

**IN THE COURT OF THE
SENIOR CIVIL JUDGE AND J.M.F.C.,CHITTAPUR**

Present: **Sri. SANTOSH S PALLEDH**, B.A., L.L.B.
(Spl), Senior Civil Judge and JMFC, Chittapur

O.S. NO.148/2011

DATED THIS THE 01ST DAY OF APRIL, 2023

PLAINTIFF/S:- Smt. Hampamma W/o Sidlingappagouda,
Age:63Years, Occ:Agri & House-hold affairs,
R/o Abbe Tumkur, Tq. & Dist. Yadgir.
Since dead, represented by her LR's

- (1a) Sri. Santosh Patil S/o Late Sri. Sidhalingappa Goda,
& Late Smt.Hampamma, Age:48years, R/o #12/1,
Jangma Kutira, 1st floor, 3rd main ramamohanapuram,
Bangaluru-560021.
- (1b) Sri. Mahes Patil S/o Late Sri. Sidhalingappa Goda,
& Late Smt.Hampamma, Age:45years, R/o No.146,
Abbe Tumkur, Taluk & District Yadgir.
- (1c) Smt. Pooja Patil S/o Late Sri. Sidhalingappa Goda,
& Late Smt.Hampamma, Age:29years, R/o H.No.3-8-102,
Beroon Quilla Raichur.
- (1d) Sri. Vishal Sharanagouda Biradara S/o Late Sri. Sharan
Ggouda, Age:27years, R/o H.No.3-8-102, Beroon Quilla
Raichur.

(By Smt.L.B. Advocate)

Vs.

DEFENDANT/S: 1. Venkangouda @ Venkatgouda S/o Sugangouda,
Age:56years, Occ:Agri. R/o Nalwar, Tq.Chittapur.

2. Basawarajgouda S/o Sugangouda,
Age:51years Occ:Agri, R/o Nalwar, Tq.Chittapur.

2a. Vishalakshmi W/o Siddramreddy Patil,
R/o Kadbur, Chittapur Taluk, Gulbarga District.

2b. Sugmma W/o Mallareddy, R/o Koppur, Devadurga
Taluk, Raichur District.

2c. Rashmi W/o M P Hallamani, R/o Naikal, Shapur

Taluk, Yadgir District.

3. Mallangouda S/o Sugangouda, Age:49years,
Occ:Agri, R/o Nalwar Tq.Chittapur.
4. Saramma W/o Sharanappagouda, Age:60years,
Occ:House-hold affairs, R/o Raichur.
5. Rajamma W/o Venkangouda, Age:50years,
Occ:Household, R/o Nalwar, Tq.Chittapur.
6. Sharangouda S/o Venkangouda, Age:28years,
Occ:Agri, R/o Nalwar, Tq.Chittapur.
7. Indramma W/o Basawarajgouda, Age:42years,
Occ:House-hold, R/o Nalwar, Tq.Chittapur.
8. Vishwanthreddy S/o Basawarajgouda,
Age:26years, Occ:Agri, R/o Nalwar, Tq.Chittapur.
9. Nagamma W/o Mallangouda, Age:42years,
Occ:House-hold, R/o Nalwar, Tq.Chittapur.
10. Sugangouda S/o Mallangouda, Age:24years,
Occ:Agri, R/o Nalwar, Tq.Chittapur.
11. Shilaja W/o Vishwanathreddy, Age:38 years,
Occ:House-hold, R/o Nalwar, Tq.Chittapur,
Now at Yeroor, Tq.Gangawathi Dist.Koppal.
12. Veena D/o Vishwanathreddy, Age:11years,
Minor.
13. Vinitha D/o Viswanathreddy, Age:9years, Minor
Both the minors under guardianship of their natural
Mother shailaja W/o Vishwanathreddy, Defendant
No.11.
14. Sri. Pandithrao S/o Bhimsha Karagar, Age:42years,
Occ:Agriculture, R/o H.No.E/113, Kusanur, Taluk
& District Gulbarga.
15. Sri. Bhimsha S/o Kotalappa Karagar, Age:75years,
Occ: Agriculture, R/o H.No.E/113, Kusanur, Taluk

& District Gulbarga.

