

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC SEDAM

PRESENT: SRI. SAGAR GURUGOUDA PATIL

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

DATED THIS THE 3rd DAY OF SEPTEMBER-2024.

O.S.No. 50/2024

Plaintiffs : Champabai and another

// Versus //

Defendants : Pandu & others.

PARTIES TO I.A.NO.2

Applicants : Khem Singh (Deft.3)

(By Sri.S.B.H.Advocate)

//Versus//

Opponents : Champabai and another(Pltfs)

(Plaintiffs by H.S.C. Adv.)

i.	Provision under which the application is filed	U/O 7 Rule 11(1)(a) and (d) of CPC
ii	Relief sought for	Suit for partition and separate possession
iii	The date on which the application is filed	12-06-2024
iv	Number of application	One
v	The date on which the objections are filed by different opponents	08-08-2024
vi	The date on which the orders were passed on the said application	03-09-2024

Order on I.A.No-2 Under Order 7 Rule 11(1)(a & d) of CPC

The defendant No.3 has filed this application U/O 7 Rule 11(1) (a & d) of CPC and sought to reject the plaint for want of cause of action and improper valuation of the suit and for payment of insufficient court fees.

2. The defendant No.3 has sworn to an affidavit in support of IA and stated that the plaint averments does not disclose the right to sue of the plaintiffs. There is no document to show that the suit property is ancestral property of the plaintiff and defendants 1 to 4. The documents show that one deceased Bikku Singh was the owner of the land measuring 18 acres 19 guntas in Sy.No.651. Out of it 17 acres 08 guntas was acquired by defendant No.6 in the year 1982 and compensation was paid to the said Bikku Singh. But the plaintiffs have filed this suit including the property acquired by the defendant No.6 also. The plaintiffs have no right to sue and cause of action to file the suit.

3. The father of plaintiffs and defendants 1 to 4 viz Bikku Singh died on 5.4.1987. The present suit is filed after lapse of 34 years from the death of father of the plaintiffs and defendants 1 to 4. Therefore, the suit is barred by the law of limitation. The plaintiffs married long back and residing in their respective husbands houses. They are not in possession of the suit property. Hence, prays to reject the plaint.

4. The plaintiffs have filed objections to IA and contended that the plaintiffs have right to sue and there is cause action to file the suit. The land measuring 18 acres 19 guntas in Sy.No.651 was belonged to father of the plaintiffs and defendants 1 to 4. Therefore, the suit property is ancestral property. The plaintiffs are having share in the

suit property. They have denied the allegations made by the defendant No.3 in the affidavit filed in support of IA. Hence, prays to dismiss the IA.

5. Perused the records. Heard arguments.

6. On the basis of the above pleadings and on hearing both side, the following points arise for my consideration are:

- 1) Whether the defendant No.3 has made out grounds to reject the plaint?
- 2) What order?

7. 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

8. **POINT No.1:** 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:

"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. The term cause of action means bundle of facts and if the plaintiffs prove the same entitled him for the relief claimed by him. In this case the plaintiffs have pleaded that the plaintiffs and defendants

1 to 4 are children of one Bikku Singh. The said Bikku Singh was the owner of the land measuring 18 acres 19 guntas in Sy.No.651 and out of it 17 acres 18 guntas was acquired by the Special Deputy Commissioner, Kalaburagi during the year 1982-83 and the said Bikku Singh received the compensation amount. After the acquisition the land measuring 1 acre 11 guntas is remained with the family of the plaintiffs and defendants 1 to 4. After the death of Bikku Singh the defendants 1 to 4 got mutated the remaining land measuring 1 acre 11 guntas in their names. The plaintiffs are having share in the said property. They have claimed the share in property measuring 17 acres 18 guntas in Sy.No.651 and in the alternative in the remaining land measuring 1 acre 11 guntas. On perusal of the above pleadings it becomes clear that if the plaintiffs able to prove the above pleadings they will entitled for the relief of partition and separate possession. Therefore, it cannot be said that there is no cause of action to file the suit.

10. The defendant No.3 has stated that the plaintiffs married long back and their father died on 5.4.1987. The present suit is filed after lapse of 34 years after the death of their father. Further since the date of married the plaintiffs are not in possession of the suit property. Therefore, the suit is barred by the law of limitation. It is pertinent to note that the cause of action to file the suit for partition and separate possession arise when one co-sharer demanded to effect partition and other co-sharers refused to effect partition and not on the date of death of their father. Therefore, in this case as per the plaintiff averments the cause of action arose when the plaintiffs got issued legal notice through their advocate on 2.1.2024 to the defendants 1 to 4. Moreover, the issue of limitation mixed question of law and facts. Therefore, same has to be decided only after the trial and not at this stage.

11. The defendant No.3 has further stated that since the date of their marriage the plaintiffs have not been in possession of the suit properties. Under the Hindu Law it is well settled that possession of one co-sharer is deemed as possession of all the co-sharers. The burden to prove the ouster is on the defendants. It is well settled principle of law that while deciding IA U/O 7 Rule 11 of CPC only plaintiff averments has to be seen. Therefore, in this case on perusal of plaintiff averments it is seen that the plaintiffs are in deemed possession of the suit property.

12. By considering the rival contentions of both the parties and the position of law it becomes clear that there is cause of action to file the suit and the issue of limitation has to be decided only after the trial. Therefore, it is clear that the defendant No.3 has failed to make out any ground to reject the plaint. Hence, I answer point No.1 in the Negative.

13. POINT No.2: For the foregoing reasons, the following:

ORDER

The application filed by the defendant No.3 U/O 7 Rule 11(1)(a & d) of CPC is hereby dismissed.

(SAGAR GURUGOUDA PATIL)
Senior Civil Judge & JMFC, Sedam.

(Dictated to the Stenographer directly and typed by him on computer and corrected, signed and then pronounced by me, in the open Court on this the **3rd day of September-2024**, at Sedam)

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

3.09.2024.
Plaintiff by HSC Adv.
Defts.1 to 4 by SBH Adv.
D.5 & 8 by SBH Adv.
D.6 & 7 absent
For orders.

(Order pronounced in the open court vide separate order)

ORDER

The application filed by the defendant No.3 U/O 7 Rule 11(a)(a & d) of CPC is hereby dismissed.

For W/s of defendants finally call on 26.9.2024.

Senior Civil Judge, Sedam