

KAMS200003242024



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND  
JMFC, H.D.KOTE**

**Dated This 19<sup>th</sup> day of DECEMBER 2025**

**PRESENT:**

**Sri. Mahesh B.T.,  
B.Com., LL.M.,  
Senior Civil Judge and JMFC,  
H.D.Kote**

**OS.No.90/2024**

**Plaintiffs :- Smt.Rajalakshmi**

**V/s**

**Defendants :- Smt.Padmini & Others**

**\* \* \***

**I.A.III**

**Applicant :- V.Sathyavelu**  
- - (Defendant No.5)

**V/s**

**Opponents :- Smt.Rajalakshmi**  
- - (Plaintiff)

**\* \* \* \***

**ORDER ON I.A No.III FILED U/O VII RULE 11 (a) & (d) R/w Sec.151 of IPC.,**

The applicant/defendant No.5 has filed the application to reject the plaint on the ground that there is no cause of action arose for the suit and the suit is barred by law of limitation by allowing this application in the interest of justice and equity.

2. As per the affidavit of the applicant that, it is stated that, the plaintiff has filed the above suit for partition and separate possession against them in respect of the suit schedule properties and stated that, the Vellengiri Chettiyar and Ponnutayi are the father and mother of the defendant No.5 and they had 4 children by name 1. V.Muttuvelu, died long back living behind the M.Padmini, M.Murali and M.Naveena. (Defendant No.1 to 3 herein) 2. Dhamodara (4th defendant herein), 3. Rajalakshmi. (Plaintiff herein) 4. Satyavelu. ( defendant No.5 herein) The suit schedule property was purchased during life time of Mallanna Chettiyar in the name of Vellangiri Chettiyar in the year 1957 total measuring 20 acres out of which 10 acres 12 guntas was registered the sale deed in the name of father of the defendant No.5 by the name of Vellangiri Chettiyar thereafter father of

the defendant No.5 change the khata and other revenue records in his name.

3. Further it is contended that, in the year 1972 father of the defendant No.5 that is Velengiri Chettiyar was died due to the natural act thunderbolt leaving behind his wife and children's and at the time plaintiff was aged about 9 years, thereafter all the responsibility took the Male children and developed property and defendant No.5 solemnized the marriage in grand scale with one Jaganatha in the year 1989. As per the demand made by the groom there after she residing with her respective husband house as mentioned in the cause title address and only defendant No.5 fulfill all function his owe cost has maternal uncle but at the time defendant No.4 shifted the his family Tamilnadu as well as elder brother Muttuvelu also without any alternative plaintiff visited and approached in defendant No.5 residence as parental house.

4. Further it is contended that, the father of the defendant Nos.1 to 3 and defendant Nos.4 and 5 are divided the suit schedule property in the year 1977-1978 in the presence and oral consent of plaintiff. Thereafter, the defendant No.5 and other co-brothers

changed the khata and other revenue records in their names and enjoying their respective shares without any obstruction till now therefore the suit schedule property is joint possession property of plaintiff and defendants. The defendant No.5 got his share in Sy.No.1 measuring 3 acres 17 guntas there after enjoying as an absolute owner and possession of the same. In the life time defendant No.5 void the refuter complication between daughters he executed the registered released deed on dated 21.06.2024 in favour of his daughters by name 1.Pavitra 2.Malleswari 3. Nithya. As per the registered instrument the properties was divided and change the joint khata in their name and they are enjoying as a absolute owner and possession of the same, in all vent in vine within the knowledge of plaintiff.

5. Further it is contended that, the plaintiff got married with one Jaganatha, and defendant No.4 got married with one Velvili who is non-other than sister of Jaganatha i.e., husband of plaintiff and daughter of plaintiff by Name Meena got married with defendant No.3. In this regard all together jointly colluded with each other filed the suit against the defendant No.5 is not maintainable. The plaintiff and defendant No.1 to 4 colluded with each other come up with this suit for

only with an intention to harassed the defendant No.5 and knock of the suit schedule property is not maintainable and plaintiff is not approach with clean hands before this court and plaintiff is not have any right to file suit for partition, but the plaintiff and defendant No.1 to 4 collude with each other to extract the money from the defendant No.5 without having any cause of action filed the above said suit is not maintainable and also the suit suffering from law of limitation. If the application is not allowed he would be put to great hardship and injustice, and on the other hand no injury and hardship caused to the other side, if the application is allowed. Hence the suit filed by the plaintiff same has to be reject. Therefore, they have prayed for reject the above application.