16. Sri. Kotalappa S/o Bhimsha Karagar,
Age:41years,Occ:Agriculture,
R/o H.No.E/113, Kusanur, Taluk
& District Gulbarga.

(Defendant No.1 to 3, 5 to 10 By Sri. IBA. Advocate
D.4 by Sri. SSA Advocate, D.11 to 13 SBK Advocate
D.14 to D.16 by Sri.VBP Advocate)

PARTIES TO IA No.24

Vishwanath Reddy

& Ors

Applicants/Defendants

V/s

Santosh Patil & Ors
(LR's of Plaintiff)

Opponents/Plaintiffs

& Others.

**ORDER S ON I.A. No.24 FILED U/O 7 RULE 11 (d)
OF CPC:**

1. This application is filed by defendant No.8 to reject the plaint as it is hit by order 7 Rule 11(d) of CPC.
2. It is stated that the suit is filed for partition and the matter is pending before land tribunal between the same parties and for same properties as such this court is not competent to entertain the suit. It is further stated that as the sub Rule (d) of order 7 Rule 11 of CPC is attracted and plaint has to be rejected.
3. In response to this the plaintiffs have filed objection contending that application is not maintainable. It is stated that the matter before the land tribunal is in respect of excess land and this suit is for partition. The reliefs claimed are different and hence seeks to dismiss the application with cost.

4. The defendant No.11 has also filed objections to this application stating that this defendant has approached land tribunal in respect of determining surplus land. It is on the basis of the fact that the Venkangouda, Basavarajgouda, Shivabasamma have played fraud and suppressed facts. Thereby it is different and the application is not maintainable.

5. Heard arguments from both sides. The following points arise for my consideration as under :

1. Whether the defendant No.8 makes out ground to reject the plaint?

My finding to the above point is in the negative for the following:

REASONS

6. **Point No.1** : In this case the suit is filed for partition contending that plaintiff and defendant No.1 to 3 constitute joint family and they are having share. It is opposed by the defendants contending that the plaintiff has relinquished the right in the suit property at the time of partition in the year 1985 and now they are stopped.

7. It is contended that plaintiff Hampamma had got her share in the compromise before Hon'ble Apex Court. On the other hand she is also argued that the matter is pending before land tribunal for surrendering excess land.

8. It is noticed that the defendants counsel has produced copy of proceedings before the land tribunal where in it is observed that the wife of Vishwanath Reddy who is applicant of this application has filed application to the tribunal stating that their family holds total 319 acres 6 guntas in Nalwar and Belawadagi Village. Thereby sought to dispose the excess land in accordance with law. In this regard there is objection filed and matter is still pending as it could be seen from the order sheet copy produced. It is also noticed that the plaintiffs have also appeared through advocate and filed objections to the application of said Shailaja.

9. It is to be noticed that it is clear from the records that the tenancy is not question before the land tribunal and it is only the surplus lands which are to be taken back by the government after proper enquiry. It is true that Civil Court cannot decide the right of tenancy and it is exclusive domain of Revenue Courts. In this case from the materials produced it is clear that there is no question of determining tenancy before the land tribunal but it is only to accept surplus land. Further from the plaint schedule it can be seen that the properties are shown from A schedule to K schedule. It is also consisting may house properties, shop properties, plots etc.,. These will not be decided in the land tribunal. Such being the case the contention of applicant that it is hit by order 7 Rule 11(d) of CPC is not acceptable. The suit

being for partition and separate possession based on various earlier records like RTC, Mutation, Khasa pahanis etc., the Civil Court can decide the right of parties with respect to their share. Even if it is assumed that there is no certainty, the matter could be proceeded for recording evidence and at the time of final verdict it could be considered. Thereby I find no merits in the arguments of counsel for applicant and hence I answer the point in the negative and proceed to pass the following:

ORDER

The IA.No.24 filed U/O 7 Rule 11(d) of CPC is here by rejected.

(Dictated to the typist directly on computer, typed by her, corrected by me, then pronounced by me in the open court on this 01st Day of March, 2023)

(SANTOSH S PALLEDH)
Senior Civil Judge
& JMFC Chittapur