

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 04th Day of November-2023

ORIGINAL SUIT NO.36/2021

PLAINTIFFS : 1. Sri. Hanamanth S/o Sanna
Ratnappa,
Age: 55 years, Occ: Agriculture.

2. Smt. Ratnamma W/o Sanna
Ratnappa,
Age: 75 years, Occ: Agriculture.

Both are R/o Biral (B),
Tq. Jewargi, Dist. Kalaburagi.

.....(By. Sri.B.B., Advocate)

V/s.

DEFENDANTS: 1. Sri. Ashok S/o Dodda
Ratnappa,
Age: 65 years, Occ: Agriculture.

2. Smt. Jagadevi W/o Ashok
Age: 55 years, Occ: Agriculture.

3. Sri. Pavan Kumar S/o Ashok,
Age: 35 years, Occ: Agriculture.

4. Sri. Ratnakar S/o Ashok,
Age: 30 years, Occ: Agriculture.

5. Smt. Sarswati W/o Mallikarjun,
Age: 48 years, Occ: Agriculture.

6. Kumari. Suganda D/o Mallikarjun,
Age: 19 years, Occ: Agriculture.

7. Kumar. Santosh S/o Mallikarjun,
Age: 17 years, Minor.

8. Kumar. Sachin S/o Mallikarjun,
Age: 13 years, Minor.
U/g of their natural mother i.e., 5th
defendant by name Smt. Sarswati W/o
Mallikarjun,
Age: 48 years, Occ: Agriculture.

9. Sri. Ramesh S/o Dodda Ratnappa,
Age: 50 years, Occ: Agriculture.

10. Sri. Rajesh S/o Dodda Ratnappa,
Age: 48 years, Occ: Agriculture.

11. Sri. Manappa S/o Eranna Doddamani,
Age: 45 years, Occ: Agriculture.

12. Sri. Basavaraj S/o Honnappa Tokapur,
Age: 40 years, Occ: Agriculture.

All are R/o Biral (B), Tq: Jewargi.
Dist: Kalaburagi.

.....(D1 to 10 By. Sri.P.P.K., Advocate)

.....(D12 By. Sri.M.S.B., Advocate)

.....(D11 Ex-parte)

PARTIES TO I.A. NO.2

**Applicant/
Defendants**

: Sri.Ashok and Others.

V/S

Opponent/ : Sri. Hanamanth and Another.
Plaintiffs

i.	Provision under which the application is filed	U/o 7 Rule 11 (a), (b) and (d) R/w Sec.151 of CPC
ii.	Relief sought for	Rejection of Plaintiff
iii.	The date on which the application is filed	12-07-2022
iv.	Number of the application	IA No.2
v.	The date of which the objections are filed by different opponents	12-12-2022
vi.	The date on which the orders were passed on the said application	04-11-2023

ORDER ON IA NO.2 FILED BY DEFENDANT No.5, 9 AND 10 UNDER ORDER 7 RULE 11(a), (b) and (d) R/w Sec.151 of CPC.

1. The defendants No.5, 9 and 10 have filed this application seeking rejection of plaintiff since it is barred by law, relief claimed is not properly valued and plaintiff doesn't disclose cause of action.

2. The defendant No.10 sworn to the affidavit annexed with the application and stated that plaintiffs have not approached the court with clean hands and suppressed aspects about earlier suit filed by them seeking the relief of partition in the year 1985, soon after they attaining majority. The mother of plaintiff being the representative of family and one of her son

represented the family and filed the said suit therefore earlier judgment and decree also binding on her share. Therefore, there is no cause of action for the plaintiff to file the present suit. The suit is also under valued since plaintiff is out of possession since 1981. Even suit is also barred by law. Therefore, defendants prayed to reject the plaint.

3. The plaintiffs filed objection to the said application contending that application is not maintainable in the eyes of laws or on facts. The plaintiffs further contended that law is settled that in order to decide application seeking rejection of plaint only plaint averments needs to be considered and not the defense set up by the defendants. The plaintiffs counsel further contended that right of partition in the earlier suit has not been decided in the said earlier suit or earlier proceedings by any competent court of law thus question of application of principle of res-judicata or suit is barred by limitation doesn't arise. Even law is settled that plaint cannot be rejected in part or partially. Therefore, plaintiffs prayed to reject the application.

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

POINTS

1. Whether the IA No.2 filed by the defendant No.5, 9 and 10 U/o 7 Rule 11(a), (b) and (d) R/w Sec. 151 of CPC is deserves to be allowed and whether the plaint can be rejected?
2. What Order ?

