

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC

AT JEWARGI

PRESENT: Sri. Sandeep A. Naik B.A., LL.B.,(Spl.)
Senior Civil Judge & J.M.F.C.,
Jewargi.

Dated This the 10th Day of February-2025

ORIGINAL SUIT NO.186/2023

PLAINTIFFS : 1. Bharamreddy
S/o Late. Bhimareddy Hosalli,
Age: 70 years, Occ: Agriculture.

2. Yankareddy
S/o Bharamreddy Hosalli,
Age: 40 years, Occ: Agriculture.

3. Mallikarjunreddy
S/o Bharamreddy Hosalli,
Age: 37 years, Occ: Agriculture,

All are R/o Hattikuni,
Tq. & Dist: Yadagir.

.....(By. Sri.J.V.H., Advocate)

V/s.

DEFENDANTS: 1. Mallareddy
S/o Bhimareddy Mudbal,
Age: 50 years, Occ: Agriculture.

2. Bharamareddy
S/o Mallareddy Mudbal,
Age: 30 years, Occ: Agriculture,

Both are R/o Alloli, Tq: Chitapur, Dist: Kalaburagi.

.....(By. Sri.M.S.M., Advocate)

PARTIES TO I.A. NO.2

Applicant/ : Mallareddy and Another
Defendants :
V/S

Opponent/ : Bharamreddy and Others
Plaintiffs

i.	Provision under which the application is filed	U/o 7 Rule 11 of CPC
ii.	Relief sought for	Rejection of Plaintiff
iii.	The date on which the application is filed	08-07-2024
iv.	Number of the application	IA No.2
v.	The date of which the objections are filed by different opponents	31-07-2024
vi.	The date on which the orders were passed on the said application	10-02-2025

ORDER ON IA NO.2 FILED BY DEFENDANTS UNDER ORDER 7 RULE 11 OF C.P.C:

1. The defendants have filed this application under Order 7 Rule 11 of C.P.C., for rejection of plaintiff since suit is not maintainable.

2. The defendant No.1 sworn to the affidavit stating that defendant No.2 is his son. The suit is not maintainable since plaintiffs have admitted about the possession of defendants. The settled preposition of law is that if a party who files suit for

partition is not in possession then he has to pay court fee as per its market value but in the present suit valuation is made as per Sec.35(2) of KCF and SV Act thus this court has no jurisdiction to entertain the suit. The plaintiffs have suppressed real facts before the court. Originally suit property was standing in the name of Sanganabasamma and after her death her daughters namely Neelamma and Basamma got mutated their names. The said Neelamma have more property. The said Neelamma out of love and affection towards her sister Basamma has given up her share to the said Basamma but due to better understanding between the sisters same was not came into force immediately. After demise of both sisters defendants got mutated their names to the entire suit lands as per the consent document executed by Neelamma in favour of Basamma.

3. Defendant No.1 further stated that one Shivaraj Patil filed an application before Land Tribunal for grant of occupancy right and said petition was allowed without making Neelamma and Basamma as party to the proceedings. Therefore both sisters filed WP No.14382/2000 which was allowed as per order dated 22-01-2002 and Tahasildar issued notice to the parties to appear before the Land Tribunal. Therefore, plaintiffs have knowledge about all these aspects and now filed this false suit without cause of action. The said Sanganabasamma was the original owner of suit property and after her death her legal heirs namely Neelamma and Basamma out of love and affection and services rendered by defendant No.1 and 2 executed relinquishment document in favour of defendant No.1 and 2 and plaintiffs have

knowledge about all these aspects but suppressed the same before the court. The suit property is not at all an ancestral and joint family property. Further there is no mention regarding delay in filing the suit. Therefore suit is hit by law of limitation since as per Hindu Succession Act only female are exempted from limitation and not male members. Therefore suit of the plaintiff is not maintainable. If the application is allowed and plaint is rejected directing the plaintiffs to approach competent authority no loss will be cause to the plaintiffs. If the application is not allowed, then defendants will be involved into multiplicity of litigations. Therefore defendants pray to allow IA No.2.

