

KAMS300007862023



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
AND J.M.F.C AT HUNSUR**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Addl.Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 10th day of July, 2024.

OS No.127/2023

Plaintiffs:

1. Mohammed Saalar,
S/o Late Mohammed Isaaq,
Aged about 72 years, R/at: Neeha Hotel,
Muslim Block, Hunsur Town.
2. Rahila Banu, D/o Late Mohammed Ameer,
Aged about 28 years, R/at: Bettadapura
Village and Hobli, Periyapatna Taluk.
3. Thanjila Banu, D/o Late Mohammed Ammer,
Aged about 25 years, R/at: Laal band street,
Hunsur Town.
4. Afzal, S/o Late Khaleel Ahammed,
Aged about 40 years,
5. Salma Banu, D/o Late Khaleel Ahammed,
Aged about 38 years,
6. Asma Banu, D/o Late Khaleel Ahammed,
Aged about 36 years,

7. Akmal, S/o Late Khaleel Ahammed,
Aged about 34 years,

All are R/at Leela theatre,
V.P.Bore, Hunsur City.

8. Thanzim Ahammed, S/o Late Iqbal Ahammed,
Aged about 26 years,

9. Nazim Ahammed, S/o Late Iqbal Ahammed,
Aged about 24 years,

10. Sakila Fathima, D/o Late Iqbal Ahammed,
Aged about 23 years,

plaintiff No.8 to 10 are R/at # 1580,
Muslim Block, Hunsur Town.

-Vs-

Defendants:

1. Nasim Unnisa, D/o Late Mohammed Isaaq,
Aged about 65 years,
2. Ajim Unnisa, D/o Late Mohammed Isaaq,
Aged about 52 years,
3. Saleem Unnisa, D/o Late Mohammed Isaaq,
Aged about 51 years,
4. Sameer Ahmed, S/o Late Ameer Jann,
Aged about 28 years,

All R/at # 1580, Muslim Block,
Hunsur Town.

1.	Provision under which the application is filed	:	Under Order 7 Rule 11(d) R/w Section 151 of CPC
2.	Relief sought for	:	Rejection of the plaint
3.	The date on which the application is filed	:	30.01.2024
4.	Number of the application	:	IA No.IV
5.	The date on which the objection is filed by the opponents	:	17.02.2024
6.	The date on which the orders passed on the said application	:	10.07.2024

ORDERS PASSED ON IA NO.IV

The learned counsel for defendants filed the present application under Order 7 Rule 11(d) R/w Section 151 of CPC seeking for rejection of the plaint as barred by law.

2. The application is supported with the affidavit of the 1st defendant wherein she has stated that, the plaintiffs filed the suit against them seeking the relief of partition and separate possession. The suit schedule property is the self-acquired property of one Ajeejunnisa W/o Late Isaaq who purchased the suit schedule property through a registered sale deed dated 10.02.1951 and she enjoyed the possession and ownership of the property. On 31.04.2013 Smt.Ajeejunnisa executed a gift deed infavour of her two unmarried daughters. Since, nobody were there to look after them.

3. It is further stated that, the parties to the suit are governed under Mohammeden Law and the suit schedule property is the absolute property of Ajeejunnisa. The gift deed executed by Ajeejunnisa infavour of her two daughters in order to take care of them. It is very important to observe that, the gift deed has been executed during the life time of Ajeejunnisa and her remaining children and grand children have got no right over the suit schedule property. It is also alleged that, the suit before this court is not at all maintainable since there is no concept of family property in the Muslims and the suit is barred by law. If the application is not allowed the defendants will be put to great hardship, on the other-hand if the application is allowed no hardship is going to be caused to the plaintiffs. Hence, prayed to allow the application.

4. The plaintiffs filed the objection contending that, the application is not maintainable under law or on facts. The application is filed in a belated stage and Ajeejunnisa was also called as Mukmarnisar and without her knowledge and consent when she was aged 75 years the gift deed was fraudulently created by Bibi Aysha who is grand daughter of Ajeejunnisa. It is also contended that, there is no concept of self-acquired and ancestral property under Mohammedan Law. The plaintiffs and the defendants are tenants in common in respect of the suit schedule property. Ajeejunnisa died intestate. Hence, prayed to dismiss the application with costs.