5. The defendants counsel filed memo and list of documents of compromise decree passed in OS No.201/1985, certified copy of order sheet, pleadings, judgment and decree passed in OS No.536/1985 and argued that plaint is liable to be rejected in view of the provisions of order 7 Rule 11 of C.P.C since plaint doesn't disclose cause of action or when suit is barred by law or when plaint is not properly valued. It is his argument that there was partition in the year 1985 itself and even a suit bearing OS No.201/1985 and OS No.536/1985 was filed but plaintiff suppressed said aspect. Therefore, plaintiff doesn't have any right nor plaint discloses cause of action. Even it is his argument that since the matter in between the parties is already adjudicated in the earlier suit bearing OS No.201/1985 and OS No.536/1985 as such instant suit is barred by principles of res-judicata. Further it is his argument that as per the pleadings of earlier suits plaintiffs were not in possession as such present suit is undervalued. Therefore, he prayed to reject the plaint. On urging all these grounds, counsel for defendants prayed to reject the plaint.

6. Per-contra learned counsel for plaintiffs vehemently argued that plaintiffs have specifically pleaded in the plaint para No.9 regarding cause of action and further plaintiffs have specifically mentioned their relationship with the defendants and ancestors and also mentioned about their legitimate right of share in the suit properties. It is his argument that cause of action is bundle of facts and contentions or averments made in the written statement cannot be looked into while dealing with the

applications filed U/o.7 Rule 11 of C.P.C. He further argued that plaint cannot be rejected on the defence taken by the defendants in the written statement on the ground of non-disclosure of cause of action by the plaintiffs. Further the plaint discloses the cause of action. The suit is not barred by principles of res-judicata. Therefore, application filed by the defendants is deserves to be dismissed.

7. On considering IA, Affidavit and objection to IA and in the light of arguments advanced 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

8. **Point No. 1** : Admittedly, this suit is filed by plaintiffs for the relief of partition and separate possession in respect of the suit schedule properties against the defendants. The present application is filed for rejection of plaint under Order 7 Rule 11 of C.P.C. The provisions of Order 7 Rule 11 of C.P.C. have 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, or plaint is undervalued or not, 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 only the plaint averments. In order to reject the plaint, 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 or undervalued. 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 or undervalued 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.

9. Before advertent 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 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.

10. 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 plaintiffs being required to furnish correct valuation within time and where the relief claim 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 specifically pressed into service the provisions of Order 7 Rule 11 (a), (b) and (d) of C.P.C. contending that suit doesn't disclose cause of action, plaint is undervalued and barred by law i.e. res-judicata. However, on careful perusal of the averments of the affidavit annexed to the application it reveals that defendants is seeking the rejection of plaint on the ground that the dispute between the parties was already adjudicated in OS No.201/1985 and OS No.536/1985 and the issue, parties and subject matter of the suit are one and the same, as such the present suit is not maintainable in view of section 11 of CPC i.e. res-judicata.

11. In the present case plaintiff averments disclose that the plaintiffs have filed this suit seeking the relief partition and separate possession in the suit schedule properties. The plaintiffs and defendants claim to be the cousin brothers and sisters. The suit properties are claimed to be joint family properties and plaintiffs and defendants constitute a joint family and have legitimate right in the suit schedule properties. The defendants No.1, 5, 9 and 10 alienated some of the properties in favour of defendant No.11 and 12 and have also refused to effect partition and to give share to the plaintiffs. The defendants are trying to alienate the suit property. Therefore, plaintiffs are constrained to file the present suit. This is all stated to be the cause of action for the plaintiff to file the present suit.

12. 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 hold 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.

13. 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 C.P.C. pleased to hold 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 plaintiff is barred by any law or doesn't disclose cause of action then court has to reject the plaint.

14. It is the contention of the defendants that the suit is barred by provisions of Section 11 of CPC i.e. principles of resjudicata. Since the matter in dispute between the parties was directly and substantially in issue in OS No.201/1985 and OS No.536/1985. Therefore, suit has to be dismissed. Therefore, defendants counsel produced judgment and decree passed in O.S No.536/1985 and also produced the copy of plaint of O.S. No.536/1985 and also produced compromise decree passed in OS No.201/1985. It is necessary to mention here that in view of the principles laid down in the aforementioned decisions court cannot go through the documents produced by the either side, since while dealing with the application filed U/o 7 rule 11 of CPC the court is only required to go through the plaint averments only and even the court cannot travel into the pleadings of the defendants. The plaint averments are germane for considering as to whether the plaint averments barred by any law or does not disclose cause of action. Therefore, the court cannot consider the documents produced by the either side at this stage of the proceeding while considering the present kind of application.

