

KAMS300022562024



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE AND JMFC, HUNSUR**

Present: Smt. Zaibunnisa, B.Com., LL.B.,
Prl. Senior Civil Judge & JMFC
Hunsur

Dated, this the 25th day of April, 2025

O.S.No.324/2024

Plaintiffs : Yashodamma and others

V/s

Defendants : Nagaraju and another

IA NO.IV

Applicant : Nagaraju and anotherDefendant No.1

V/s

Opponent : Yashodamma and otherPlaintiffs

ORDERS ON IA-IV FILED U/O 7 RULE 11(b) R/W/Sec.
151 OF CPC

The applicant/defendant No.1 has filed the IA No.IV and sought for rejection of plaint on the grounds of no cause of action to file the suit and suit is barred by law.

2. In the annexed affidavit, it is submitted that the plaintiff has filed the suit against the defendants seeking the relief of partition. The deceased parents of the plaintiffs had transferred their movable property for their own self acquired property and fixed deposit money for their security. The father and mother of the defendant No.1 had also mentioned the name of defendant No.1 as a nominee for the fixed deposit money. The names of the plaintiffs were not mentioned in any document, the defendant No.1 is the sole and absolute rightful owner of the said fixed deposit amount. The plaintiffs have filed this suit to illegally withdraw the money at the instigation of the 2nd defendant. The plaintiffs have not produced documents to show that they have an equal share in the fixed deposit amount. The plaintiffs have only filed this suit for the movable property, not for the immovable property. Hence, suit filed by the plaintiff is not

maintainable under law, and it attracts *res-judicata* making it liable to be dismissed. Hence, the application.

3. This application is resisted by the plaintiffs contending that the application is not maintainable either under law or on facts. The father of plaintiffs and 1st defendant, Sannappajigowda, had four sons and three daughters. Sannappajigowda had performed the marriage of all the children during his lifetime. Sannappajigowda had sold some properties belonging to the family and deposited the said money in a fixed deposit in his name, with his wife Akkamma as a nominee. The said fixed deposit was renewed from time to time. The Sannappajigowda died on 25.2.2012. After his death, the said fixed deposit was transferred to the name of his wife, Akkamma. At that time, of the remaining three sons Sannappajigowda and Akkamma were deceased. The remaining son, 1st defendant, was made a nominee and she has not stated anywhere that all the fixed deposit money should go to the 1st defendant. The said fixed deposit was made by Sannappajigowda, not his wife Akkamma. The said fixed deposit has matured and due for payment. The plaintiffs and 1st defendant are the legal heirs of Sannappajigowda and have equal right over the said deposit amount.

The 7th plaintiff has filed a suit against the Sannappajigowda for her share in Addl. Sr. Civil Judge and JMFC., Hunsur in OS No.261/2009. The said suit decreed on 23.1.2015. He is a 9th defendant in the said suit and has appointed an advocate to conduct the suit. Despite knowing all these facts, the 1st respondent filed false affidavit and has filed false application with a malafide intention to grab the said deposit money. Hence, the plaintiffs prayed to dismiss the application with costs.

4. I have heard the learned counsel for the parties and perused the materials on record.

5. Points that arise for consideration of the court are:

1. Whether the applicant/defendant No.1 has made out grounds to allow IA No.IV filed U/O 7 Rule 11(a) and (d) CPC and to reject the plaint ?

2. What order?

6. Findings of this court on the above points are:

Point No.1: In the Negative

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

REASONS

7. **Point No.1:** It is the law that Order 7 Rule 11(a) CPC mandates rejection of a plaint if it does not disclose a cause of action. However, at this stage, only the averments in the plaint are to be considered and not the defense of the defendants.

8. The plaintiffs have pleaded that, the fixed deposit was created from joint family property. They are legal heirs of Sannappajigowda and have a rightful share. Nomination does not extinguish their rights as per the settled law on nominations. These averments prima facie disclose a cause of action. The merits of the claim are to be adjudicated during trial, not at this stage.

9. As far as defense of defendant No.1 as suit is barred by the principles of Res-Judicata is concerned, Section 11 CPC bars a suit if the matter was directly and substantially in issue in a former suit between the same parties. The earlier suit in OS No. 261/2009 was said to be filed by only the 7th plaintiff for her separate share. The subject matter and parties in the present suit are different. Hence, the principle of res judicata does not apply. The plaint discloses a cause of action as the plaintiffs have asserted their rights over the fixed deposit as legal heirs. The suit is not barred by

res judicata since the earlier suit did not adjudicate the rights of all plaintiffs in the present matter. The application under Order 7 Rule 11(b) CPC is not maintainable and deserves to be dismissed. Accordingly, point No.1 is answered in the Negative.

10. **Point No.2:** In the light of above said discussion, I proceed to pass the following;

O R D E R

The IA No.IV filed by the applicant/
defendant No.1 U/O 7 Rule 11(a) and
(d) of CPC is hereby rejected.

No order as to costs.

(Dictated to the Stenographer directly on computer, typed by her, revised, corrected and then pronounced by me in the open Court on this the 25th day of April, 2025)

PSCJ & JMFC., Hunsur.

