

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE
AT CHINCHOLI.**

Present: **Sri. RAVI KUMARA. V. BA.L.,L.L.B.,**
C/c Addl. Civil Judge,
Chincholi.

DATED THIS THE 19th DAY OF MARCH-2022.

FDP.No.3/2016

Petitioner : Umakanth

V/s

Respondents : Malleshappa and others.

I.A.No.III

Applicant : Malleshappa.

(Rep. by Sri. B.S Adv)

V/s

Opponent : Umakanta.

(Rep. By Sri. S.B.S Adv)

**ORDER ON I.A. NO.III FILED UNDER ORDER 7 RULE 11 (d) OF
CPC BY THE DEFENDANT NO.1**

The respondent No.1/applicant filed this I.A No.III U/o 7 Rule 11(d) of CPC by praying this court to dismiss the petition.

2. In his affidavit accompanying to the present I.A, the respondent No.1 has stated that the petitioner/deGREE holder filed this petition for the devision of suit properties as per the preliminary decree passed by this court in O.S.No.24/1996 dated: 26-07-2005 by this court. It is stated by the applicant that in the suit in O.S.NO.24/1996, the petitioner has only included the house properties and other agricultural landed properties situated at Huvinhalli village. But, in the present petition filed for final decree proceedings, the petitioner has included additional properties without the permission of this court.

3. The said additional properties are the agricultural lands measuring 6 acre in Sy.NO.172 of Kapnoor village, 15 acre 30 guntas of land in Sy.No.44 of Huvinhalli village, 5 acre 30 guntas of land in Sy.No.70/2 of Kapnoor village, 10 acre of land in Sy.No.43 of Huvinhalli village, 3 acre 33 guntas of land in

Sy.No.43/1 of Huvinhalli village, 4 acre 4 guntas of land in Sy.No.34/4 of Huvinhalli village and a house property bearing Municipal number; 3-9-64/2 of Sedam.

According to the applicant, the above said properties were not to the subject matter of the suit in O.S.No.24/1996 and the value of the above said properties are more than Rs.1,20,00,000/- and the 1/6th share of the petitioner would itself quantify more than at Rs.20,00,000/-. Hence, the applicant claims that the value of the petitioner's share in the above said property exceeds the pecuniary jurisdiction of this court and therefore, the petitioner can not maintain the present petition for final decree proceedings. Hence, the applicant prays to reject the present petition under order 7 Rule 11(d) of CPC.

4. Per contra, the decree holder/petitioner filed his objection and contending that, the respondent No.1 has filed a similar application under the same ground urged under this I.A and the same was earlier dismissed by this court on 18-11-2019 by holding that this court has the pecuniary jurisdiction to proceed further in this petition. Hence, the petitioner contending that the

present application is not maintainable as the same is misleading and accordingly, he prays to reject the present I.A.

5. In light of the rival contentions raised by both the parties in the present I.A. the following points are arisen for my consideration;

1. Whether the application filed by the applicant U/o 7 Rule 11(d) of CPC in this petition for final decree proceedings is maintainable?
2. Whether the applicant has made out any grounds to allow this I.A?
3. What order?

6. I have heard both the sides on the I.A. perused the I.A, objections along with all other materials produced before me.

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

Point No.1 : **In the Negative.**

Point No.2 : **In the Negative.**

Point No.3: As per final order for the following.,

REASONS

8. **POINT NO.1 AND 2:** On careful perusal of the material available before this court it is evident that present petition filed

for final decree proceedings as per the preliminary decree passed by this court in O.S.No.24/1996 dated: 26-05-2005. There is no dispute that the properties shown in serial number 1 to 6 in the annexure attached to the present petition were the only subject matters in the suit in O.S.No.24/1996. But, at the time of filing this petition the petitioner has included the properties shown in serial No.7 to 14 in the said list and contending that the joint family of plaintiff and defendants have acquired the said properties during the pendency suit in O.S.No.24/1996 out of joint family funds. Accordingly, the petitioner/plaintiff prays to draw a final decree with respect to all the serial No.1 to 14 properties enlisted along with the petition.

9. Per contra, the present respondent/applicant in his objection filed to the present petition itself has contended that this petition is not maintainable in view of inclusion of additional properties without the permission of the court. Further, by amending his objection filed to the main petition, the applicant contending that the 1/6th share of petitioner in the additionally

included properties excludes the pecuniary jurisdiction of this court and hence, he prayed for rejection of the present petition.

