

**IN THE COURT OF THE ADDL. CIVIL JUDGE AND J.M.F.C, AT
HUNSUR.**

-:Present:-

Sri. Sannahanamagouda, B.A., LL.M.,
Addl. Civil Judge & J.M.F.C,
Hunsur.

O.S.No.164/2018

Dated this the 28th day of May, 2019

PLAINTIFFS:

- 1) Nagaraju @ Naga,
S/o Late. Nanjegowda,
Aged about 55 years,
R/at Store Street,
Hunsur Taluk,
Mysuru District.
- 2) Mahadeva,
S/o Late. Nanjegowda,
Aged about 53 years,
R/at New Maruthi
Extension,
Hunsur Taluk,
Mysuru District.
- 3) Chandra,
S/o Late. Nanjegowda
Aged about 51 years,
R/at Manjunatha
Extension,
Hunsur Taluk,
Mysuru District.
- 4) Manjunatha,
S/o Late. Ningegowda,
Aged about 30 years,
R/at Store Street,
Hunsur Taluk,
Mysuru District.

- 5) Divya,
D/o Late. Ningegowda,
Aged about 28 years,
R/at Store Street,
Hunsur Taluk,
Mysuru District.
- 6) Bhavya,
D/o Late. Ningegowda,
R/at Store Street,
Hunsur Taluk,
Mysuru District.
- 7) Mahadevamma,
W/o Ramegowda,
Aged about 50 years,
R/at Old Chikkahunsauru,
Hunsur Taluk,
Mysuru District.
- 8) Arun Kumar,
S/o Late. Ramegowda,
Aged about 23 years,
R/at Old Chikkahunsauru,
Hunsur Taluk,
Mysuru District.
- 9) Kiran,
S/o Late. Ramegowda,
Aged about 21 years,
R/at Old Chikkahunsauru,
Hunsur Taluk,
Mysuru District.
- 10) Srinivasa,
S/o Late. Krishna,
Aged about 25 years,
R/at Maruthi Extension,
Hunsur Taluk,
Mysuru District.

(By Sri. B. C. S.,Advocate)

// V/s //

DEFENDANTS:

1. Viji, W/o Prakash,
D/o Nagaraju,
Aged about 30 years,
R/at 2nd Division Manjunath
Extension,
Hunsur Taluk,
Mysuru District.
2. Mahadevi, W/o Dhanaraju,
D/o Nanjegowda,
Aged about years,
R/at Madalapura 5th Maili, Kodige,
Somavarapete Taluk,
Madikere District.

(D1 by Sri. S. N. K. Advocate)
(D2 by Sri. M. V. P. Advocate)

PARTIES TO I.A.NO.V**APPLICANTS:**

: Viji,
W/o Prakash,
D/o Nagaraju,
& another..... D1

Vs.

OPPONENTS:

: Nagaraju @ Naga and
others.....Plaintiffs

ORDERS ON I.A.NO.V FILED UNDER ORDER VII RULE 11(d)
OF CPC.

This application has been filed by the defendant No. 1 under Order VII Rule 11(d) of C.P.C. praying to rejection of plaint.

2. In support of IA the defendant No. 1 filed affidavit contended that the plaintiffs have filed the suit against her and other defendant relief sought for partition and separate possession. That the averment made in the plaint, it not corrects and it will be dismiss at limine. The property came into the Sannamma W/o Late. Nanjegowda through registered the gift deed in favour of the 1st defendant on 22.01.2015. The defendant No. 1 is the, take cases of the Late. Sannamma. The suit schedule property is came into through registered sale deed dated 28.04.1987 through one Ningegowda. The plaintiffs have not mentioned the arose of action cause in the averment made in the plaint. The plaintiffs have no rights over the suit schedule property. The defendant No. 1 legal possession over the suit schedule property. If the application is not allowed it will be put great hardship not in the other hand. Hence, he prayed for rejecting the plaint.

3. Per contra, the plaintiffs have filed their objections to I.A.No.V contending that the application filed by the defendant No. 1 is not maintainable either on law or on facts and the same needs to be dismissed at the threshold. The defendant No. 1 sworn to a false affidavit and the present application filed is only to cause hardship to the plaintiffs. Accordingly, prayed for dismissal of I.A. with costs.

4. Heard the arguments and perused the documents.

5. The following points arise for my consideration is as follows:

1. Whether the defendant No. 1 has made out a grounds to allow the IA No. V filed under Order VII Rule 11(d) of CPC and eject the plaint?

2. What order?

6. My findings on the above points are as follows:-

Point No.1: - In the Negative.

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

REASONS

7. Point No.1: - This is a suit filed by the plaintiffs against the defendants for the relief of partition and separate possession. At this juncture the defendant No. 1 has appeared through his counsel and filed this application with a prayer to reject the plaint. On the other hand the plaintiffs have opposed the application.

8. The defendant No. 1 has filed the above application under Order VII Rule 11(d) of CPC for rejection of plaint and stating that the plaintiffs have not mentioned the arose of action cause in the averment made in the plaint and the plaintiffs have no right over the suit schedule property.

9. It is established principle of law that the court shall perused only plaint averment no any other document consider defence taken by the defendants. Hence court considering plaint averment. Now question arose before the court whether plaintiffs disclosed the cause of action in plaint or not. After observing the plaint and also by considering the para Nos. 9 and 14 of the

plaint. This court has pointed out that plaintiffs have clearly mentioned when cause of action was arise this will be appropriate to show the arose of cause of action in partition suit. And defendants have also contended that plaintiffs have no right over the suit schedule property. But this contention of the defendants will be decided on the merit of the case. By the court also opines that the evidence is necessary to decide the case. The ingredients of Order VII Rules 11(d) are not made out by the defendant No. 1. Therefore, the point No. 1 answered in the negative.

10. Point No.2: -In view of above discussion I proceed to pass the following;

ORDER

The IA No. V filed by the defendant No. 1 under Order VII Rule 11(d) of CPC is hereby rejected.

No order as to cost.

(Directly dictated to the Stenographer on Computer and typed by her, corrected and then pronounced by me in open court on this the 28th day of May, 2019.)

**(Sannahanama Gouda)
Addl. Civil Judge & J.M.F.C.,
Hunsur.**