

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND
J.M.F.C. AT CHINCHOLI**

PRESENT

Sri. Dattakumar Jawalkar, B.B.A. LL.B. (Hons.) LL.M.
Prl. Civil Judge and J.M.F.C.,
Chincholi

Dated: 12th day of December 2024

O.S. No.86/2024

Plaintiffs

1. Avirodh S/o Gopalrao Kattimani, Age: 29 years, Occ: Agriculture.
 2. Nishabdha D/o Gopalrao Kattimani, Age: 27 years, Occ: Agriculture.
 3. Shubhodh S/o Gopalrao Kattimani, Age: 24 years, Occ: Agriculture.
- All are R/o Bidar cross Chincholi, Tq: Chincholi, Dist: Kalaburagi.

(By Sri.A.S.Hegde. Advocate)

V/s

Defendants:

1. Roopkala W/o Gopalrao Kattimani, Age: 55 years, Occ: Agriculture.
 2. Gopalrao S/o Saidappa Kattimani, Age: 63 years, Occ: Agriculture.
- Both R/o Bidar Cross

Chincholi, Tq: Chincholi,
Dist: Kalaburagi.

3. Goureddy Venkateshwar Reddy
S/o Goureddy Narayanreddy,
Age: 42 years, R/o town
Malesangam Manipalli Mandal,
Sangareddy District
(Telengana State) 502345 Cell
No.7799555225

(Defendant No.1 and 2 placed
exparte and Defendant No.3 By Sri.
S.D.Rathod Advocate)

i.	Provision under which the application is filed	Order VII Rule 11
ii.	Relief sought for	Rejection of Plaintiff
iii.	The date on which the application is filed	03-08-2024
iv.	Number of the Application	I.A.II
v.	The date on which the objections are filed by the different opponents	30-10-2024
vi.	The date on which the orders were passed on the said application	12-12-2024

ORDER ON I.A. NO.II

The Defendant No.3 has filed the present I.A.No.II
under Order VII Rule 11 (a) and (d) of the Code of Civil

Procedure, 1908 for rejection of the Plaint at the stage before framing of issues.

2. **Brief facts:** It is the case of the Defendant No.3 that there is no pleading in the Plaint to show that the suit property was succeeded from the ancestors of Defendant No.1 and 2. The suit property is the self acquired property of the Defendant No.2 and then transferred in the name of Defendant No.1. The Defendant No.1 and 2 have sold the suit property to the Defendant No.3 through registered sale deed dated 05-01-2023. There is no cause of action with respect to Plaintiff to file the suit as the suit property is the self acquired property of Defendant No.1 and 2. Therefore, prays to reject the Plaint.
3. The Plaintiff has filed objection denying the averments of the Plaint and prays to dismiss the application.
4. Heard the learned Counsel for the Defendant No.3 and Plaintiff. Counsel for Defendant No.3 relied upon the Judgment of the Hon'ble High Court of

Delhi in *Charanjeeth Singh V. Harvinder Singh* in CS (OS) 486/2018 and the judgment of Hon'ble High Court of Karnataka in *Koshy Abraham V. D.K Jayalaxmi* in CRP.No.121/2021.

5. Based on the pleadings of the parties the following points arise for the consideration of this Court:

POINTS FOR CONSIDERATION

1. Whether there are grounds to reject the Complaint under Order VII Rule 11 of Code of Civil Procedure, 1908?
2. What Order?

6. The findings to the above points are as under:

Point No. 1: Negative

Point No. 2: As per the Order for the following:

REASONS

7. **Point No. 1:** It is the case of the Defendant No.3 that the Plaintiff has not pleaded regarding the suit property being the ancestral property. As the suit property is the self acquired property of Defendant No.1 and 2, the Complaint does not disclose any cause of action. Hence, prays to reject the application.