6. The plaintiff has filed objections to the said application and contended that, the application filed by the defendant is not maintainable either under law or on facts of the case. The applicant filed the above said application rejection of plaint on the ground that, there is no cause of action arose for the suit and the suit is barred by law of limitation. In the entire averments made in the affidavit sworn by the defendant No.5 in support of the application as not discloses anything regarding limitation and cause of

action. The defendant No.5 sworn the false affidavit. The plaintiff in her plaint page No.5, para No.16 clearly projected the cause of action for the suit arose on 16.06.2024 and subsequently on every day within the jurisdiction of this court. Further the defendant No.5 in his application seeking the rejection of the plaint on the ground that, the suit is barred by the law of limitation. But in entire affidavit filed in support of the application as nothing to demonstrate regarding law of limitation and how the suit is barred by law of limitation. The defendant No.5 reiterated the averments made in the written statement once again. The contention of the defendant No.5 whether the suit is barred by law of limitation are not has to be decided after the full trial. But not at this stage. Therefore, she has prayed for rejection the above application with exemplary costs.

7. Heard the Counsel for defendant No.5 and the plaintiff.

8. The following points arise for my determination:

- (1) *Whether the plaint averment reveal that the plaint has to be rejected ?*
- (2) *What order ?*

11. 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**

**12. Point No.1 :** The plaintiff has filed the above suit for partition and separate possession against defendants in respect of the suit schedule properties. It is stated that, the Vellengiri Chettiyar and Ponnutayi are the father and mother of the defendant No.5 and they had 4 children by name 1. V.Muttuvelu is a died long back living behind the M.Padmini, M.Murali and M.Naveena. (Defendant No.1 to 3 herein) 2. Dhamodara (4th defendant herein), 3. Rajalakshmi. (Plaintiff herein) 4. Satyavelu. (defendant No.5 herein) The suit schedule property was purchased during life time of Mallanna Chettiyar in the name of Vellangiri Chettiyar in the year 1957 total measuring 20 acres out of which 10 acres 12 guntas was registered the sale deed in the name of father of the defendant No.5 by the name of Vellangiri Chettiyar thereafter father of the defendant No.5 change the khata and other revenue records in his name. Therafter, they have partitioned the suit schedule properties. The plaintiff

got married with one Jaganatha, and defendant No.4 got married with one Velvili who is non-other than sister of Jaganatha i.e., husband of plaintiff and daughter of plaintiff by Name Meena got married with defendant No.3. In this regard all together jointly colluded with each other filed the suit against the defendant No.5 is not maintainable. The plaintiff and defendant No.1 to 4 colluded with each other come up with this suit for only with an intention to harassed the defendant No.5 and knock of the suit schedule property is not maintainable and plaintiff is not approach with clean hands before this court and plaintiff is not have any right to file suit for partition, but the plaintiff and defendant No.1 to 4 collude with each other to extract the money from the defendant No.5 without having any cause of action filed the above said suit is not maintainable and also the suit suffering from law of limitation.

13. So far as rejection of plaint is concerned, it is dealt under Order 7 Rule 11 of CPC. Order 7 Rule 11 of CPC is reproduced for better understanding.

*“11.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 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 comply with the provisions of Rule 9*

14. In the above said provision it states that, if the plaint does not disclose a cause of action and if it appears that the statement in the plaint is barred by any law and for that matter barred by limitation then, the plaint has to be rejected.

15. This Court would rely on the decision of Apex Court in **(2004) 9 SCC 512 (DB) in Liverpool &**

**London S.P. & I Association Ltd., -V/s- M.V.Sea  
Success I and another.**

*On perusal of the said citation the Hon'ble Apex Court has held that:*

*“Cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. The material facts required to be stated but, not the evidence. Whether a claim discloses a cause of action or not is essentially a question of fact. Whether it does or does not disclose cause of action must be found out from reading the plaint itself. The plaint averment has to be read in entirety. It is further held that, in ascertaining whether the plaint shows a cause of action, the Court is not required to make an elaborate enquiry into doubtful complications question of law or fact. So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge mere fact that, the case is weak and not likely to succeed is no ground for striking it out. It has further held that, if the averments made in the plaint or documents relied upon disclose a cause of action then, **the plaint should not be rejected merely on the***

**ground that the averments are not sufficient to prove the facts stated therein.”**

16. Here this Court would also like to refer to decision of **Hon’ble Karnataka High Court in ILR 2016 KAR 2429 in Smt.N.Triveni –V/s- G.T.Shankar.**

In the said case it has been held that,

*“while considering the application under Order 7 Rule 11 of CPC, the Court has to examine the averments in the plaint and the pleas taken by the defendant in the written statement are irrelevant. Further, it has held that, it is the averments made in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercising the power under Order 7 Rule 11 of CPC, the case of the defendant stated in the written statement or in the application filed for rejection of the plaint is immaterial. It is only if the averments in the plaint ex-facie do not disclose a cause of action or the suit appears to be barred under any law, the plaint can be rejected. Otherwise, the case of the parties has to be adjudicated by conducting the trial.”*

