

KAKL510001222021



**IN THE COURT OF PRL. CIVIL JUDGE & ADDL. JMFC,
AT K.G.F.**

PRESENT: SRI.VINOD KUMAR.M BAL,.LLB,LLM.,
PRL. CIVIL JUDGE & ADDL. JMFC
AT K.G.F.

O.S. No.44/2021

DATED THIS THE 22nd DAY OF JUNE - 2024

BETWEEN :

Sri. Nova,
S/o late A.Samuel,
Aged about 42 years,
R/at: New Town,
Bethamangala,
K.G.F. Taluk.

.... Applicant/Defendant No.4
(By **Sri. K.S.R,** Adv.,)

V/s

Smt. Naheeda Anjum,
D/o Hameed Khan,
W/o D.Khadhar Khan,
Aged about 38 years,
R/at: #10/61,
Narayanaswamy Street,
Kuppam, Chittoor District,
Andhra Pradesh.

... Opponent/Plaintiff
(By **Sri. N.S.,** Adv.,)

i.	<i>Provision under which the application is filed</i>	U/o VII Rule 11(d) of CPC
ii.	<i>Relief sought for</i>	Rejection of Complaint
iii.	<i>The date on which the application is filed</i>	09-12-2022
iv.	<i>Number of the application</i>	IA No.VIII
v.	<i>The date on which the objections are filed by different opponents</i>	09-01-2023
vi.	<i>The date on which the orders were passed on the said application</i>	22-06-2024

Orders on I.A.No.VIII U/o VII Rule 11(d) of CPC

At the stage of to hear on IA No.I & II, the Applicant/Defendant No.4 filed I.A.No.VIII U/o VII Rule 11(d) of CPC to reject the plaint as barred by law U/Sec.9 of CPC, in the interest of justice and equity.

2. In the accompanied affidavit of Defendant No.4 contended that, the plaintiff filed suit for Declaration & Injunction against defendants in OS No.83/2012 and the said suit came to be dismissed. The suit is barred by law U/Sec.9 of CPC. He has a made out prima-facie case & balance of convenience lies in their favour. If the application will be not allowed, he will put great hardship and loss. On these ground, the he prays to reject the plaint by allow the application.

3. Per contra, the Plaintiff filed objections by denied the averments of the affidavit in support of application inter-alia contending that, the application filed by the Defendant No.4 is

not maintainable either in law or on facts. It is further that, there is no reason to file this application and filed this application only to drag on the proceedings. There is no sufficient cause & genuine reason to filed this application. If the application is allowed, he would be great hardship & no injury to others. On these ground, he prays to dismissal the application.

4. Heard the arguments by learned counsel for Defendant No.4 and that of learned counsel for Plaintiff. Perused the documents available on record.

5. The points that arise for my consideration is that,

1. Whether the Defendant No.4 has made out sufficient ground to reject the plaint U/o VII Rule 11(d) of CPC?

2. What Order?

6. My findings to the above points are:-

Point No.1 : **In the Negative**

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

REASONS

7. **Point No.1:** The Plaintiff has filed a suit against Defendants for the relief of Permanent Injunction in respect of suit property. It is not in dispute that, the present application filed at the stage of here on IA No.I & II to reject the plaint on the grounds made in the affidavit to support of application.

8. It is specific contention of Defendant No.4 that, the suit is barred by law U/Sec.9 of CPC in view of suit filed by the plaintiff in OS No.83/2012 for the relief of Declaration & Injunction was dismissed. On other hand, the suit for Permanent Injunction in respect of suit property is not at all attracted to present suit in any manner.

9. Before discussing the merits of the application, it is just and necessary to go through the provision of **“Order 7 Rule 11 (d)”** reads as follows:

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

10. Mere perusal of the entire averments made in the plaint, written statement and document produced by both parties. The Defendant No.4 has raised contention regarding suit is barred by law U/Sec.9 of CPC. Admittedly, the present suit for Permanent Injunction against defendants in respect of suit property. In the prayer of plaint clearly reveals that, schedule property is immovable property and necessary to decide the physical possession as well as interference by defendants in any manner. From reading of plaint nothing found any averments to show the barred by law and suit comes before elsewhere other than this court/civil court. Admittedly, both parties have claiming suit property as contended suit property belongs to their properties.

11. The learned counsel for defendant No.4 argued that, the suit is barred by law U/Sec.9 of CPC and suit filed by the plaintiff in OS No.83/2012 for the relief of Declaration of Title &

Permanent Injunction in respect of suit property against defendants was dismissed. In support of argument, the counsel for defendant No.4 has produced Judgement in OS No.83/2012 passed by this court and suit filed by plaintiff against defendants/Samuel. But, the present suit filed only for Injunction against defendants No.1 to 3 along with Lrs of Samuel as defendant No.4. Such being, there is no bar to file Injunction suit in once again after dismissal the suit for Declaration of Title & Permanent Injunction. If it is defendants are in possession of suit property, it can be decide on merits at the time of passing Judgement, but not at this stage. The contention of defendant No.4 is not acceptable in suit for bare injunction. The present application U/o VII Rule 11(d) of CPC filed by defendant No.4 without applicable of any said provisions. In this regard, I am relying ratio laid down in ***Biswanath Banik and another V/s Sulanga Bose and others***, reported in AIR 2022 SC 1519, wherein Hon'ble Apex Court held that:

7.1 From the aforesaid decision and even otherwise as held by this Court in a catena of decisions, while considering an application under Order VII Rule 11 CPC, the Court has to go through the entire plaint averments and cannot reject the plaint by reading only few lines/passages and ignoring the other relevant parts of the plaint.

12. Admittedly, suit filed by Plaintiffs for the relief of Permanent Injunction against Defendants. It is settled law that, suit for Permanent Injunction is lies on the plaintiffs to prove the physical possession & interference by defendants over suit

property. By close reading of plaint discloses that, the Plaintiffs sought for injunction against defendants from interfering with suit property needs to be trial by both side. On these ground, the question of suit is barred by law as contended by Defendant No.4 does not arise. On these ground, the ratio laid down in **Biswanath Banik** case is clearly applicable to present case in my hand.

13. In the instant case, nothing about barred by law in the plaint after read the plaint. On the above ground, the question of rejection of plaint U/o VII Rule 11(d) of CPC does not arise. If any contention of both parties regarding claiming the property in possession or not would be consider in full-fledged trial. It is of consider opinion of the court, the Defendant No.4 has not made out prima-facie case to grant relief of reject the plaint. Accordingly, I have answered to **Point No.1** in the **Negative**.

14. Point No.2: In view of any afore said findings proceed to pass the following:

ORDER

I.A.No.VIII U/o VII Rule 11(d) of CPC filed by Defendant No.4 is hereby dismissed.

No order as to cost.

(Dictated to the stenographer directly on computer and typed by him, corrected, signed by me & then pronounced in the open Court on this the **22nd day of June – 2024**)

Sd/-

(VINOD KUMAR M.)

PRL. CIVIL JUDGE & ADDL. JMFC.,
K.G.F.