

IN THE COURT OF THE SENIOR CIVIL JUDGE
& J.M.F.C., AT : CHINCHOLI

Present : Smt.Jyothi.Shantappa.Kale
L.L.M.,
Senior Civil Judge & JMFC, Chincholi.

DATED : THIS THE 17th DAY OF AUGUST 2024

O.S. No.26/2021

i.	Provision under which the application is filed	U/o VII Rule 11(B) of CPC
ii.	Relief sought for	Rejection of Plaint
iii.	The date on which the application is filed	04/07/2024
iv.	Number of the application	I.A No.v
v.	The date on which the objections are filed by different opponents	22/07/2024
vi.	The date on which the orders were passed on the said application	17/08/2024

Plaintiff/s

Jyothi W/o Amith Singh and another.

V/s

Defendant/s:

Amith Singh S/o Hanuman Singh.

-: I.A.No.V:-

Applicant/s:

Amith Singh S/o Hanuman Singh.

V/s

Opponent/s:

Jyothi W/o Amith Singh and another.

**ORDER ON INTERIM APPLICATION No.X FILED BY THE
DEFENDANT V UNDER ORDER VII RULE 11(D) OF CPC.**

1. The defendants have filed the interim application No.X under the provisions of Order VII Rule 11 Of CPC R/W praying to reject the plaint.

2. The application is accompanied with an affidavit filed by the defendants contending that the plaintiff has filed suit for relief of partition and separate possession in respect of suit schedule property. It is stated that the said suit property came to the defendant No.1 his grand son has given the gift deed to the defendant No.1. The grand

father of the plaintiff has purchased the suit property from Shesu Singh S/o Tikka Singh on 24/11/1976 and therefore suit property is not the ancestral property. Hence on these grounds the defendants prayed to allow the application and reject the plaint.

3. On the contrary the plaintiff has filed objections contending that the application is not maintainable. It is contended that the provisions of order 7 Rule 11 D CPC is not applicable to the contents of affidavit. The application is filed intention to prolong the proceedings. On these grounds the plaintiff sought for rejection of the application.

4. Heard both counsels on IA No.V and perused the materials.

5. Now the points that arise for my consideration are:

1. Whether the plaint instituted by the plaintiff is liable to be rejected under the provisions of Order VII Rule 11(B) of Civil Procedure Code, 1908 ?

2. What order?

6. My findings on the aforesaid points are as under;

1. Point No.1: In the Negative

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

following;

REASONS

7. Reasoning on Point No.1 :

(a) The plaintiffs have filed this suit for the relief of partition and separate possession in respect of suit schedule properties.

(b) The defendants have sought for rejection of plaint Order VII Rule 11(a and d) of Civil Procedure Code, 1908 on ground that the suit property is not the ancestral property.

(c) Order-VII Rule-11 of CPC contemplates the circumstances under which the plaint can be rejected, which is enshrined U/O.VII Rule-11-D ;

(d) Plaint does not disclose cause of action Rule 11(a): Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue.

(e). The defendant has invoked the provisions of Order-VII

Rule-11(D) of CPC for rejection of plaint. It is settled law that, rejection of plaint U/O VII Rule-11 (a) to (f) can be invoked at any stage before conclusion of trial. Admittedly this is a suit for partition and separate possession filed by the sister of the defendant No.1 and 2 seeking their share in the suit schedule properties.

(f) The learned counsel for the defendants contends that suit property is not the ancestral property. Perusal of the entire pleadings of both the parties and the contents of the application shows that plaintiff claims that suit properties are ancestral and joint family properties. At this stage in the absence of any evidence by both the parties it cannot be concluded that the suit property is not the ancestral property. Moreover the contents of affidavit filed by the defendants shows that the defendants themselves have stated that grand father of the plaintiff has purchased the suit property from Shesu Singh S/o Tikka Singh on 24/11/1976. Therefore

(g) In this case the question that the suit property is not the ancestral property is question of facts and not question of law. Thus this fact cannot be decided at this stage, the same needs a trial. The contention that the suit property is not the ancestral property is

matter of trial. The plaint averments and the documents produced by the plaintiff clearly disclose a right to sue. Therefore on going through the entire plaint averments, there are no sufficient materials found to reject the plaint as sought by the defendants in their application. Accordingly I answer point No.1 in the Negative.

8. Point No.2 : In view of my findings on above points, I proceed to pass the following :

ORDER

The interim application No. V filed by the defendants under the provisions of Order VII Rule 11(D) of CPC R/W is hereby rejected on cost of Rs. 300/-.

(Dictated to Typist, typed by him corrected by me, signed and pronounced by me in the open court on 17th day of AUGUST 2024.)

(Jyothi Shantappa Kale)
Senior Civil Judge & JMFC.,
Chincholi.