

KAKB320017832023



IN THE COURT OF CIVIL JUDGE & JMFC. AT: AFZALPUR.

PRESENT

Sri. ANIL AMATE,
B.A. L.LB (Hon's) ,
Civil Judge & JMFC.,
AFZALPUR.

O.S.No.96/2023

Dated this the 20th day of February -2025

Smt.Mallamma and another

-Plaintiffs

V/S.

Smt. Laxmibai and others

-Defendants.

: PARTIES TO I.A.No.VI :

Smt.Drakshayini W/o Mallikarjun

... Applicant/Defendant No.6

(By Sri.S.G.A. Advocate for D-6)

V/S

Smt.Mallamma & another

(By Sri.S.S.P. Advocate)

..Opponents/plaintiffs.

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: ORDER ON I.A.NO.VI:

This orders arise out of I.A.No.VI filed by the defendant No.6 under Order VII Rule-11 (a)and (d) of CPC seeking an order of rejection of plaint as not disclosed the cause of action and for suit is barred under Order 9 Rule 9 of CPC. The plaintiff filed this suit for perpetual partition and separate possession.

2. In support of I.A.No.VI, the defendant No.6 has taken contention that the plaintiff No.2 filed suit for partition and separate possession against the defendants for suit properties and non suit properties in OS No. 15 /2020 before the Hon'ble Senior Civil Judge, Afzalpur, which was dismissed for the non prosecution. The defendant No.6 produced the certified copy of order-sheet and plaint copy of in OS No. 15 /2020. Hence the plaintiffs have no cause of

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action to file the present suit, hence suit of plaintiffs hit by U/o 7 Rule 11 (a) and (d) of CPC. Therefore prayed for the reject the plaint.

3. On the other hand the plaintiffs have filed objection to the I.A No VI, and admitted that, plaintiff No.2 filed the in OS No. 15 /2020 before the Hon'ble Senior Civil Judge, Afzalpur, for partition and separate possession, which was dismissed for the non prosecution. The present suit is filed for all the family properties and fresh cause of action, therefore the Order 9 Rule 9 is not applicable, suit is maintainable, hence prayed for reject the IA No.VI.

4. On perusal of the above pleadings and rival contentions, the following points arise for the consideration.

1. Whether the the suit filed by the plaintiffs is not maintainable in view of non

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disclosed of cause of action and Order 9 Rule
9 Of CPC , thereby the suit is liable for reject
U/O7 Rule 11 (a) and (d) of CPC?

2. What order ?

5. My answer to the above points are as follows:

Point No.1: In the negative

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

: R E A S O N S :

6. **Point No.1:-** In Civil Procedure Code of 1908, when the suit is being filed in the court, the court under an obligation to determined whether the suit is maintainable or not. The court may do one thing to one of these three things after determined the maintainability accept the plaint, reject the plaint or return the plaint to the plaintiff.

7. Thus, for the court full fill its duty U/O-7 Rule-11 which sets the grounds on which plaint should be rejected the main object of Order-7 Rule-11 is to reject the plaint that

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are frivolous, vexatious, and in proper nature of at the every beginning, the saving judicial time and resources.

8. Till the present case rejection of plaint application filed U/O-7 Rule-11(a) and (d) that 'where the suit appears not disclose the cause of action and from the statements in the plaint to be barred by any law.

9. On going to the plaint the suit is for partition and separate possession in Sy. No 378/1 measuring 3 acres 38 guntas situated at Karajagi village, in Afzalpur taluka. The cause of action arose to the plaintiffs on 22.10.2023 when the requested the defendant No.2 for partition in suit property, the defendant No.2 refused to give share in the suit property.

10. On going through the rival contention and argument advanced by the both side, no doubt it is admitted fact that plaintiff No.2 previously filed suit for partition and

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separate possession against the defendant NO.6 as well as other defendants and same was dismissed for non prosecution. The contention plaintiff is that plaintiffs have filed present suit on fresh cause of action.

11. It is pertinent to note that, plaintiffs have disclosed the cause of action arose them to file the present on 22.10.2023 when the requested the defendant No.2 for partition in suit property, the defendant No.2 refused to give share in the suit property, moreover the cause of action is a bundle of facts and the defendant No.6 not established that there is no legally sustainable cause of action, hence Order 7 rule 11 (a) of CPC is not applicable to the present suit.

12. Clause (d) of Order VII Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. In order to examine whether the plaint is barred

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by any law, as contemplated by this provision the averments made in the plaint alone have to be seen and they have to be assumed to be correct.

13. As per the contention of the defendant No.6 is that plaintiffs previously instituted suit OS No.15/2020 was dismissed for non prosecution. Hence the present suit is hit by the order 9 rule 9 of CPC. The plaintiff contended that on fresh cause of action filed the suit.

14. Under the facts and circumstances of the case, it is just and proper go through the provision of law as contemplated under Order 9 Rule 9 of CPC. Which reads

AS:9. Decree against plaintiff by default bars fresh suit.-

(1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

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15. As per the above provision, it is very clear that the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action where suit dismissed under rule 8 of order 9 of CPC. In present case the plaintiff disclosed the different cause action which was not shown in the previously instituted suit. However it observed that, in previous suit the plaintiffs included total three suit schedule properties and four plaintiffs were claimed the relief against the total number of 15 defendants. In the present suit two plaintiffs and suit property is one. It clearly goes show that non inclusion all family property and non joinder of necessary party, therefore the present suit bad for non inclusion of all family properties and non joinder of necessary parties, however it can be cured, as already stated supra the cause of action is bundle of facts, its requires the elaborate enquiry, non joinder party and non

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inclusion of all property is not ground for the rejection of the plaint. Therefore the this court is of the opinion that plaint not is liable reject under Order 7 Rule 11 (a) and (d) of CPC. Hence point No.1 is answered in negative.

16. **Point No.2:** In view of the reasons assigned above, this court is pass the following :

: O R D E R :

I.A No.VI filed by the defendant No.6 U/O-7 Rule-11(a) and (d) of C.P.C. is hereby rejected.

No order as to costs.

(Dictated to the stenographer, transcribed by his, corrected by me, then pronounced in the open court on this the 20th day of February -2025)

(Sri. Anil Amate)
Civil Judge, & JMFC.,
Afzalpur.