4. The plaintiffs have filed counter to the application contending that defendants have not mentioned the exact provision i.e., under which clause of order 7 rule 11 of CPC plaint is not maintainable. The valuation of the suit properties for the purpose of payment of court fee and jurisdiction is valued U/Sec. 35(1) KCF and SV Act but the plaintiffs are in joint possession of the suit property as such question of possession, joint possession and out of possession have to be adjudicated by this court after full-fledged trial as such at this stage the court cannot reject plaint. Further when the suit and relief claimed by the parties is undervalued under such an event the court has to correct and thereafter fix time for correcting the same and when parties fails to do so then plaint is liable to be rejected as such on this ground alone plaint cannot be rejected.

5. The plaintiffs further contended that the point of limitation is concerned the plaint cannot be rejected since the

point of limitation has to be decided after framing issues along with other issues since it is fixed question of fact and law and requires oral evidence. Further plaintiffs as well as defendants are claiming rights through the female heirs. Non challenging of mutation and entries in ROR before authorities do not bar the plaintiffs to claim partition on basis of succession/inheritance since petition is not maintainable. The cause of action is bundle of facts and required to be pleaded and to prove for purpose of obtaining relief claimed under the suit by the parties to the suit as such court cannot required to make elaborate inquiry about the cause of action. Therefore plaintiffs prayed to reject the application.

6. On considering the rival contentions of the parties, the points that arise for my consideration are as under:

POINTS

1. Whether the application filed by the defendants U/O.7 Rule 11 of C.P.C. is deserves to be allowed? and whether the plaint can be rejected?
2. What Order ?

7. The advocate for defendants argued that plaint is liable to be rejected since suit properties are the separate properties Sanganbasawwa and after her death her daughters Neelamma and Basamma have succeeded to the said properties and out of their love and affection they given up their rights in favour of the defendants. Further plaintiffs are not in possession

of the suit property as such they have to pay court fee as Section 35(1) of KCF & SV Act. There is no cause of action and suit is barred by limitation and even suit is not properly valued as such deserves to be rejected.

8. Per-contra, learned counsel for plaintiffs argued plaintiffs are seeking partition in the suit schedule properties. The suit schedule properties are the joint family properties of plaintiffs and defendants. As such, the plaintiffs have right to claim partition in the properties. He further argued that defendants have not mentioned the specific provision under which plaint has to be rejected. Further the point of limitation is a mixed question of fact and law which requires a trial . Therefore, the application filed by the defendants is deserves to be dismissed.

9. My answer to the above points is as under:

Point No.1:- In the **NEGATIVE**.

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

REASONS

10. **Point No. 1**: Admittedly, this suit is filed for partition and separate possession in respect of suit schedule properties. The present application was filed when the matter was posted for cross of P.W.-1 to 4 at that time defendants have come up with the present application. The application is filed for rejection of plaint under Order 7 Rule 11(a) and (d) of C.P.C. The

provision of Order 7 rule 11 of C.P.C., has limited scope for rejection of plaint. The Application which consequently states that, suit is barred under any law or does not disclose cause of action must be drawn from averments made in plaint and in order to invoke Order 7 Rule 11 of C.P.C., no amount of evidence can be looked into. At that stage, issues on merits of matter could not be within realm of court, while adjudicating application under Order 7 Rule 11 of C.P.C., court cannot go through the contents and pleadings of written statement. But court has to go through the plaint averments. The court has to satisfy that suit appears from statements in the plaint to be barred by any law or doesn't disclose cause of action. If from the statements in the plaint it appears that suit of the plaintiff is barred by any law or doesn't disclose cause of action then court has to reject the plaint. The Court cannot touch upon merits of the suit while dealing with the applications filed Under Order 7 rule 11 of C.P.C.

