

KAMS300013242023



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

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

**Dated this the 01<sup>st</sup> day of April, 2026.**

**OS No.220/2023**

Plaintiff: Smt.Shanthamma,  
D/o Late Ningegowda,  
W/o Kalegowda,  
Aged about 50 years,  
R/at Singamaranahalli Village,  
Bilikere Hobli, Mysore District.

-Vs-

Defendants: 1. Shivannegowda, S/o Late Ningegowda,  
Aged about 53 years,  
2. Byregowda, S/o Late Ningegowda,  
Aged about 52 years,  
3. Krishnegowda, S/o Late Ningegowda,  
Aged about 48 years,  
4. Ravigowda, S/o Late Ningegowda,  
Aged about 39 years,  
5. Lokesha, S/o Late Ningegowda,  
Aged about 38 years,  
6. Smt.Manjula, D/o Late Ningegowda,  
Aged about 44 years,  
All are residing at Singamaranahalli village,  
Bilikere Hobli, Hunsur Taluk.

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 plaint
3.	The date on which the application is filed	:	21.02.2025
4.	Number of the application	:	IA No.II
5.	The date on which the objection is filed by the opponents	:	03.04.2025
6.	The date on which the orders passed on the said application	:	01.04.2026

**ORDERS PASSED ON IA NO.II**

**When the case was posted for steps,** the learned counsel for defendants No.1 and 4 filed the present application under Order 7 Rule 11(d) R/w Section 151 of CPC to reject the plaint as barred by law.

2. The application is supported with the affidavit of defendant No.4 wherein he has stated that, the plaintiff has filed the suit against himself and other defendants for partition and separate possession in respect of the suit schedule properties and previously the first defendant filed suit against his parents, the plaintiff and brothers seeking the relief of partition and separate possession before learned Principal Civil Judge and JMFC Hunsur in OS No.57/2013 in respect of plaint schedule properties. During the course of evidence, on

the advice of well-wishers the said suit was settled by way of compromise and compromise petition was recorded on 08.04.2013. As per the said compromise, lands bearing Sy.No.4 measuring 3 acres, Sy.No.4/2/1 measuring 1 acre, Sy.No.4/2P measuring 1 acre and Sy.No.2/2A measuring 4.08 guntas have been allotted to the share of the first defendant of this suit. Further lands bearing Sy.No.4 measuring 20 guntas and Sy.No.2/2A measuring 4.08 guntas has been allotted to the share of the plaintiff herein. Further the land bearing Sy.No.23/1 measuring 4 acres 14 guntas has been allotted to the share of 3<sup>rd</sup> defendant herein. Further, lands bearing Sy.No.2/2A measuring 22.08 guntas and Sy.No.2/2A measuring 5 guntas have been allotted to the share of parents of the plaintiff and the defendants herein. Further the lands bearing Sy.No.23/1 measuring 4 acres and Sy.No.2/2A measuring 4.08 guntas have been allotted to the share of the 2<sup>nd</sup> defendant herein. Further lands bearing Sy.No.4 measuring 20 guntas and Sy.No.2/2A measuring 4.08 guntas have been allotted to the share of 6<sup>th</sup> defendant herein.

3. Further lands bearing Sy.No.42/2 measuring 1 acre 35 guntas, Sy.No.60/3 measuring 26 guntas and Sy.No.2/2A measuring 4.08 guntas and Sy.No.60/4 measuring 1 acre have been allotted to the share of Defendant No.4 herein and lands bearing Sy.No.42/2 measuring 1 acre 35 guntas,

Sy.No.60/3 measuring 25 guntas, Sy.No.60/4 measuring 37 guntas, Sy.No.2/2A measuring 4.08 guntas have been allotted to the share of defendant No.5 herein. As per the compromise decree, the revenue records have been changed in their names as well as they are in enjoyment of the allotted properties separately since 10 years. As a result, the plaintiff has no right to file subsequent suit and claim partition. She ought to have filed final decree proceedings for demarcation of her share. The suit is barred by law. Already defendants No.1 and 4 have filed suit in OS No.175/2023 for share of the properties allotted to their parents in OS No.57/2013 and it is pending for consideration. The plaintiff has filed the suit after lapse of 10 years and it is barred by law. The plaint should have been rejected at the time of filing the suit itself by holding that it is barred by law. The office has mechanically registered the suit. If the application is allowed no hardship will be caused to the other side. On the other-hand if the application is not allowed defendants No.1 and 4 will be put to great hardship and inconvenience. Hence, prayed to allow the application.

