



**IN THE COURT OF THE PRINCIPAL SENIOR
CIVIL JUDGE AND CJM, AT. HAVERI**

:PRESENT:

**Sri.Mahammad Anwar Hussain Mogalani
B.Sc., L.L.B. (Spl)**

Prl. Senior Civil Judge & CJM,
Haveri

DATED THIS 06th DAY OF JUNE-2026

O.S.NO.168/2022

PLAINTIFFS:

1. Smt. Renuka
W/o Ningappa Kuragunda,
Age: 48 years,
Occ: Household and agriculture,
R/o: Devagiri-Yallapur,
Tq: Haveri.
2. Savitravva
D/o Adivappa Devaraneelannanavar,
Age: 46 years,
Occ: Household and agriculture,
R/o: Guttal, Tq: Haveri.



3. Smt. Prema
W/o Guddappa Parasannanavar,
Age: 44 years,
Occ: Household and agriculture,
R/o: Guttal, Tq: Haveri.
4. Smt. Nagarathna
W/o Honnappa Kambali,
Age: 42 years,
Occ: Household and agriculture,
R/o: Basapura,
Tq: and Dist: Haveri.
5. Smt. Mallavva
W/o Shambappa Devaraneelannanavar,
Age: 61 years,
Occ: Household and agriculture,
R/o: Guttal, Tq: Haveri.
6. Smt. Beeravva
W/o Ramanna Hattimattura,
Age: 59 years,
Occ: Household and agriculture,
R/o: Devihosur, Tq: Dist: Haveri.

(By Sri P.C.S., Adv.,)

V/s

**DEFENDANTS:**

1. Smt. Puttavva
W/o Guddappa Kuragund,
Age: 60 years,
Occ: Household and agriculture,
R/o: Devagiri-Yallapur,
Tq: and Dist: Haveri.
2. Mallappa
S/o Guddappa Kuragund,
Age: 38 years,
Occ: Agriculture,
R/o: Devagiri-Yallapur,
Tq: and Dist: Haveri.
3. Parasappa
S/o Guddappa Kuragund,
Age: 36 years,
Occ: Agriculture,
R/o: Devagiri-Yallapur,
Tq: and Dist: Haveri.
4. Smt. Rathnavva
W/o Shankrappa Chapparamani,
Age: 32 years,
Occ: Household and agriculture,
R/o: Gudageri,
Tq: Kundagol, Dist: Dharwad.



5. Smt. Shaila
W/o Somashekar Nerti,
Age: 30 years,
Occ: Household and agriculture,
R/o: Adyapaka Nagar, Savanur,
Tq: Savanur, Dist: Haveri.
Now residing at
R/o: Devagiri-Yallapur,
Tq: and Dist: Haveri.
6. Ningappa
S/o Dyamanna Kuragund,
Age: 56 years,
Occ: Agriculture,
R/o: Devagiri-Yallapur,
Tq: and Dist: Haveri.
7. Smt. Devakka @ Yallavva
W/o Basavanneppa Karjagi,
Age: 64 years,
Occ: Agriculture,
R/o: Devagiri,
Tq: and Dist: Haveri.
8. Niranjana
S/o Basavaraj Thandura,
Age: 51 years,
Occ: Business and Agriculture,
R/o: Hattarageri oni,
Tq: and Dist: Haveri.



9. Dr. Shailaja
W/o Jagadish Goddemmi,
Age: 45 years,
Occ: Agriculture and Doctor,
R/o:Karagudari Chala,
Dr. Goddemmi hospital,
Tq: and Dist: Haveri.
10. Nikil
S/o Jagadish Goddemmi,
Age: 06 years,
Occ: Agriculture and studies,
R/o:Karagudari Chala,
Dr. Goddemmi hospital,
Tq: and Dist: Haveri.
11. Neha
D/o Jagadish Goddemmi,
Age: 04 years,
Occ: Studies,
R/o:Karagudari Chala,
Dr. Goddemmi hospital,
Tq: and Dist: Haveri.