11. At this juncture, it is useful to refer a decision reported in **(2008) 12 SCC 661 in between the Kamala and Ors Vs K.T. Eshwara Sa and Ors** where in the Hon'ble Supreme Court pleased to held that:

“ Rejection of plaint under Order 7 Rule 11 of CPC has limited scope. Application which consequently states that, suit is barred under any law or does not disclose cause of action must be drawn from averments made in plaint.”

12. It is further held that for invoking order 7 Rule 11 of C.P.C., no amount of evidence can be looked into. At that stage, issues on merits of matter could not be within realm of court.

The Hon'ble Supreme Court while dealing with provisions of order 7 rule 11 of CPC pleased to held that, while adjudicating application under order 7 rule 11 of C.P.C., the court cannot go through the contents and pleadings of the written statement. But court has to go through plaint averments and therefore the court has to satisfy that suit appears from statements in the plaint to be barred by law or doesn't disclose cause of action. If from the statements in the plaint it appears that suit of the plaintiffs is barred by any law or doesn't disclose cause of action then court has to reject the plaint.

13. Now keeping in mind above aspects let us consider the present application. Before adverting to the merits and factual aspects of the statement of the plaint it is necessary to refer provisions of Order 7 Rule 11 of CPC for better appreciation which reads thus:

Order 7 Rule 11 of CPC speaks about the rejection of plaint.

The plaint shall be rejected in the following cases:-

(a) Where it does not disclose a cause of action;

(b) Where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

(c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp -paper within a time to be fixed by the Court, fails to do so,;

(d) Where the suit appears from the statement in the plaint to be barred by any law;

(e) Where it is not filed in duplicate;

(f) Where the plaintiff fails to comply with the provisions of rule 9

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

14. The above mentioned provisions makes it clear that where a suit does not disclose the cause of action or whether relief claimed is undervalued and the plaintiff being required to furnish correct valuation within time and where the relief claimed is properly valued but the plaint is written upon on insufficiently stamped paper or the suit appears from the statement in the plaint barred by any law or does not disclose cause of action then the plaint has to be rejected. By way of present application defendants have not specifically mentioned under which provision of Order 7 Rule 11 of C.P.C., the plaint has to be rejected. However, on careful perusal of averments of affidavit annexed to the application it reveals that defendants seeking rejection of the plaint on the ground that plaintiffs are not in possession of the suit property as such court fee have to be paid under section 35(2) of KCF & SV Act and this court has no jurisdiction and further suit is barred by limitation.

15. In the present case, plaint averments disclose that plaintiffs claim that they and defendants are stated to be the joint family members and joint owners and possessors of suit properties. One Sanganasawwa W/o Channabasappa @ Basappa Poradi is the common ancestor of plaintiffs and defendants. She had two daughter's namely Ningamma W/o Nagappa Hossali and Basamma W/o Bhimareddy Mudbal. The

said Ningamma had daughter by name Narasamma W/o Bharamareddy i.e., wife of plaintiff no.1. The said Basamma S/o Bhimareddy Mudbal had a son namely Mallareddy i.e., defendant No.1. The suit properties were owned and possessed by common ancestor namely Sanganbasamma W/o Channabasappa @ Basappa Poradi and her name was entered to the record of rights as owner and possessor of suit properties.

16. After death of said Sanganabasamma her two daughters namely Ningamma W/o Nagappa Hosalli and Basamma W/o Bhimareddy got mutated their name to the suit property bearing Sy.No.8 measuring 6 acres 15 guntas vide mutation no.62 dated 15-03-1999 and were jointly cultivating the said properties as joint owners and possessors without effecting any partition by metes and bounds. The said Neelamma W/o Nagappa Hosalli and her husband and only daughter Narasamma dead intestate leaving behind plaintiffs as their heirs and successors. Said Basamma S/o Bhimareddy and her husband also dead intestate leaving behind defendant No.1 and 2 as their heirs and successors. The plaintiffs being class-I heirs and successors of deceased Neelamma W/o Nagappa and her deceased daughter Narasamma W/o Bharamareddy having $\frac{1}{2}$ share in the suit properties, whereas defendants being class-I heirs of Basamma W/o Bhimareddy have remaining $\frac{1}{2}$ share in the suit properties. But defendants without the knowledge of plaintiffs got mutated their names to the record of rights vide mutation No.10/2011-12 dated 17-12-2011 on basis of partition without having any kind of right, title or interest over the