8. Perused the Plaint. The Plaint discloses that the Plaintiff No.1 to 3 are the children of Defendant No.1 and 2. The suit property is the ancestral property of Plaintiffs and Defendant No.1 and 2. The suit property is nominally standing in the name of Defendant No.1. The Defendant No.1 taking undue advantage of the suit property standing in his name, colluding with the Defendant No.2 has alienated the suit property to Defendant No.3 without the knowledge and consent of the Plaintiffs. When the Plaintiffs attained majority they came to know about the alleged registered sale deed and asked for their share which was refused by the Defendants. Hence, prayed to decree the suit by allotting 3/4th share in the suit properties.
9. Order VII Rule 11 (a) and (d) of the Code of Civil Procedure, 1908 provides that the Plaint should be rejected when it does not disclose cause of action or it is barred by any law. In the present case, the Plaint discloses that the suit property is the ancestral property of the Plaintiffs and Defendant

No.1 and 2 and it is nominally standing in the name of Defendant No.1. The said pleading is the cause of action in the present case and the pleadings relating to the suit property being the ancestral property and refusing to give share to the Plaintiffs would constitute cause of action. Whether the suit property is the ancestral property or not is the matter of evidence and can not be enquired at this stage and needs to be decided after full fledged trial.

10. The Defendant No.3 has not pleaded in his application on which law the said Plaint is barred. However, the counsel for the Defendant No.3 has argued before this Court that since the suit property came to the share of Defendant No.1, it would be her absolute property and the Plaintiffs would not have any share in the absolute property of the Defendant No.1. The counsel also relied upon the Judgment of the Hon'ble High Court of in the case of *Koshy Abraham V. B.K Jayalaxmi* and the Judgment of Hon'ble High Court of Delhi in *Charanjeet Singh V. Harvindra Singh*. In *Koshy Abraham* case the Plaintiff had pleaded that there was a partition in the family

and the property in question fell to the share of Defendant No.1. The Hon'ble High Court coming to the conclusion that once a partition is admitted prior to coming in to force of the amendment and under the partition, properties have been allocated to the father i.e., Defendant No.1, the father would take the property in his individual capacity. There being a disruption of the joint family property, the property allocated to Defendant No.1 who has taken it as his own separate and/or individual property, it is not for the Plaintiff who is daughter of Defendant No.1 to claim any right therein and upon the said conclusion the Hon'ble High Court had allowed the appeal and rejected the Plaint under Order VII Rule 11 of Code of Civil Procedure. In *Charanjeet Singh's* case the Plaintiff has pleaded that there was an oral family settlement dividing the properties amongst family members and the property in question fell to the share of Defendant No.1 and the settlement deed was signed by the Plaintiff in February-2013. The suit being filed beyond the limitation of 3 years stipulated in Article 59 of the Limitation Act, with no scope for any

extention or exclusion of time or condonation of delay under any of the provisions of the Limitation Act, the Hon'ble High Court of Delhi held that the said Plaint is barred by the law and thus rejected the Plaint.

11. In the present case there is no any pleadings in the Plaint relating to the suit property being self acquired property of the Defendant No.1 and 2 and further it was pleaded that the suit property is the ancestral property of the Plaintiffs and Defendant No.1 and 2. Therefore, the said pleading would constitute cause of action and the Judgments relied by the Defendant No.3 can not be applied to the present case as in the said cases the partition was pleaded and the Limitation was also expired. Therefore, this Court is of the opinion that by looking only at the Plaint averments it discloses cause of action and does not seem to be barred by any law. With this observation, this Court answers Point No.1 in Negative.

12. **Point No.2:** In view of the findings of this Court to the Point No. 1, this Court proceeds to pass the following:

ORDER

I.A. No.II filed by the Defendant No.3 under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure, 1908 is hereby dismissed.

(Dictated to the stenographer, transcribed by him, then corrected and pronounced by me in the Open Court on this the 12th day of December 2024)

*(Dattakumar Jawalkar)
Prl. Civil Judge & J.M.F.C
Chincholi*