4. On the other-hand, learned counsel for the plaintiff has filed objection contending that, the application is not maintainable under the law or on facts. The 4<sup>th</sup> defendant has not mentioned how the suit is barred by limitation. The 4<sup>th</sup> defendant sworn to a false affidavit suppressing the material

facts. After compromise in OS No.57/2013, the 4<sup>th</sup> defendant filed another suit seeking for partition and separate possession in OS No.175/2023 before learned Additional Civil Judge and JMFC., Hunsur against the plaintiff herein and others in respect of Sy.No.2/2A measuring 22.08 guntas and 5 guntas and he had violated the terms and conditions of compromise. The plaintiff has filed a lawful suit seeking for partition and possession of equal share including all the joint family properties. The defendants have fraudulently obtained compromise decree. If the application is allowed, great hardship and injustice will be caused to the plaintiff. Hence, prayed to dismiss the application with exemplary costs.

5. Thereafter, heard arguments addressed by learned counsels for defendants No.1 and 4 and the plaintiff and 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 defendants No.1 and 4 have made out sufficient grounds to reject the plaint under Order 7 Rule 11(d) of CPC?
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 plaintiff alleged that one Ningegwoda is the propositus of the family of the plaintiff as well as the defendants and one Smt.Puttamma is his wife and said couple are no more and the plaintiff and defendants are the only legal heirs to the said couple. As per the plaintiff, the suit schedule properties are ancestral and joint family properties of herself and the defendants. It is the further case of the plaintiff that, the first defendant filed suit in OS No.57/2013 before learned Civil Judge and JMFC., Hunsur on 05.02.2013 against herself and other children of Ningegowda. The said suit was ended in compromise but defendants No.1 to 5 obstructed the share of the plaintiff to change the Khata into her name and defendant No.1 and 4 have filed another suit in OS No.175/2023 before learned Principal Civil Judge and JMFC., Hunsur and claimed partial partition not including all the properties. They have left out other joint family properties and without any alternative the plaintiff filed this suit.

8. It is the further case of the plaintiff that after the death of father, Defendants No.1 to 5 were managing and supervising the affairs of the suit schedule properties and on 12.06.2022 the plaintiff demanded her legal share. But the defendants have declined to allot her share. It is further stated that, she is the coparcener in respect of the suit schedule

properties and she has got equal share over the same. Hence she had filed the suit for the relief of partition and separate possession of her 1/7<sup>th</sup> share in respect of all the suit schedule properties.

9. Defendants No.1 and 4 have filed the written-statement and they have admitted about earlier suit filed by the 1<sup>st</sup> defendant in OS No.57/2013 before learned Civil Judge and JMFC., Hunsur and it is also an admitted fact that the said suit ended in compromise. Further it is to be noted that, as per the affidavit filed in support of present application in the compromise in OS 57/2013 two properties have been allotted jointly to the share of the parents of the plaintiff as well as the defendants. It is also an admitted fact that, now defendants No.1 and 4 have filed OS No.175/2023 before the learned Additional Civil Judge and JMFC., Hunsur for partition of the properties allotted to the share of their parents. Now the plaintiff has brought this suit seeking her lawful share i.e., 1/7<sup>th</sup> equal share in all the suit schedule properties.

