

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

DATED THIS THE 23rd DAY OF JUNE 2023.

**Present: Smt. Fairoza H. Ukkali,
B.A.LLM.,
Senior Civil Judge & J.M.F.C.,
Shiggaon Sitting At Savanur.**

O.S.162/2017

Plaintiffs: 1) Mohammed Hussain S/o Umarkhan
Pathan (Dead) By LRs.

V/s

Defendants: Malekabegum W/o Shaheboddin
Peerzade and others

I.A.No.XXXV/2023

Applicant: Basavaraj S/o Gurusiddappa
Sindhur (Dft.No.9)

V/s

Opponents: 1) Mohammed Hussain S/o Umarkhan
Pathan (Dead) By LRs.

ORDER ON I.A.No.XXXV

The Advocate for defendant No.9 has filed this I.A.No.XXXV under Order VII Rule 11 r/w Sec.151 of CPC, seeking to reject the plaint by contending that there is no cause of action for the suit and therefore the plaint is barred under Order of VII Rue 11 of CPC.

2. In the affidavit, the applicant has stated that the defendant No.9 has filed his additional written statement mainly resisting the suit claims on not furnishing proper address of defendant No.3 and I.A.No.7 not supported by affidavit and falsely contended that the executant of GPA is alive and grant document is in defaced condition and there is discrepancy in extent and boundaries of the suit property and there is no cause of action for the suit and therefore plaint has to be rejected.

3. The plaintiffs have filed objections to this application contending that by making false averments the IA has been filed. That the plaintiff has pleaded the cause of action and without any grounds by taking false contention defendant No.9 has filed this application just to protract the proceedings and caused harassment to the plaintiffs. Hence the plaintiffs have prayed to dismiss the application with cost.

4. I have heard on both side and perused records.

5. The following points arise for my consideration:

- 1) Whether the defendant No.9 has made out grounds for rejection of plaint under Order VII Rule 11 of CPC?
- 2) What order?

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

Point No.1 : In the Negative

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

REASONS

7. **POINT No.1:** The plaintiffs have filed the suit against the defendant seeking the relief of partition and separate possession of suit property and by challenging various sale deeds saying that they are not binding on their shares. Defendant No.9 has filed the present IA by contending that the plaint has to be rejected as there is no cause of action for the suit. In order to reject the plaint by invoking Order VII Rule 11 of CPC, only plaint averments are required to be looked into. If the plaint does not disclose a cause of action the plaint shall be rejected as per Order VII Rule 11(a) of CPC. Thus it is

necessary to consider whether the plaint discloses the cause of action or not.

8. On perusal plaint, it is forthcoming that in para No.9 of the plaint the plaintiffs have disclosed the cause of action. Therefore as the cause of action is disclosed in the plaint, the plaint cannot be rejected by invoking Order VII Rule 11 of CPC.

9. Further in IA and the affidavit the say of defendant No.9 is that there is no cause of action for the suit. There is no say by the defendant No.9 that the plaintiffs have not disclosed the cause of action. As regards the plea of defendant No.9 that there is no cause of action for the plaintiffs for filing the suit, the same can be considered only while considering the suit on merits. At this stage as the plaint discloses the cause of action, no grounds are made out by defendant No.9 for rejecting the plaint under Order

VII Rule 11 of CPC. Hence Point No.1 is answered in the **Negative**.

10. POINT No.2: For the aforesaid reasons and finding on Point No.1, I proceed to pass the following:-

ORDER

I.A. No.XXXV filed under Order VII Rule 11 r/w Sec.151 of CPC is dismissed on cost of Rs.200/-.

(On my dictation transcribed and typed by the Stenographer, print out taken by her, corrected and then pronounced by me in the Open Court on this the 23rd Day of June 2023.)