17. In the above said citation it has been held that, so far as cause of action is concerned, only if from the bare reading of the plaint if it does not disclose the cause of action for filing the suit then, the plaint has to be rejected. On the other hand, if the limitation is a mixed question of law and fact then, it cannot be rejected under Order 7 Rule 11 of CPC. Further held, while considering application under Order 7 Rule 11 of CPC., only the plaint averment has to be looked into and not the defence taken by the defendant in the written statement. Further, it has been held that, cause of action is a bundle of facts which gives right to a party to file a suit. On reading entire plaint, if there is a triable case even if it is a weak case then, it is said that, there is a cause of action to proceed with the suit.

18. By keeping the above principles in mind to the present case on hand, in the present case, it has to be looked into whether the plaint discloses, cause of action to file the suit.

19. Here this Court would also like to refer to decision rendered by Hon'ble Apex Court reported in 2019 (7) SCC 158 between Mahadevprasad Agarwal

and another vs. Axis Bank Limited and another, the plaint can not be rejected in part. In this decision their lordship is held in para No.10 to 14 the same is reproduced as under:

“10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) of CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power Order 7 Rule 11 (d) of CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in the case of Sejal Glass Limited (supra) is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) of CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the director's defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against defendant No.1 company alone. The question considered by this Court

was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) of CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 5 OS No.204/2021 11(d) of CPC will have no application at all, and the suit as a whole must then proceed to trial”.

“11. In view of this settled legal position we may now turn to the nature of reliefs claimed by respondent No.1 in the notice of motion considered by the Single Judge in the first instance and then the Division Bench of the High Court of Bombay. The principal or singular substantive relief is to reject the plaint only qua the applicant/respondent No.1 herein. No more and no less”.

“12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) of CPC on account of non compliance of mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 of CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part. In that sense, the relief claimed by respondent No.1 in the notice of motion(s) which commended to the High Court, is clearly a jurisdictional error. The fact that one or some of the reliefs claimed against respondent No.1 in the concerned suit is barred by Section 34 of 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 of CPC at the appropriate stage. That can be considered by the Court on its own merits and in accordance with law. Although, the High Court has examined those matters in the impugned judgment the same, in our opinion, should stand effaced and we order accordingly”.

“13. Resultantly, we do not wish to dilate on the argument of the appellant(s) about the inapplicability of the judgments taken into account by the Division

Bench of the High Court or for that matter the correctness of the dictum in the concerned judgment on the principle underlying the exposition in Nahar Industrial Enterprises Limited Vs. Hong Kong and Shanghai Banking Corporation 7 to the effect that the DRT and also the appellate authority cannot pass a decree nor it is open to it to enter upon determination in respect of matters beyond the scope of power or jurisdiction endowed in terms of Section 17 of the 2002 Act. We leave all questions open to be decided afresh on its own merits in accordance with law”.

“14. A fortiori, these appeals must succeed on the sole ground that the principal relief claimed in the notice of motion filed by respondent No.1 to reject the plaint only qua the said respondent and which commended to the High Court, is replete with jurisdictional error. Such a relief “cannot be entertained” in exercise of power under Order 7 Rule 11(d) of CPC. That power is limited to rejection of the plaint as a whole or not at all”.

20. On perusal of the plaint averment, it is pleaded that, about the relationship and also stated about the mode of acquisition of the suit schedule property and

how she entitled for the share in the suit schedule property. But, the defendant No.5 herein taken the contention that, already oral partition taken place in the family and they are enjoying their shares as per the oral portion, Now the plaintiff after having all the knowledge joining with the other defendants had filed false suit which is hit by law of limitation.

21. Now, on going through the plaint averment it reveals that, plaintiff has clearly mentioned the cause of action to institute the suit. Further it is to be noted here that, whether plaintiff is aware of the oral portion in the family or not, whether she has right of share in the suit schedule property or not has to be determined in full fledged trial. Now, at this juncture court cannot come to conclusion about the rights of the parties and also whether suit is hit by law of limitation. Hence, based on above said reasoning, **Point No.1 is answered in the Negative.**

**22. Point No.2:** Based on findings in Point No.1, proceed to pass the following:

**ORDER**

I.A No. III filed by defendant  
No.5 under Order 7 Rule 11(a)  
& (d), R/w Section 151 of  
C.P.C. is hereby rejected.

*(Dictated to the Stenographer in part and dictated directly on  
the computer and computerized by her, corrected, signed and  
then pronounced by me in the Open Court on this the 19<sup>th</sup> day of  
December 2025.)*

Sd/-

**(Sri.Mahesh.B.T)**  
**Senior Civil Judge and JMFC,**  
**H.D.Kote**