15. It is well settled that the defense taken by the defendants in their written statement resisting the claim of plaintiff cannot be taken into consideration while examining the merits of the application seeking rejection of the plaint U/o.7 rule 11 of C.P.C. At this stage, the Court is only required to restrict itself to examine the plaint as whole and on premise that what has been stated in the plaint is correct. It is necessary to mention here that on perusal of the entire plaint averments nowhere the aspect regarding OS.No.201/1985 and OS No.536/1985 have been mentioned. Therefore, plaint averments does not discloses that the matter in issue was directly and substantially in issue in earlier suits. Moreover, it is necessary to refer a decision in the case of **Shri Sayyed Amana ulla and another vs. Smt. Mehataja @ Faizunissa and others, RFA No.1384/2018 disposal date 10.02.2016** wherein the Hon'ble High court pleased to observe that, the court upon considering the defense advanced regarding resjudicata is bound to frame an issue and ought to provide opportunity to prove or disprove the issues to the parties without following procedure contemplated under the CPC rejection of plaint on the ground of resjudicata is against the well settled legal position.

16. In another decision in between **Kasappa Vs. Ajit and another RFS 200017/2015 dated 7.12.2018 (kalaburgi Bench)** the Hon'ble High court while dealing with a issue regarding resjudicata pleased to held that, the said aspect of resjudicata is mixed question of law and facts and said question cannot be determined as preliminary issue. The principles of

resjudicata is mixed question of law and facts and it would required not only examination of the plaint averments but also evidence that may be tendered.

17. In another decision in between **Tulusu Jattugoud and others Vs. Nagaraj amd others WP No.66643/2019 (GM-CPC disposal dated 27.09.2013)** the Hon'ble High Court of Karnataka, Dharawad Bench once again reiterated that res-judicata is mixed question of facts and law and same should be proved by adducing and producing the copies of pleadings and issues framed in the earlier suit, by the party, which has raised the plea. Therefore, in this sense, at this stage, it can be said that the contention of the defendants cannot be considered at this interlocutory stage and have to addressed after full-fledged trial.

18. Since while dealing with the applications of this nature, 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 entire averments of the plaint and plaint has 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 or plaint is under valued.

19. At this stage 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) ”

20. In the present case, the dispute pertains to the suit schedule property and about the plaintiffs right of share in the suit schedule property. Therefore, the question as to whether the plaintiffs have got any right of share in the suit properties and whether the suit is barred by principles of res-judicata or barred by limiation are the questions to be adjudicated which requires full-fledged trial. The Court cannot give its finding regarding all these aspects at this stage of the proceedings. Therefore, contention of the defendants that the present suit is barred by principles of resjudicata is unsustainable at this stage of the proceedings.

21. It is another set of contention of the defendants that the suit of the plaintiff is barred by limitation. In order to reject a plaint on the ground of limitation the Court has to go through the statement of the plaint and if in the plaint it appears that suit of the plaintiff is barred by any law then court has to reject the plaint. Moreover, regarding limitation aspect is concerned, the point of limitation is mixed question of fact and law. At this juncture, it is necessary to refer the decision of 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**. Wherien it was held 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 Hobbble 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-facia in the present case on the reading of the plaint 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 plaint 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 and fact and has to be adjudicated after fledged trial.**”*

22. Therefore, considering all these aspects, I am of the view that contention of the defendants that suit of the plaintiff is barred on account of barred by law of limitation requires consideration and it is question to be adjudicated in the present suit. Therefore, without a full-fledged trial Court cannot come to

a conclusion as to whether the plaintiff can maintain this suit or not which is also a question to be adjudicated it requires full-fledged trial. Therefore, considering all these aspects, I am of the opinion that contention of defendants that suit is barred by limitation and res-judicata is unsustainable at this stage of the proceedings. Further, I have gone through the entire plaint averments and apparently it seems that, plaint averments disclose cause of action. The averment of plaint discloses that plaint is not barred by law as contended by the defendants. Hence, considering all these aspects, I am of the considered view that, application of defendants is liable to be dismissed as devoid of merits. **Hence, I answer Point No.1 in the Negative.**

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

ORDER

IA No.2 filed by defendant No.5, 9 and 10 Under Order 7 Rule 11(a), (b) and (d) R/w Sec.151 of CPC is hereby dismissed as devoid of merits.

No order as to cost.

Call on for Issues by 21-12-2023.

(Dictated to the Stenographer, transcribed and typed by him, corrected and then pronounced by me in the Open Court on this 04th day of November-2023).

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