(Defendant No.10 and 11 are
minors, represented by their
natural guardian mother
i.e., defendant No.9)



12. Gurubasappa
S/o Basappa Desai,
Age: 60 years,
Occ: Agriculture and business,
R/o: Vidyanagar, C block,
Kollapur Mahalaxmi temple near,
Tq: and Dist: Haveri.
13. Basappa
S/o Gadigeppa Giryappanavar,
Since deceased
by Lrs.,
- 13A. Kasturevva
W/o Basappa Giryappanavar,
Age: 75 years,
Occ: Household,
R/o: Vidyanagar, A block,
3rd cross,
Backside of Menasinakai petrol bunk,
Tq: and Dist: Haveri.
- 13B. Rajashekar
S/o Basappa Giryappanavar,
Age: 60 years,
Occ: Agriculture,
R/o: Vidyanagar, A block,
3rd cross,
Backside of Menasinakai petrol bunk,
Tq: and Dist: Haveri.



13C. Ravindra
S/o Basappa Giriyappanavar,
Age: 51 years,
Occ: Agriculture,
R/o: Vidyanagar, A block,
3rd cross,
Backside of Menasinakai petrol bunk,
Tq: and Dist: Haveri.

13D. Champa
W/o Prakash Hakkapakki,
Age: 49 years,
Occ: Household,
R/o: Bijapur,
Tq: and Dist: Bijapur.

13E. Shaila
W/o Rachappa Nittali,
Age: 45 years,
Occ: Household,
R/o: Gangavati,
Tq: and Dist: Koppal.

(D.1 to 5 by Sri P.M.B., Adv.,)
(D.6, 7 by Sri M.S.P., Adv.,)
(D.8 to D.11 by Sri S.R.H., Adv.,)
(D.12,13 (A, B, D, E) - Exparte)
(D.13© - by Sri A.D.H., Adv.,)



ORDERS ON PRELIMINARY ISSUE NO.7

The plaintiffs have filed this suit by seeking relief of partition and separate possession and also declaration.

2. On the other hand the defendant No.8 to 11 have filed their written statement, the defendant No.1 to 5 also filed their separate written statement by denying the averments stated in the plaint.

3. On going through the rival pleadings this court has framed total 13 issues where in issue No.7 is to be heard as preliminary issue, since as per issue No.7 the defendant No.8 to 11 have taken contention in their written statement as the suit of the plaintiffs is not maintainable as per Sec.11 of CPC.

4. On going through the rival pleadings of the parties as stated above, the issue No.7 which has



been ordered to this court to be heard as preliminary issue and accordingly heard learned advocates for plaintiffs and defendants on preliminary issue No.7, at the time of hearing of preliminary issue NO.7 the learned advocate for defendant No.8 to 11 have filed some documents pertaining to the other suit which has been decided in respect of same suit properties between the same parties and accordingly preliminary issue No.7 has been framed on the basis of written statement of defendant No.8 to 11 as follows:

1. Whether defendant No.8 to 11 proves that the suit of the plaintiffs is not maintainable as per Sec.11 of CPC as stated in the preliminary issue No.7 ?

2. What order or decree?

5. My answers to the aforesaid points are as follows;

Point No.1 : In the Affirmative

Point No.2 : As per final order for the following:



REASONS

6. **Point No.1:-** In this suit, the plaintiffs have contended in the plaint that the suit schedule A properties are ancestral and joint family properties of plaintiffs and defendants, the suit schedule A properties during the life time of propositus Dyamanna @ Dyamappa S/o Mallappa Kuragund are in his possession and he cultivating the suit schedule A properties and after his death he has left his class-I legal heirs the plaintiffs and defendants, but the defendants by colluding each other they have mutated their name without intimating to the plaintiffs in the revenue records, in the suit schedule A properties till this date no partition has been effected between plaintiffs and defendants, by taking undue advantage of the name which were existed in the revenue records some of the properties have been sold to the third persons by the some defendants. In respect of some joint family



properties the defendant NO.1 to 5 have filed suit for partition against the plaintiffs bearing O.S No.11/2013 which was dismissed for the reason of non inclusion of all the joint family properties in that suit on dated 30.08.2016, thereafter the defendant No.1 to 5 have preferred R.A No.32/2016 against the order passed in O.S No.11/2013 and in the said appeal also the defendant NO.1 to 5 have not included all the joint family properties even then the appellate court set aside the judgment passed in O.S No.11/2013 and allowed the appeal and according to judgment passed in R.A No.32/2016 the defendant No.1 to 5 have filed the final decree before trial court for passing the final decree as per the judgment passed in R A No.32/2016. By looking in to that aspects the plaintiffs have filed this suit against defendants by claiming their joint 1/6th share in the suit schedule A properties.