properties. Therefore, plaintiffs approach defendants and requested them to effect partition in the suit properties but defendants refused to effect partition. Therefore, plaintiff was constrained to file this suit. This is all stated to be the cause of action for the plaintiffs to file this present suit.

17. The counsel for defendants contended that plaintiffs are not in possession and further suit is barred by limitation. Therefore, plaint has to be rejected. On perusal of the entire plaint averments, it is clear that plaintiffs are claiming their right over the suit properties on basis of inheritance. Further plaintiffs contended that defendants tried to alienate the suit schedule property. Even plaintiffs have also specifically contended that they are joint possession of suit properties. Therefore, they are constrained to file this suit. While dealing with the applications of this nature, the Court has to consider the entire plaint averments and Court cannot on a strange admission or pleadings reject the plaint. The Court has to go through the averments of the plaint and plaint averments have to be read as a whole to find out whether averments disclose a cause of action or whether suit is barred by any law.

18. It is necessary to refer decision reported in **(2017) 13 SCC 174** – in between **Madanuri Sri Ramachandramurthy V/s. Syed Jalal**, wherein the Hon'ble Supreme Court of India held that

“ The plaint can be rejected under Order 7 Rule 11 C.P.C. if conditions enumerated in the said provision are fulfilled. The power under Order 7 Rule 11 C.P.C. can be exercised by the Court

at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the Court should exercise power under Order 7 Rule 11 C.P.C. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 of C.P.C. to the exercise of power of rejection of plaint have to be strictly adhered to. **The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law.** The question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 C.P.C. can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the Court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.(Para 7). ”

19. At this stage, it is also necessary to refer another decision reported in **(2017) 5 SCC 345** in between ***Kuldeep Singh Pathania V/s. Bikram Singh Jaryal***, wherein it is held that:

“ Rejection of plaint due to absence of cause of action – Principles to be followed and material(s) that may be considered while dealing with such application, clarified – Held, plaint cannot be rejected based on allegations made by defendant in his written statement or in his application for rejection of plaint – Court has to read entire plaint as whole to find whether it discloses cause of action or not – If plaint discloses that cause of action, then it cannot be rejected under Or.7 R.11(a) – Whether plaint discloses that cause of action is question of fact, and it has to be gathered on basis of plaint averments taking them to be true – As long as plaint discloses cause of action, mere fact that plaint may not succeed in suit cannot be ground for rejection of plaint.”

20. In another decision reported in **(1996) 8 SCC 377** in ***State of Orissa V/s. Klockner and Company***, wherein the Hon'ble Supreme Court of India pleased to held that

“ Rejection of plea – plea that plaintiff does not disclose cause of action – Different from plea that there was no cause of action for the suit – For determining whether suit to be wiped out under R.11(a), averments in the plea to be looked into.”

21. In the present case, defendants have not disputed that originally suit properties belong to the common ancestor Sangnabasawwa W/o Channabasawwa. The question regarding plaintiffs are in joint possession or not and suit is barred by limitation or not are the aspects to be adjudicated in the present case which requires a full-fledged trial. Without conducting a full-fledged trial the Court cannot give its finding regarding the aspects of joint family, joint possession and limitation and maintainability of the suit at this stage of the proceedings. Therefore, contention of defendants that since plaintiffs have Neelamma & Basamma have relinquished their right in favour of defendants as such plaintiffs have no right, title and interest over the property and they have not been in possession of the suit schedule properties, as such, suit has to be dismissed is unsustainable at this stage of the proceedings.

