



**IN THE COURT OF THE SENIOR CIVIL JUDGE
AND J.M.F.C., SHIGGOAN SITTING AT SAVANUR**

Present: Sri. Sunil S. Talawar
B.A.LLB..., (Spl.)
Senior Civil Judge & JMFC.,
Shiggaon Sitting at Savanur

DATED THIS THE 10th DAY OF APRIL 2026

O.S.NO.147/2022

Plaintiffs : 1. Shidramappa S/o Gurshantappa
Bendigeri and Another

V/s

Defendants: 1. Raghuraj S/o Bodharao Deshpande
(Dead) and Others

I.A.IV/2026

Applicant: 4. Sanjeev S/o Madhusudhan
Deshpande and others.

V/s

Opponents: 1. Shidramappa S/o Gurshantappa
Bendigeri and Another

ORDER ON I.A.No.IV

The defendants No.4 herein in the present matter has filed present application under Order VII Rule 11 R/w Section 151 of Code of Civil Procedure seeking rejection of plaint as the suit is filed against the dead persons and also on the ground of limitation.



2. The defendant No.4 has filed sworn affidavit and stated that, the plaintiffs are claiming title over suit property on the ground that their ancestors were cultivating the suit property from 1963 and during 1977 on lease basis. The plaintiffs are not aware of the facts of the suit property and they have filed suit against dead persons i.e., Raghuraj and Madhusudhan who are made as defendants No.1 and 2 in the suit. The defendant No.1 Raghuraj died on 07.10.2018 and defendant No.2 Madhusudan died on 02.05.2014. Therefore, the suit filed against dead person is not maintainable. The plaintiffs ought to have bring the legal heirs of defendant No.1 and 2 on record. But the present defendants No.3 to 6 have participated in this suit voluntarily for which also the plaintiffs had objected. The plaintiffs claim over the suit property is hopelessly barred by law of limitation. Hence prayed to reject the plaint with cost.

3. Per contra, the plaintiffs have filed objections to the I.A.No.IV by denying all the statement of facts mentioned in the sworn affidavit and specifically contended that, the plea of limitation is the mixed question of law and facts. Hence the plea of limitation is not permissible under law to be determined in the interim stage by way of interim application. Therefore, the application is not maintainable. It is also contended that the grounds urged by the applicants are not in accordance with the relevant provision of law and



applicants not at all stated under which provisions the plaintiff is liable to be rejected. Therefore on these grounds also I.A.No.IV is not maintainable. Hence prayed to reject the application with cost.

4. Heard Sri.M.S.Mudagal learned advocate for defendants No.4 and so also heard Sri. S.S.Hiretanad learned Advocate for plaintiffs.

5. Perused, the materials placed on application and also the materials those are with the case file.

6. The point that arose for the consideration of this court is as here under :-

POINTS

1) Whether the defendant No.4 has made out grounds for rejection of plaint on ground that the suit filed against dead person is not maintainable and the suit of the plaintiff itself is barred by law of limitation?

2) What order?

7. My answer to the above said points are as here under;

Point No.1: In the Negative

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



REASON

8. **Point No.1 :** Before entering into the reasonings on above said point it is necessary here to discuss the nature of suit filed by the plaintiffs. This is a suit for declaration by way of adverse possession and also for the relief of permanent injunction restraining the defendants from interfering with plaintiffs peaceful possession and enjoyment of the suit property bearing R.S.No.48/2B measuring 02 acres 08 guntas situated at Mavoor village in Savanur taluka. The records of present matter reveals that the defendant No.4 appeared through his counsel and filed written statement contending that, the suit is hopelessly barred by law of limitation and suit filed against dead person is not maintainable.

9. It appears on perusal of the pleadings of defendant No.4 that, he is seeking order of rejection of plaint on ground that, the defendant No.1 and 2 reported died long back and hence the plaintiffs without having knowledge of the same have filed suit against dead person which is against the law and procedure. Further, the defendant No.4 has urged one more ground that, the plaintiffs are relying their possession in the year 1977 and they ought to have file suit after lapse of 12 years in order claim adverse possession over the suit property.



10. In this regard it is necessary here to reproduce the relevant provision of law order VII rule 11 of Civil Procedure Code 1908.

