the existence of cause to sue.

22. Therefore without venturing to the merits of the case and upon giving consideration only to the pleadings, the suit does qualify for adjudication and hence the Point No.1 is answered in the **Negative**.

23. **Point No.2:-** For the above stated reasons, this Court passes the following;

ORDER

*The I.A. filed by the defendant No.6
under Order 7 Rule 11D R/w. Section 151 of
CPC on 16.03.2021 is hereby **rejected**.*

(Dictated to the stenographer, transcribed and typed by her, the transcript revised, corrected and then pronounced by me in the Open Court on this **08.07.2025**).

(Naveen F. Dsouza)
Civil Judge and J.M.F.C.,
Navalgund.