10. It is pertinent to note that, the plaintiff has produced an endorsement issued by the plaintiff. This document goes to show that there was objection for change of Khata. She has also produced the summons and copy of the plaint in OS No.175/2023. As per the affidavit filed in support of present application an extent of 22.08 guntas and 5 guntas

in Sy.No.2/2A have been allotted to the share of parents and it is the subject matter of OS No.175/2023. On the other-hand, learned counsel for defendants No.1 and 4 produced the certified copy of the order-sheet, plaint, amended plaint, compromise petition and decree in OS No.57/2013. Now it is necessary to look into the subject matter of OS No.57/2023 and this suit which are as hereunder:

<b>OS No.57/2013</b>		<b>OS No.220/2023</b>	
<b>Sy.No.</b>	<b>Extent</b>	<b>Sy.No.</b>	<b>Extent</b>
42/2	4 acres 15 guntas	42/2	3.00 acres 30 guntas
60/3	1 acre 19 guntas	60/3	1 acre 11 guntas
60/4	1 acre 37 guntas	60/4	1 acre 37 guntas
2/2A	1 acre 14 guntas	2/2A	1 acre 14 guntas
4/2/4	1 acre	2/2A	1 acre 14 guntas
23/1	8 acres 14 guntas	23/1	4 acres
4/2P	1 acre	23/4	3 acres 36 guntas
4	4 acres	4	4.00 acres
Khata No.44	5 ankanas country tiled house	Khata No.44	5 ankanas country tiles house

11. There are some differences in the extent of the properties which are the subject matter of this suit and the subject matter of OS No.57/2013. Further as per the compromise petition in OS No.57/2013 an extent of 20 guntas in Sy.No.4 and an extent of 0.04.08 guntas in Sy.No.2/2A. At the time of presenting the plaint the plaintiff has produced the RTC pertaining to all the suit schedule properties. It is pertinent to note that, OS No.57/2013 has been compromised in the year 08.04.2013. But the RTC produced by the plaintiff are of the year 2023-24 and all the RTC are still standing in the name of father of the plaintiff and the defendants and it clearly prima-facie shows that the compromise in OS No.57/2013 has not been acted upon by the parties to the said suit. The plaintiff specifically alleged that, when she has approached the revenue authorities for change of khata defendants No.1 to 5 have raised the objection. As per defendants No.1 and 4 the suit is barred by limitation since the compromise was entered in the year 2013 itself. But defendants No.1 and 4 have not produced any documents to show that the said compromise was duly acted upon between the parties. They have not produced the RTC of the suit schedule properties to show that the compromise has been duly acted upon. The plaintiff has alleged that defendants No.1

to 5 have played fraud upon her. These facts needs to be agitated only after complete trial.

12. Further at the time of addressing the arguments learned counsel for defendants No.1 and 4 has placed reliance on the decision reported in:

**2025 (1) Kar.L.R. 531 (DB)**

Between: Hanumawwa Vs Bheemawwa @ Channabasawwa  
and others

Wherein Hon'ble High Court of Karnataka has held as hereunder:

*Law says that the person questioning lawfulness of the compromise must approach the same court as per the provisions of Rule 3-A of Order 23 of CPC, which has recorded the compromise. Even the provisions of Order 43, Rule 1(m) of CPC is also repealed. In view of the said provisions of Order 23 Rule 3-A of CPC, no appeal is maintainable against the consent decree having regard to the specific bar contained in Section 96(3) of CPC. Only remedy which is available to the plaintiff is to approach the same court seeking review of the said order for setting aside the compromise decree.*

13. Herein this case the alleged partition of the year 2013 has not been acted upon between the parties. As such the principles laid down in the aforesaid decision are not aptly applicable to the facts of the case on hand. The materials on

record shows that it remained only a paper decree. Without acting upon the said decree, cleverly defendants No.1 and 4 have now filed OS No.175/2023 with regard to the share allotted to their parents. It is the settled principles of law that the question of limitation is the mixed question of fact and law and it required complete trial. Further it is the settled principles of law that the plaint in part cannot be rejected. On the basis of the above discussions this court comes to the conclusion that defendants No.1 and 4 have not made out sufficient grounds to reject the plaint as barred by law as provided under Order VII Rule 11(d) of CPC. Accordingly, Point No.1 is answered in the Negative.

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

**ORDER**

IA No.II filed by defendants No.1 and 4 under Order 7 Rule 11(d) R/w Section 151 of CPC is hereby rejected with costs of Rs.300/-.

(Typed by me directly on the Laptop, same is then corrected and pronounced by me in the open court on this the 01<sup>st</sup> day of April, 2026.)

Sd/-  
**(Anitha)**  
Prl.Senior Civil Judge and JMFC.,  
Hunsur.