

**IN THE COURT OF THE CIVIL JUDGE & JMFC**  
**HEGGADADEVANAKOTE**

**PRESENT**

Sri Mohammed Shaiz Chouthai, B.A. LL.B. (Hons.), LL.M.(M.L.)  
Civil Judge & JMFC.,  
Heggadadevanakote

**Dated: 2<sup>nd</sup> day of July 2019**

**O.S.No.89/2015**

Plaintiff/s : A.S.Rajesh S/o.M.S.Somegowda,  
Aged about 34 years, R/o.Agasanahundi  
Village, Kasaba Hobli, H.D.Kote Taluk.  
*(By Sri.G.N.Narayanagowda, Advocate)*

**V/s**

Defendant/s : 1. Chief Secretary,  
Government of Karnataka,  
Vidhana Soudha, Bengaluru.

2. Director,  
Rajeevgandhi Rashtriya Udyanavana,  
Hunsur Division, Hunsur, Mysuru District.

3. Assistant Forest Range Officer,  
Antharasanthe Vanya Jeevi Division,  
Antharasanthe Hobli, H.D.Kote Taluk.

4. Zonal Forest Officer,  
Metikuppe Division, Metikuppe,  
Kasaba Hobli, H.D.Kote Taluk.  
*(By Learned A.G.P.)*

Applicant : Zonal Forest Officer (4<sup>th</sup> Defedant)

V/s

Opponents : A.S.Rajesh (Plaintiff)

**ORDER ON I.A.No.III FILED UNDER ORDER VII**

**RULE 11 OF C.P.C.**

This instant application is filed by the defendant  
U/O.VII Rule 11 of C.P.C., to reject the plaint for want of

cause of action and barred by law.

2. The plaintiff has filed this suit for declaration of ownership and permanent injunction against the defendants. The defendants are Government Office and Officials. The contention of the plaintiff is that, the land Sy.No.6/3, 6/4, 6/5, 6/9 each measuring 4-00 acres situated at Agasanahundi Village, Kasaba Hobli, H.D.Kote Taluk were all granted in favour of one Puttaiah, Dasaiah, Javaraiah and Thammaiah by the Government. The Government had issued Grant Certificate to them. After the expiry of period of limitation to alienate, the above said person sold the said properties in favour of the plaintiff. Since from purchase, the plaintiff is in possession of the suit schedule properties. Thereafter, the above said land survey number were re-numbered as Sy.No.21, 22, 23 and 24 each measuring 4-00 acres. The mutation was certified in their names in the revenue records. The defendants having no right or interest in the suit schedule properties are interfering in the same. The defendants without giving prior notice, tried to trench in the suit schedule properties on the pretext that the said properties are the forest land. Hence, this suit of the plaintiff.

3. The learned A.G.P., has appeared and filed an

application U/O.VII Rule 11 of C.P.C., to reject the plaint on the ground that there is no cause of action arisen to the plaintiff to file this suit and the suit is barred by law. His contention is that, the suit lands comes within the jurisdiction of the forest land, hence this Court has no jurisdiction to entertain the suit. In addition to this, he claims that the defendants are not denied the ownership of the plaintiff over the suit schedule properties.

4. The plaintiff has filed objection to the said application contending that, the suit schedule properties are purchased properties and they are in possession from long time. Their names are being mutated in the revenue records by the concerned authority. Since the lands are granted land by the Government, the defendants can't claim that it is the forest land. Therefore, he prays to dismiss the application.

5. I have heard the learned A.G.P. and the counsel for the plaintiff, perused the records.

6. The points that arise for my consideration are:-

1. Whether the application filed by defendant for rejection of plaint for want of cause of action and barred by law is liable to be allowed?

2. What order?

7. My answer on the above points are as follows:-

- Point No.1 : In the Negative  
Point No.2 : As per final order  
for the following:-

**REASONS**

8. **POINTS NO.1:-** The learned A.G.P. himself has filed affidavit in connection with application under consideration. The Learned A.G.P. has argued that, the suit for declaration only arises when the title is denied. Since the defendant has not denied the title of the plaintiff, the suit doesn't survive. He also argued that, the plaintiff has shown false cause of action. It is the case of the defendant that, they have already trenched the suit schedule property in the year 1992-93 and not of the date shown by the plaintiff in this plaint. He also argued that, the suit for declaration of ownership on forest land is not sustainable under law and the same is barred by law. On these grounds, he prayed to reject the plaint.

9. On the other hand, the learned counsel for the plaintiff has argued that, since the defendant has filed application U/O.VII Rule 11 of C.P.C., the concerned Officer should have filed affidavit. The affidavit of learned A.G.P., in support of application is bad in law and doesn't survive for consideration. The plaintiff argued that, though the defendants have trenched in the year 1992-93, they have

again started trenching in the suit schedule properties. The plaintiff has produced grant certificate and sale deed in the instant suit. As the defendant claim that they have already trenched in the year 1992-93 and there is no question of trenching now, the plaintiff has raised the valid point stating that, there is no reason why the defendant don't file affidavit stating that they are not trenching in the suit land after 1992-93. Now the only thing, which has to be gone into is whether the suit schedule properties are forest land or not. The plaintiff claim that the properties are granted land and their names are being mutated in the revenue records and there is no proof that the plaintiff has encroached upon the forest land. At this juncture, this Court can't go into the validity or otherwise of the grant made by the Government unless the defendants putforth some documents before this Court stating that those grants relied upon by the plaintiff are being set-aside. As stated above, the plaintiff claim that the suit schedule properties are his purchased properties, on the other hand, the defendants state that the properties are belonging to the forest land and hence it is barred by law. When this is so, the Court has to find out the truth as to whether the suit schedule properties are really a forest land or else whether the plaintiff has encroached upon the forest land. This is a grund question, which is to be resolved in this

suit, until then the Court can't come to the conclusion that, the property is a forest land and hence it is barred by law. This question can only be gone into while deciding the merits of the case. Hence, I answer Point No.1 in the **Negative.**

10. **POINT NO.2:-** In view of the above findings and discussions, I proceed to pass the following:-

**ORDER**

The application filed by the defendant U/O.VII Rule 11 of C.P.C., is hereby dismissed.

*(Dictated to the Stenographer directly on computer, typed by him, the same is corrected, revised, signed and then pronounced by me in the open Court, the **2<sup>nd</sup> day of July 2019**).*

**(MD SHAIZ CHOUTHAI)**  
CIVIL JUDGE & JMFC.,  
**H D Kote**