22. The Hon'ble Supreme court in a decision reported in **(2006) 5 SCC 658 in between Balasaria Construction (P) Ltd. V/s. Haunuman Seva Trust and Others**. Pleaded to hold that:

“ After hearing the counsel for the parties going through the plaintiff, application U/o 7 Rule 11 (d) C.P.C. and judgment of the trial court and Hon'ble High Court we are of true opinion that present suit cannot be dismissed as barred by limitation without proper pleadings. Framing of an issue of a limitation and taking of evidence. Question of limitation is mixed question of law and fact. Ex-facie in the present case on the reading of the plea it cannot be held that suit is barred by time. The finding recorded by Hon'ble High Court touching upon the merits of the suit are set aside but the conclusion arrived at High court is affirmed. We agree with the view taken by the trial court that a plea cannot be rejected U/o 7 rule 11 (d) of C.P.C. Similarly in the present

case also in order to find out whether suit is barred by law of limitation is a mixed question of law ad fact and has to be adjudicated after fledged trial.”

23. In view of the aforementioned decisions, it is clear that the aspect of limitation is a mixed question of law and facts and has to be adjudicated after full-fledged trial. Therefore, the contention of the defendants that the suit of the plaintiffs is barred by law of limitation is also not maintainable at this stage of the proceedings.

24. Moreover, at this stage it is useful to rely upon a decision reported in **AIR 1988 SUPREME COURT 1636** in between **Commercial Aviation and Travel Company and Others Vs. Vimla Panalal**, wherein the Hon'ble Supreme Court while dealing with the provision of order 7 rule 11(b) of CPC pleased to held that,

Civil P.C. (5 of 1908) , O.7 R.11(b)— Suits Valuation Act (7 of 1887) , S.9 — Punjab High Court Rules (Civil) , R.4(i)— Ordinarily, it is not possible for the Court at a preliminary stage to determine the value of the relief in a suit for accounts simpliciter. If the Court is itself unable to say what the correct valuation of the relief is, it cannot require the plaintiff to correct the valuation that has been made by him. Indeed, in a suit for accounts it is also difficult for the Court to come to a finding even as to the approximate correct valuation of the relief. In such a case, the Court has no other alternative than to accept plaintiff's valuation tentatively.

HELD: (1) The suits which are mentioned under section 7(iv) are of such nature that it is difficult to lay down any standard of valuation. Indeed, the Legislature has not laid down any standard of valuation in the Court Fees Act.

(2) It is apparent from Rule 4(i) of the Rules framed by the Punjab High Court under section 9 of the Suits Valuation Act, which are applicable to the Union Territory of Delhi, that valuation for the purposes of Court Fee and jurisdiction is not the same. Under these Rules, the value of suit for accounts for purposes of court fee will have to be determined by the plaintiff.

(3) It is manifestly clear from the provision of order VII, Rule 11 (b), that

a Court has to come to a finding that the relief claimed has been undervalued which necessarily means that the Court is able to decide and specify proper and correct valuation of the relief. But ordinarily it is not possible for the Court at a preliminary stage to determine the value of the relief in a suit for accounts simpliciter and the Court has no other alternative than to accept plaintiff's valuation tentatively.

(4) Where there are objective standard of valuation or, in other words, the plaintiff or the Court can reasonably value the relief correctly on certain definite and positive materials, the plaintiff will not be permitted to put an arbitrary valuation dehors such objective standards or materials.

(5) The plaintiff cannot whimsically choose a ridiculous figure for filling the suit where there are positive materials and/or objective standards of valuation of the relief appearing on the face of the plaint. These materials or objective standards will also enable the Court to determine the valuation for the purpose of Order VII, Rule 11(b), of the Code of Civil Procedure.

