

**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, SAVANUR.**

PRESENT : **Sri. Shreyansh Doddamani,**
B.Com., LL.B.,(spl)
Civil Judge and JMFC.,
Savanur.

ORIGINAL SUIT NO. 154/2023

Dated this 11th day of April, 2023

PLAINTIFF: Shahzad Begum Urf Rahamathkhatu
W/o Mustaqkhan Biradar, Nawab,
Age : 74 years, Occ : Household work,
R/o : Kamal Bangadi Street, Savanur,
Tq : Savanur, Dist : Haveri

Vs

DEFENDANTS: 1. Narayan S/o Hanumantappa Reddy,
Age : 74 years, Occ : Rtd Govt.Servant,
R/o : Shukravarpeth Street, Savanur,
Tq : Savanur, Dist : Haveri and others.

ORDER

The plaintiff filed this suit for declaration and consequential relief of permanent injunction.

2. The plaintiffs case in nutshell is as under :- Suit schedule property originally belongs to one Mahaboobalikhan Biradar Nawab of Savanur. He died un-married. Thereafter, his sisters

by name Nawajkhatu & Munavar Khatu inherited the suit property. They were not able to manage the suit schedule property. Therefore, they have handed over the suit property along with other properties to the defendant No.3 under Bombay Court of Wards Act. Plaintiff is sole legal heir of Nawazkhatu. She is sister's grand child of Nawazkhatu through her father Mohijuddinkhan. This plaintiff filed suit OS No.171/1984 before this Hon'ble Court. Said suit was decreed on 31.10.1994. Accordingly, the plaintiff is declared as sole legal heir of last ward Navazkhatu. The said decree passed in OS No.171/1984 also confirmed in RA No.16/1996 by senior Civil Judge Haveri and in R.S.No.130 and 277/1999 by Honorable High Court of Karnataka. Thereafter, some of the properties transferred to the plaintiff. Recently plaintiff came to know about the defendant No.1 that he colluding with TMC fraudulently entered his name in the record of rights of suit property despite of having no right, title or interest over the suit property. The suit property is a court of wards property and it

is in possession of the Assistant Commissioner, Savanur managed by Deputy Commissioner Dharwad as court of wards. Assistant Commissioner Savanur rented the land by auction. The defendant No.4's husband was occupying the suit property from court of wards. Prior to him his father Venkanna was occupying the suit property through court of wards. Accordingly, the name of defendant No.4's grand father entered in the TMC records in the occupiers column. After that father of defendant no.4 name entered and thereafter the name of defendant no.4 entered in the records. The defendnat no.1 got entered his name in the records of suit property and sold the same to the defendant no.2. Thereafter, the defendant No.1 colluding with defendant No.2 filed bogus suit OS No.1/2018 before this court for declaration and it was disposed on 31.03.2018. The defendant No.1 and 2 colluded got decree. The defendant No.1 is having no right, title whatsoever over the suit property. The suit property originally belongs to Nawazkatu and managed by Assistant Commissioner as court

of wards. Therefore he prayed to declare the suit property belongs to Nawazkhatu managed by Assistant commissioner and court of wards and also declare that registered sale deed dated :05.09.2018 is null and void. And consequentially restrained the defendant No.2 from interfering with the possession defendant No.3 over the suit property.

3. On perusal of the pleadings this court found that suit is not maintainable as it is hit by order 7 Rule 11 of CPC. As such the suit was posted sue-moto for hearing under Order 7 rule 11 of CPC by relying on the decision of Hon'ble Supreme court in the case of ***Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniammam Education Trust reported in (2012) 8 SCC 706.***

4. Heard the arguments of learned counsel for plaintiff.

5. Perused the plaint and materials placed before this court.

6. The following points arise for my consideration:

- 1) *Whether the suit of the plaintiff is liable to be rejected under order 7 Rule 11 of CPC?*
- 2) *What order ?*

7. My answers to the above points are as follows:

Point No.1 : In the Affirmative.

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

:-REASONS:-

8. **Point No.1** :- It is the case of the plaintiff that the suit property belongs to Nawazkhatu Nawab of Savanur and she handed over the suit property to the Deputy Commissioner Dharwad as court of wards under the Bombay Courts of Wards Act. The assistant commissioner Managed the suit property as court of wards who is defendant No.3 herein. The defendant No.3 handed over the suit property to ancestors of defendant No.1 under lease. On the basis of lease the name of father's father of defendant No.1 and thereafter the name of father of defendant No.1 entered in the records in the column of

occupiers. The defendant No.1 by taking disadvantage executed the registered sale in respect of suit property in favour of defendant No.2. Thereafter, the defendant No.1 and 2 colluding with each other filed suit OS No.1/ 2018 and obtained false decree. Therefore, he prayed to declare that the suit property was belongs to Navazkhatu and managed by defendant No.3 and also declared that sale deed executed by defendant No.1 in favour of defendant No.2 is null and void and also consequential relief of permanent injunction restraining the defendant No.2 interfering into possession of defendant No.3 over the suit property permanently.

9. On careful plain reading of the plaint it clearly reveals that the plaintiff is having no right, title or interest over the property. He might be declared as legal heir of Nawazkhatu who is last Nawab of Savanur. But she is not declared as owner of the suit property. Admittedly, suit property is in possession of defendant No.3 and managed by defendant No.1. As such there is no cause of action arise at all to the plaintiff to file this

suit. As per the plaint the defendant No.3 is the affected party. He can file the suit. Therefore, the plaintiff has no cause of action to file this suit. The plaintiff cannot claim in favour of defendant No.3. The prayer it self shows that suit property not belongs to the plaintiff and no cause of action to the plaintiff. Therefore, the suit of the plaintiff is without cause of action and also barred by law and as such the suit is hit by 7 Rule 11(a) and (d) of CPC and liable to be rejected. Accordingly, this court answered **point No.1 in the Affirmative.**

10. Point No.2:- In view of the above discussion and answer to the point No.1 this court proceed the following;

ORDER

**In exercising the jurisdiction U/O
VII Rule 11 (a) and (d) of Civil
Procedure Code suit of the plaintiff
is hereby rejected.**

Draw up decree accordingly.

(Directly typed by me in my laptop and corrected by me and then pronounced in the open court this the 11th day of April 2023.)

CJ & JMFC., Savanur.