5. Thereafter, heard arguments addressed by the learned counsel for the plaintiffs. The learned counsel for the defendants not addressed the arguments. Thereafter, perused the case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

POINTS

1. Whether the defendants have made out sufficient grounds to reject the plaint as barred by law?
2. What order?
6. The findings on the above points are as hereunder:

Point No.1: In the Negative

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

REASONS

7. **Point No.1:** The plaintiffs have filed the suit against defendants seeking the relief of partition and separate possession of their 2/8th share each in the suit schedule properties. It is the case of the plaintiffs that, one Ajeejunnisa and Mahammed Isaaq are the ancestors of plaintiffs and the defendants. Said couple had totally eight children out of whom five sons and three daughters. The 1st son as well as three daughters are alive and other sons are no more. The plaintiff No.1 is the eldest son of Ajeejunnisa. Plaintiff No.2 and 3 are the daughters of 2nd son of Ajeejunnisa. Plaintiffs No.4 to 7 are

the sons and daughters of 3rd son of Ajeejunnisa. Plaintiffs No.8 to 10 are sons and daughters of last son of Ajeejunnisa. Defendants No.1 to 3 are the daughters of Ajeejunnisa and defendant No.4 is the grand-son of Ajeejunnisa through her 2nd son.

8. It is further stated that, the plaintiffs and the defendants are the tenants in common to the suit schedule property. Ajeejunnisa during her lifetime got executed a registered gift deed infavour of defendants No.1 to 3 dated 30.04.2013 without the knowledge of the plaintiffs. The said gift deed was challenged by Smt.Reshma Banu who is the mother of defendants No.8 to 10. She filed the suit in OS No.218/2013 before learned Civil Judge and JMFC, Hunsur against Smt. Ajeejunnisa and her daughters i.e., defendants No.2 and 3. The said suit came to be decreed on 19.11.2021 and it has not been challenged. The plaintiffs produced the certified copy of judgment passed in OS No.218/2013. As per the judgment the gift deed alleged to have been executed by Ajeejunnisa infavour of her two daughters has been declared as null and void. On the basis of said decree Reshma Banu got entered the name Ajeejunnisa in the khata maintained at City Municipal Council, Hunsur. As such the plaintiffs and the defendants became tenants in common to the suit schedule property.

9. It is specific case of the plaintiffs that, they are having definite share over the suit schedule properties. The defendants have appeared through their respective counsel but not filed written statement. However, they have maintained this application for rejection of plaint. In the affidavit filed in support of IA the 1st defendant has not disclosed about judgment and decree passed in OS No.218/2013. The plaintiffs produced certified copy of decree passed in the said suit. As per that document it was filed by Smt.Reshma Banu against Ajeejunnisa and her two daughters who are the defendants No.2 and 3 in this suit. The said suit came to be decreed and it was declared that the gift deed executed by 1st defendant in favour of defendants No.2 and 3 dated 30.04.2013 is declared as null and void. Further, the defendants of the said suit have been restrained from interfering with the peaceful possession and enjoyment of the plaintiffs to over the suit schedule properties.

10. Furthermore, the defendants have contended that, they are governed under Mohammedan Law and the suit schedule property was absolute property of Ajeejunnisa. It is not in dispute that, the suit schedule property was purchased by Ajeejunnisa. Since, gift deed executed by Ajeejunnisa infavour of her two daughters has been declared as null and void, the suit of the plaintiffs is maintainable. Hence, this court comes to the conclusion that, the defendants have failed to

prove that, the suit is barred by any law. Accordingly, point No.1 is answered in the negative.

11. **Point No.2:** In view of the reasons discussed above, this court proceeds to pass the following:

ORDER

IA No.IV filed by the defendants under Order 7 Rule 11(d) R/w Section 151 of CPC is hereby rejected with costs of Rs.500/-.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 10th day of July, 2024.)

(Anitha)

Addl. Senior Civil Judge and JMFC.,
Hunsur.