10. The records would further reveal that, in view of the objections raised by the respondent, this court has examined the said objections and vide its order dated: 18-11-2019 this court held that in absence evidence from both the sides, it can not be held that the the value of 1/6th share of the petitioner exceeds the pecuniary jurisdiction of this court.

Thus, the said order of this court would goes to show that in absence of evidence from both the sides, the question of pecuniary jurisdiction of this court to proceed further in this petition can not be decided. Thus, this court has given liberty to both the parties to lead their evidence with respect to the pecuniary jurisdiction of this court to decide this petition and make division of the additional properties brought by the petitioner.

11. As per the said order of this court, the petitioner examined himself as PW-1 and got marked Ex.P-1 to 17 documents in his

favour. However, when the matter was posted for Cross examination of PW-1 the applicant come with the present application U/o 7 Rule 11(d) of CPC and praying to reject the petition.

12. Since, the suit in O.S.No.24/1996 is already decreed and since, now under this petition this court is holding the proceedings only for division of suit properties as per its preliminary decree, a fundamental question would definitely arise whether the application U/o 7 Rule 11 (d) of CPC can be maintained even after the decree passed in the suit and in final decree proceedings.

13. During the course of his argument on the present I.A, the learned counsel for the applicant has vehemently argued that since this petition is nothing but the continuation of the suit in O.S.No.24/1996, the present petition filed for final decree proceedings can also be treated as a plaint and hence it can be rejected U/o 7 Rule 11(d) as barred by law.

14. But, this court is totally in disagreement with the said arguments canvassed by the learned counsel for the applicant for the simple reason that the present petition filed for final decree proceedings of the preliminary decree passed by this court in O.S.No.24/1996 is the one filed Section 54 of CPC and the said petition is not the plaint presented under order 7 of CPC. Thus, the present petition filed by the petitioner can not be treated as a plaint and therefore U/o 7 Rule 11(d) of CPC shall have no application to the present petition.

15. At the same time, it is worth to note that the suit filed by the petitioner in O.S.NO.24/1996 was already decreed by this court on 26-07-2005 and hence filing the application U/o 7 Rule 11(d) of CPC after the Judgment itself is bad under law. In this regard bankable to note that the Hon'ble Apex court in the case of **Saleem Bhai and others V/s State of Mahatastra** reported in **AIR 2003 SC 759** has held that;

*The power U/o 7 Rule 11 of CPC
may be exercised at the any stage of
the suit, either before registering the*

plaint, or after issuing summons to the defendant, or before conclusion of trial.

16. From the above ratio, it can be understood that the outer limit for filing the application and exercising the power U/o 7 Rule 11 of CPC is only before conclusion of trial and after conclusion of trial, such applications can not be maintained and the court can also not exercise its power under the said rule.

In the case on hand, the trial in the suit in O.S.No.24/1996 is concluded and decree was passed in the said suit way back in the year 2005 and after disposal of the suit the applicant come with the this I.A that to in the stage of final decree proceedings holding by this court as per Section 54 of CPC.

17. Hence, for the foregoing reasons it can be held without hesitation that the applicant can not maintain the present I.A. and the same is also devoid of merits. Thus, the present I.A shall be rejected in the threshold.

18. At the same time, it shall be noted that, when this court is entertaining the objection raised by the applicant with respect to the pecuniary jurisdiction of this court for the devision of the additional properties brought in the petition and when this court is already holding an enquiry in this regard, there are all reasonable liberty and opportunity left to the applicant to substantiate his contention. If, after enquiry, it is found by this court that the value of 1/6th share of the petitioner in the additional properties brought to this petition is exceeds the pecuniary jurisdiction of this court, automatically the objection raised by the applicant will be upheld. And hence, no injustice will be caused to the applicant if the present application is not allowed. The above said reasons will also makes the present application as devoid of merits.

19. Hence, for the above reasons the present application is liable to be rejected and accordingly, this court answered the Point NO.1 and 2 **in the Negative.**

20. **POINT No.3:** In view of my discussion of point No.1 and 2, I proceed to pass the following;

ORDER

The I.A No.III filed by the respondent No.1 U/o 7 Rule 11(d) of CPC is hereby dismissed.

No orders as to cost.

(Directly dictated to the Stenographer on Computer, print out taken by him, corrected and then pronounced by me in open court this 19th day of March-2022)

(Ravi Kumara V.)
C/c Addl. Civil Judge.,
Chincholi.