11. **Rejection of Plaint:** The plaint shall be rejected in the following cases:-

(a) Where it does not disclose a cause of action;

(b) Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

[(e) where it is not filed in duplicate;]

[(f) where the plaintiff fails to comply with the provisions of Rule 9:]

[Provided that the time fixed by the Court for the correction of the valuation or supplying



of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

12. Therefore applying this provision of law the defendant No.4 application require to be assessed whether there are sufficient grounds as to allow the application for rejection of plaint. In this regard the defendant No.4 admits that, the defendant No.1 and 2 died long back. In this regard the proposed defendant No.3 to 6 have filed application under Order I Rule 10(2) R/w Section 151 of CPC seeking order to implead them as defendants. Accordingly this court allowed the application and the defendant No.3 to 6 are brought on record. It also appears that, the plaintiffs have taken substitute service of summons as against defendant No.1 and 2 by publishing draft summons in the news paper Vijay-Karnataka. Accordingly the same application is allowed and upon service of summons through substitute service the defendants No.1 and 2 are remained absent. Hence placed exparte. The order sheet dated 06.10.2023 disclosing the same fact. On the same day itself the



plaintiff No.4 has stepped into witness box and examined as P.W.1. Therefore the records of this case reveals that the defendants No.1 to 3 are placed exparte. But here the defendants No.3 to 6 contention is that the defendants No.1 and 2 are no more and the plaintiffs have filed suit against dead person. In this regard the application filed by the defendants No.3 to 6 disclose that, they wanted to place in the matter that to the legal representatives. The defendant No.3 to 6 claims that there was partition in between themselves and the defendants No.1 and 2. However, there are death extract have been produced by the defendant No.3 to 6 which clearly reveals that the defendant No.1 and 2 reported died on 07.10.2018, 02.05.2014 respectively. But here the plaintiffs have made an attempt to secure the defendants No.1 and 2 by taking aid of substitute service and for that the defendants No.3 to 6 cannot say that the suit being initiated on the dead person. Because the plaintiffs might have noticed that, the plaintiffs after filing of the plaint they came to the knowledge of the same that to when said fact brought by the defendants No.3 to 6. Under the circumstances though the suit being initiated as against dead person it cannot take back the claim of plaintiffs over the suit property. On the other hand the plaintiffs have got every opportunity to bring legal representatives of deceased defendants No.1 and 2. The subsequent incidents that to after filing of suit are not made grounds to reject the plaint but it can raise an opportunity to the



plaintiffs to proceed against the legal representatives of deceased defendants No.1 and 2. Therefore, the ground urged by the defendants No.3 to 6 seeking rejection of plaint cannot made acceptable on present facts and circumstances of the matter.

13. The one more grounds urged by the defendants No.3 to 6 in order to reject the plaint is the law of limitation. Here the plaintiffs are claiming ownership over the suit property by virtue of adverse possession. As per their contention they are in possession of the same since 1963 and 1977. The defendants No.3 to 6 contention is that if this statement of fact to be considered then the plaintiffs ought to have file suit in the year 1989 or 1993 as per limitation. Here, the law provides that when the limitation aspect is raised by any party then it looked into mixed question of law and fact. It cannot be decided in a preliminary stage of proceedings. If any evidence brought before the court which warrant the suit is barred by law of limitation then the party may seek such order at any stage of proceedings. However, in order to decide the limitation aspect the court shall bound to look into the plaint avernment only. Here upon going through the plaint avernment it appears that the cause of action to file present suit arose on 2nd week of January 2022 during the Sankrati festival. Therefore under circumstances if the defendants No.3 to 6 want to place any material then



they shall bound to go with facts and law equally pertaining to the limitation aspect. The nature of the suit is as such the plaintiffs are claiming declaratory relief by way of adverse possession and the consequential relief of permanent injunction. Therefore, having regard to the nature of suit the limitation plea cannot be made applicable as to reject the plaint.

Therefore, by considering all these material facts, law discussed on relied fact the point No. 1 is answered **in the Negative.**

14. **Point No.2:-** In lieu of the findings given on point No.1, I proceed to pass the following:-

ORDER

The I.A.No.IV filed by the applicant/ defendants No.4 under order VII Rule 11 R/w 151 of CPC is hereby rejected.

No orders as to cost.

For Issues.

Call on 24.04.2026.

(Dictated to the Stenographer, typed by her, revised and corrected by me and then pronounced in the open court on this the 10th day of April 2026)

(Sunil.S. Talawar)
Senior Civil Judge and JMFC,
Shiggaon Sitting At Savanur.



(Operative portion of the order pronounced
in the open court vide separate order)

ORDER

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