

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC AT  
SEDAM**

**PRESENT: SRI. SAGAR GURUGOUDA PATIL**

**Senior Civil Judge & JMFC., Sedam**  
B.A., LL.B.

**DATED THIS THE 30<sup>th</sup> DAY OF MAY-2023.**

**ORIGINAL SUIT No.13/2022.**

**PLAINTIFFS:**

**1)** Shreya D/o Late Siddappa Choragasti, Age: 18 months (Minor) through her natural guardian/Next Friend Sangeeta W/o Late Siddappa Choragasti, Age: 21 years, Occ: Household, R/o Kodla, Tq: Sedam, Dist: Kalaburagi.

**2)** Sangeeta W/o Late Siddappa Choragasti, Age: 21 years, Occ: Household, R/o Kodla, Tq: Sedam, Dist: Kalaburagi.

**3)** Bhimavva @ Bhimbai W/o Tippanna Choragasti, Age: 55 years, Occ: Household, R/o Kodla, Tq: Sedam, Dist: Kalaburagi.

(Advocate for plaintiffs by Sri.S.K.D)

**//V E R S U S//**

**DEFENDANTS:**

**1)** Tippanna S/o Kareppa Choragasti, Age: 60 years, Occ: Agriculture, R/o Kodla, Tq: Sedam, Dist: Kalaburagi.

**2)** Mahadevamma W/o Tippanna Choragasti, Age: 50 years, Occ: Household, R/o Kodla, Tq: Sedam, Dist: Kalaburagi.

**3)** Monappa S/o Tippanna Choragasti, Age: 28 years, Occ: Agriculture, R/o Kodla, Tq: Sedam, Dist: Kalaburagi.

**4)** Nagappa S/o Tippanna Choragasti, Age: 26 years, Occ: Agriculture, R/o Kodla, Tq: Sedam, Dist: Kalaburagi.

**5)** Kashamma W/o Mallappa Itagi, Age: 24 years, Occ: Household, R/o Itagi, Tq: Chittapur, Dist: Kalaburagi.

**6)** Gouramma W/o Mallappa, Age: 22 years, Occ: Household, R/o Kodla, Tq: Sedam, Dist: Kalaburagi.

**7)** Shaik Hussain S/o Saifansab Yadrami, Age: 55 years, Occ: Agriculture, R/o Kodla, Tq: Sedam, Dist: Kalaburagi.

**8)** Mahabub S/o Akbar Ali Korba, Age: 48 years, Occ: Agriculture, R/o Kodla, Tq: Sedam, Dist: Kalaburagi.

**9)** Mahinderkar Bajrang Rao S/o Late M.Babu Lal, Age: 70 years, Occ: Agriculture and Business R/o H.No.21-1-249, Opp. High court Charminar Hyderabad.

**10)** M.Krishna Raj S/o Mahinderkar Bajrang Rao, Age: 38 years, Occ: Agriculture and business R/o H.No.21-1-249, Opp. High Court Charminar Hyderabad.

(Advocate for defendant No.1 to 4 by Sri.H.L.A)

(Advocate for defendant No.5 & 6 by Sri.B.T.)

Advocate for defendant No.7 by Sri.B.S.S.)

(Defendant No.8 Absent)

(Advocate of defendant No.9 & 10 by S.B.M.)

**ORDER ON No.10**

Tippanna

Applicant/Deft.1

//Versus//

Shreya and others

Opponents/Pltfs.

**Order on I.A.No-10 U/o 7 Rule 11 of CPC**

The defendant No.1 has filed IA No.10 U/O 7 Rule 11 of CPC and sought to reject the plaint as barred by law.

**2.** The defendant No.1 has sworn to an affidavit in support of IA No.10 and stated that the plaintiffs have filed this suit for the relief of partition and for declaration that the sale deeds are null and void and for maintenance. The suit schedule properties are the self acquired properties of this defendant. Therefore, this suit is barred by law. Hence prays to allow the I.A.No.10.

**3.** The plaintiffs have filed objection to IA No.10 and contended that to decide the IA U/O 7 Rule 11 of CPC only plaint averments has to be considered and written statement averments are the irrelevant. Therefore, this suit is very much maintainable. Hence prays to dismiss the IA.

**4.** On the basis of the above pleadings and on hearing both sides, the following points arise for my consideration.

1) Whether the defendant No.1 has made out grounds to allow I.A.No.10 filed U/o 7 Rule 11 of CPC?

2) What order?

5. My findings on the above points are as under:

Point No:1 : In the Negative.

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

### **REASONS**

6. **Point No.1:-** The plaintiffs have filed this suit for the relief of partition and separate possession, for declaration that the sale deeds dated 15.3.2012, 23.8.2012 and 8.10.2021 are null and void and not binding on the plaintiffs and for maintenance.

7. Before touching the merits of the case it is worth to refer the well settled position of law on the point. Here it is worth to note the decision of the Hon'ble Supreme Court in the case of Bhau Ram V/s Janak Singh and others reported in (2012) 8 SC.101, wherein their Lordships held as under:

8. *“Civil Procedure Code, 1908-Or.7 Rule 11 and Or.9-Rr.8 and 9, Or.23 Rr.1(3) & 1(4)(b)-Rejection of plaint”.*

*Basis for-Only averments in plaint can be looked into while deciding the application for rejection of the plaint- Pleas taken by defendant in written statement not relevant.*

**9.** In the instant case on perusal of the plaint averments it is found that the plaintiffs have alleged that the defendant No.1 is grandfather of plaintiff No.1, father-in-law of plaintiff No.2 and husband of plaintiff No.3. One Siddappa who is the husband of plaintiff No.2 is son of plaintiff No.3 and defendant No.1. and he died on 2.9.2020 leaving behind him the plaintiffs. The suit schedule properties are the ancestral properties of the plaintiffs and defendant No.1. The plaintiffs are having share in the suit properties. Based on these allegations the plaintiffs have sought for partition and separate possession and maintenance.

**10.** On the other hand the defendant No.1 in his written statement has denied the plaint averments and contended that the suit schedule properties are his self acquired properties having acquired the same through his maternal grand mother.

**11.** Now in view of the above decision of the Hon'ble Supreme Court this court while deciding IA U/O 7 Rule 11 of CPC has to consider only the plaint averments and not written statement averments. The averments of the plaint if proved by the plaintiffs entitle them for the reliefs prayed in the suit. Therefore it cannot

be said that the suit is barred by law or there is no cause of action for the suit.

**12.** As far as contention of the defendant No.1 is concerned, he has to prove his defence i.e., the suit schedule properties are his self acquired properties during the trial. Now only based on the pleadings this court cannot conclude about the nature of the suit properties.

**13.** Assuming that the suit properties are self acquired properties of the defendant No.1, in such a case the plaintiffs cannot maintain the suit for partition but they can very well maintain the suit for maintenance even against his self acquired properties and this court cannot partly reject the plaint.

**14.** Apart from this the defendant No.1 has failed to state under which law the suit is barred. Therefore it has to be concluded that this suit is not barred by any law in force. I answer **point No.1 in the Negative.**

**15. Point No.2:-** As I have answered point No.1 in the Negative, hence I proceed to pass the following:

**ORDER**

I.A.No.10 U/O VII Rule 11 of CPC  
filed by the defendant No.1 is hereby  
rejected with cost of Rs.500/-.

(Dictated to the Stenographer directly on computer, corrected,  
singed and then pronounced by me, in the open Court on this  
the **30<sup>th</sup> day of May-2023**)

**(Sagar Gurugouda Patil)**  
**Senior Civil Judge & JMFC,**  
**Sedam.**