7. The defendant No.8 to 11 have stated in the written statement that the defendant NO.1 to 5 were filed O.S No.40/2002 for partition against deceased Guddappa and one Veerabhadrapa Kori and in the said suit they clearly pleaded that there was partition in between deceased Guddappa and Ningappa. Therefore, now plaintiffs are estopped to claim the partition on the ground that there was no partition in the joint family in respect of suit schedule properties, and further submitted that in O.S No.40/2002 the plaintiffs of this case withdraw the above said suit which was filed for partition and now they suppressed the facts and filed this suit. Further it is submitted that the defendant No.8 and deceased Dr. Jagadish Goddemmi were purchased the suit properties Sl. No.9 and 10 on 29.06.2001 and dated 02.07.2001 respectively and they are in possession of the said properties. Further the O.S No.40/2002 has been filed by the defendant No.1 to



5 before Learned Prl. Civil Judge Haveri for partition and separate possession in respect of suit schedule properties and also some other properties on dated 29.04.2002 and said suit was dismissed on 11.04.2003. Further it is submitted that the defendant No.1 to 5 filed O.S No.11/2013 by challenging the sale deeds executed by the defendant No.6 Ningappa in favour of defendant No.8 and deceased Jagadish Goddemmi who is the husband of defendant No.9 and father of defendant No.10 and 11 and that said suit came to be dismissed and upheld the sale deeds executed by the Ningappa, against the said judgment the defendant No.1 to 5 preferred an RA No.32/2016 before Hon'ble Prl. District Judge Haveri and same also dismissed by confirming the judgment of the trial court. Hence already the Learned Prl. Sr. Civil Judge Haveri has given findings regarding execution of sale deeds. Hence present suit is not maintainable



as per Sec.11 of CPC.

8. The defendant No.1 to 5 separately have filed their written statement against the plaint of the plaintiffs by stating that already there was a partition in between brothers of propositus Dyamanna in respect of suit schedule properties wherein some of the properties of this suit schedule A properties included in this suit and in respect of suit schedule A properties are concerned there was a family arrangement deed in between father of plaintiffs and defendants, that itself shows that on the basis of prior partition this suit is not maintainable. Hence defendant No.1 to 5 prays to dismiss the suit as not maintainable.

9. At the time of hearing on this preliminary issue the learned advocate for defendant NO.8 to 11 has produced certified copy of original suit No.11/2013 which was decided on dated 30.01.2016 where in



the plaintiffs are also parties who have filed the above suit against the same defendants of this case in respect of suit schedule A properties, and after discussing proper reasons in the above said suit the Learned Addl. Sr. Civil Judge Haveri court has dismissed the above suit. By looking in to the cause title of above said suit it appears that the parties in this suit are also same parties in the O.S No.11/2013 and that suit was filed for partition and separate possession in respect of same properties which have been stated in this suit by claiming the same relief also, the learned advocate for defendant No.8 to 11 has produced the certified copy of O.S No.11/2013 but the learned advocate for defendant No.8 to 11 has not produced certified copy of RA No.32/2016 which was filed by defendant No.1 to 5 wherein Hon'ble appellate court has confirmed the judgment passed in O.S NO.11/2013.



10. After looking in to the O.S No.11/2013 when already Learned Addl. Sr. Civil Judge court Haveri has decided the dispute involved in this suit and that dispute was not considered by the above said court by dismissing the suit bearing O.S No.11/2013 on the basis that the suit properties in which the plaintiffs have claimed partition where not joint family properties inherited by the propositus Durgappa, when such being the case when already there was a findings in the O.S No.11/2013 which was confirmed by appellant court in R.A No.32/2016 then once again the plaintiffs cannot claim the same relief in respect of same suit schedule A properties in this suit against defendants. As per Sec.11 of CPC it has been clearly stated that if once any court has disposed off the matter involved between the same parties in respect of same properties and by claiming such suit and the subsequent suit by the either one of the plaintiffs or defendants in previous suit cannot