(6) The valuation of the relief in the instant case, for the rendition of accounts under Section 7(iv)(f) of the Court Fees Act. is neither unreasonable nor it is demonstratively arbitrary.

25. In a recent decision reported in **2022 LiveLaw (SC) 963** in between **GURDEV SINGH versus HARVINDER SINGH**, the Hon'ble Supreme court while dealing with application filed under order 7 rule 11 of CPC pleased to held that;

Code of Civil Procedure, 1908; Order VII Rule 11 - Rejection of Plaintiff - The case on behalf of the petitioner is that the plaintiff is not entitled to any relief in the suit. The aforesaid cannot be a ground to reject the plaint at the threshold in exercise of powers under Order 7, Rule 11 CPC.

26. At this stage it is also useful to refer decision reported in **AIR 1959 Mys 184** in between **Shaik Ismail Vs. Malan bi and Others**, the Hon'ble court while dealing with the provisions of section 35 of Karnataka Court Fees and Suit Valuation Act, 1958 pleased to held that in a suit for partition and separate share, the value for purpose of jurisdiction is the value of the share claimed and not the value of the entire

property.

27. In another decision reported in **ILR 1990(2) Kar. SN 6 = 1988(3) KLJ 31 in between M.V.Chayapathy Rao Vs. M.V.Satyanarayana Rao**, the Hon'ble court while dealing with the provisions of section 35 of Karnataka Court Fees and Suit Valuation Act, 1958 pleased to held that the averment made in the plaint is the guiding factor to determine the court fee and not the plea taken in the written statement. Where the plaintiffs alleged that the property is a joint family property but the defendant contended otherwise, the suit cannot loose its colour of being a suit for partition.

28. In another decision reported in **ILR 1993(2) Kar. 973** in between **Thibbaiah Vs. Desigowda**, the Hon'ble court while dealing with the provisions of section 35 and 50 of Karnataka Court Fees and Suit Valuation Act, 1958 pleased to held that, in a suit for partition, the court fee payable is fixed under section 35(2) if the plaintiff asserts that he is in joint possession of the property, which in turn depends upon value of the plaintiff's share. Necessarily the value of the plaintiff's share will be the market value. Unless there is some other Act or legal provision governing the determination of the jurisdiction.

29. In another decision reported in **ILR 1965 Mys. 918** in between **Shabeer Ahmed Vs. B. Iqbal Ahamed and others**, the Hon'ble court while dealing with the provisions of section 35(1) of Karnataka Court Fees and Suit Valuation Act, 1958

pleased to held that, in a suit for partition, court fee is payable on basis of material allegation made in the plaint. Allegations and averments made in the written statement are not relevant. In case of joint owners joint possession is deemed.

30. Similarly in the present case also in order to find out whether plaint is under-valued or not and court fee paid adequate or not this court has to go through the plaint averments only while considering the application filed under Order 7 Rule 11 of CPC and on perusal of the plaint averments it is clear that plaintiff claims that they are in joint possession of the suit property and valued the suit at Rs.6,00,000/- and paid court fee of Rs.200/- towards their share as such having gone through the entire plaint averments apparently it seems that, it discloses that suit is not barred by any limitation or by any law nor at this stage it discloses that plaintiff's are not in possession. Hence, considering all these aspects, I am of the considered view that, application of the defendants is liable to the dismissed as devoid of merits. **Hence, I answer Point No.1 in the Negative.**

31. **Point No. 2:** For the reasons stated above, I proceed to pass the following:

ORDER

The IA No.2 filed by the defendants Under Order 7 Rule 11 of CPC is hereby dismissed as devoid of merits.

No order as to cost.

For Cross of P.W.-1 to 4 by 12-
03-2025.

(Dictated to the Stenographer, transcribed and typed by him, corrected and then pronounced by me in the Open Court on this 10th Day of February-2025).

(Sri. SANDEEP A. NAIK)
Senior Civil Judge & J.M.F.C.,
Jewargi.