file the subsequent suit for partition in respect of same properties by claiming their share. In that respect the learned advocate for defendant No.1 to 5 has relied on the ruling reported in AIR 2020 SC 3717 in between Vineeta Sharma Vs Rakesh Sharma that as per Sec.6(1) of the Hindu Succession Act, the daughter is also claim the partition in the joint family properties inherited by their father, further the defendant No.8 to 11 have produced the certified copy of the O.S No.11/2013 which was disposed off in the year 2016 wherein some of the plaintiffs and some of the defendants were party in this suit. In view of that already the matter has decided in previous suit once again as per Sec.11 of CPC the Maxim Res-judicata. In view of that according to the Sec.11 of the CPC this subsequent suit is not maintainable hence by considering the contents of Sec.11 of CPC and deciding of the dispute involved between the plaintiffs and defendants of this case in



previous case also then this suit of the plaintiffs is not maintainable as stated by defendant No.8 to 11 in their written statement and on the basis of the said pleadings issue No.7 as per the submission made by learned advocate for defendant No.8 to 11 issue No.7 has considered to be heard as preliminary issue and after verifying the pleadings of defendant No.8 to 11 and also by considering the certified copy of O.S No.11/2013 this subsequent suit is not maintainable and on the above said Maxim Sec.11 of CPC is applicable as it is Res-judicata from this Maxim the plaintiffs are estopped to claim same relief in respect of same properties in another suit.

11. The Hon'ble Supreme court of India has clearly stated in respect of consideration of Sec.11 to be a preliminary issue are not and whether the issue which has been framed U/Sec.11 is mixed question of law and fact that has to be considered with all



other issues at the time of passing the judgment but not as a preliminary issue.

12. The same principle was reiterated which is reported in AIR 2003 SC 3349 in between **Shiromani Gurdwara Parbhandhak Committee V. Mahant Harnam Singh C (Dead) M.N. Singh** in this ruling also the Supreme Court of India has stated that as per Sec.11 of CPC if the matter involved directly and substantially in issue in an earlier suit then the Maxima of Res-judicata can be applicable and it can be tried as preliminary issue.

13. Further in respect of consideration that point of determining if an issue was directly and substantially decided in the previous suit has to be applicable U/Sec.11 of CPC as a Res-judicata and if any issue has been framed in a subsequent suit then that issue has to be treated as preliminary issue and



it can be disposed off before commencement of trial itself, this aspect has been clearly stated in the ruling reported in

(2000)3 SCC 350 in between Sajjadananshin Syed MD B.E Edr. (D) by Lrs. V. Musa Dadabhai Ummer.

In this case Hon'ble Supreme court of India has clearly observed that the words used in Sec.11 of CPC are " directly and substantially in issue, if the matter was in issue directly and substantially in a prior litigation and it has been decided against the party then the decision would be Res-judicata in a subsequent proceeding. Judicial decisions have however held that if a matter was only "collaterally or incidentally" in issue and decided in an earlier proceeding, the finding there in would not ordinarily be Res-judicata in a later proceeding where the matter is directly and substantially in issue. It is important aspect in order to consider the issue



which has been framed U/Sec.11 of CPC that the subsequent matter will be barred by Res-judicata, then the court has to observed that in an earlier suit generally the matter will be “directly and substantially” in issue but it does not mean that of the matter is one in respect of one relief is sought it is not “directly or substantially in issue”. It may or may not be. It is possible that it was “directly or substantially” in issue it may also be possible that it was only collaterally or incidentally in issue depending upon the facts of the case. The question arises as to what is the test for deciding in to which the category of the case falls?. One test is that if the issue was “necessary” to be decided for adjudicating on the principle issue and was decided, it would have to be treated as “directly and substantially” in issue and if it is clear that the judgment was infact based upon that decision, then it would be Res-judicata in a latter case, for that the court has to



verify the plaint and written statement and the issues and the judgment to find out if the matter was “directly and substantially” in issue then the court has to frame that issue as a preliminary issue and decided as a preliminary issue before commencement of the trial after framing the issues. Accordingly this court has after examining the plaint and written statement filed by defendants has framed this issue as per the contention taken by the defendant No.8 to 11 in their written statement that the subsequent suit is barred U/Sec.11 of CPC as the matter involved directly and substantially in issue in a previous suit and once the court has passed the judgment on the same point of view i.e., applicable to explanation VI of the Sec.11 of CPC i.e., constructive Res-judicata and it is mandatory to the court to consider that issue as preliminary issue and it has to be decided prior to the commencement of trial and as per the above said rulings when already



the plaintiffs have filed O.S NO.11/2013 and where in the previous court has dismissed the suit which has been filed against the defendant No.1 to 5 in respect of same relief as claimed in the later suit by claiming the declaration regarding to set aside the registered sale deeds executed by defendant No.1 to 5 in favour of defendant No.8 to 11 and there after the plaintiffs of the previous suit No.11/2013 again they have filed this suit on the same facts by creating a false cause of action by claiming the relief of declaration and partition and separate possession in the suit properties by stating false contents in the plaint and suppressed the important and essential materials to be considered in respect of execution of the registered sale deeds in favour of defendant No.8 to 11 by the defendant No.1 to 5 and also claiming the partition and separate possession in the same properties which have been described in previous suit.



14. The defendant No.1 to 5 have taken contention in their written statement in para No.20 that the Guddappa has executed a registered sale deed in respect of suit schedule A-7 property in favour of one Veerabhadrappa, and the said Veerabhadrappa has filed the suit before this court itself bearing O.S No.69/2006 and thereafter that matter was decided on merits on dated 18.06.2015 by dismissing the suit with costs, further said Veerabhadrappa has preferred appeal against judgment passed in O.S No.69/2006 in R A No.52/2015 and that appeal also decided on merits on dated 27.10.2021, after disposed of that RA the defendant No.1 to 5 have preferred an appeal against the judgment passed in R A No.52/2015 before Hon'ble High Court of Karnataka in RSA No.100501/2021 in respect of the suit schedule A-7 property and that matter is still pending for enquiry, but the plaintiffs have suppressed this material content in the plaint and



they are claiming the share in suit schedule A-7 property.

15. After framing of issue when the suit is posted for hearing on preliminary issue which has been framed in respect of the present suit is barred under Sec.11 of CPC, at the time of hearing the Learned advocate for defendant NO.8 to 11 has filed the certified copy of the judgment passed in O.S No.11/2013 which was disposed off on 30.01.2016, which has been filed by the defendant No.1 to 5 against the defendant No.6 Ningappa in respect of challenging the sale deeds executed by the defendant No.6 Ningappa in favour of defendant No.8 and deceased Jagadish Goddemmi who is the husband of defendant No.9 and father of defendant No.10 and 11 and that suit came to be dismissed and it has been confirmed in RA No.32/2016 which has been preferred by the defendant No.1 to 5 of this case in the said appeal the findings regarding



the execution of sale deeds has been confirmed in favour of defendant No.8 to 11 by the defendant No.6 Ningappa. When already this prayer has been rejected by this court in respect of challenging the sale deeds executed by defendant No.6 in favour of defendant No.8, and also executed some other suit properties in favour of defendant No.8 to 11 by the concerned owner of the suit schedule properties i.e., defendant NO.6 Ningappa. When already in previous suit the execution of registered sale deeds has been confirmed then once again the plaintiffs have filed the similar this suit by claiming the same relief of setting aside the registered sale deeds executed in favour of defendant No.8 to 11 and also by claiming partition and separate possession in suit schedule A properties. As per the above said rulings it appears after examining the pleadings of both the parties of this case the issue in respect of Sec.11 of CPC which states that the matter involved in the previous suit



which has been decided on the same facts which has claimed in the later case then that aspect is considered as Maxim of Res-judicata and that issue can be decide as preliminary issue as stated above. Accordingly when already the suit schedule properties have been sold in favour of defendant No.8 to 11 and the said execution of sale deeds have been confirmed in previous case then this case is not maintainable as per the contents of Sec.11 of CPC. In view of that the point No.1 is answered in the **Affirmative.**

16. **POINT NO.2:-** As per the reasons stated in point No.1, I proceed to pass the following.....

ORDER

As per preliminary issue No.7 the suit filed by the plaintiffs is not maintainable as per Sec.11 of CPC i.e., this



subsequent suit is barred as it is hit by Res-judicata accordingly this suit is not maintainable in the present form and accordingly the suit of the plaintiffs is hereby dismissed.

Draw decree accordingly.

No order as to cost.

*(Dictated to the Stenographer directly on computer, printout taken by her, corrected and then pronounced by me in the open court on this the **06.06.2026**)*

(MAHAMMAD ANWAR HUSSAIN MOGALANI)
PRL. SENIOR CIVIL JUDGE & CJM,
HAVERI