

KAMS400002172020



**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC**  
**AT K.R.NAGAR**

**PRESENT:**     **Sri. Aravindra.B.C., B.A., L.L.B.,**  
                          **Senior Civil Judge & JMFC**  
                          **K.R.Nagar.**

Dated this the 18<sup>th</sup> day of April, 2024

**O.S./12/2020**

**1. Sri. S.R.Kamakshi,**  
D/o Late S.J.Ramegowda,  
Aged about 59 years.

**2. Smt. S.R.Shashikala,**  
D/o Late S.J.Ramegowda,  
Aged about 57 years.

**3. Smt. S.R.Pushpa,**  
D/o Late S.J.Ramegowda,  
W/o V.B.Siddaiah,  
Aged about 52 years.

All are R/at: Door No.265,  
Kaveri Main road,  
Raghavendra Nagar,  
Mysuru.

**.....Plaintiffs**

(By Sri. V.S., Advocate)

**-Versus-**

**1. Smt. Susheela,**  
W/o Late S.R.Jagadeesh,  
Aged about 60 years.

**2. Sri. S.J.Devaraj,**  
S/o Late S.R.Jagadeesh,  
Aged about 37 years.

Defendant No.1 and 2 are  
R/at: Haliyur Grama & Post,  
Chunchugatta Hobli,  
K.R.Nagar Taluk, Mysuru.

**3. Sri. S.R.Prakash,**  
S/o Late S.J.Ramegowda,  
Aged about 65 years.

**4. Smt. Gayathri,**  
W/o S.R.Prakash,  
Aged about 50 years.

**5. Smt. S.P.Pallavi,**  
D/o S.R.Prakash,  
Aged about 33 years.

**6. Smt. S.P.Preethi,**  
D/o S.R.Prakash,  
Aged about 30 years.

**7. Smt. S.P.Pavan,**  
S/o S.R.Prakash,  
Aged about 26 years.

Defendant No.3 to 7 are  
R/at: Sumuka Nilaya,  
Vinayaka Layout,  
2<sup>nd</sup> Cross, K.R.Nagar Taluk,  
Mysuru District.

**8. Smt. Sunandamma,**  
W/o S.L.Ramakrishnegowda,  
Aged about 65 years,

R/at: Appajigowda Beedhi,  
Saligrama, K.R.Nagar Taluk,  
Mysuru District.

**9. Sri. Puttegowda,**  
S/o Late Malalligowda,  
Aged about 68 years,  
R/at: Muddalabeedu,  
Saligrama Hobli,  
K.R.Nagar Taluk,  
Mysuru District.

**10. Sri. M.P.Nagaraju,**  
S/o Puttegowda,  
Aged about 55 years,  
R/at: Muddalabeedu village,  
Saligrama Hobli,  
K.R.Nagar Taluk,  
Mysuru District.

**11. Sri. S.N.Narasimhegowda,**  
S/o Late Ningegowda,  
Aged about 63 years,  
R/at: Edigara Beedhi,  
Saligrama Hobli,  
K.R.Nagar Taluk,  
Mysuru District.

**.....Defendants**

(D1 & 2 6 by Sri. S.B., Adv.)  
(D3 to 7 by Sri. C.S., Adv.)  
(D8 by Sri. C.L.M., Adv.)  
(D9 & 10 by Sri. T.G., Adv.)  
(D11 Exparte)

**Parties to I.A.No.VI**

**Applicant** : Sri. M.P.Nagaraju

**..... 10 Defendant**

-V/s-

**Opponents** : Smt. S.R.Kamakshi and others

**..... Plaintiffs**

Provision under which the application is filed	Under Order 7 Rule 11(d) of CPC.
Relief Sought For	Seeking permission to reject the plaint
The date on which the application is filed	27.03.2023
Number of the application	IA No.VI
The date on which the objections are filed by the different opponents	04.07.2023
The date on which the orders were passed on the said application	18.04.2024

### **ORDER ON IA.No.VI**

This is an IA Under Order 7 Rule 11(d) of Code of Civil Procedure filed by the defendant No.10 to reject the plaint on the ground that, the suit of the plaintiffs is hit by Section 6 of the Hindu Succession Amendment Act-2005.

2. In the supporting of affidavit, the defendant No.10 has contended that, the plaintiffs have filed suit against himself and other defendants for the relief of partition and

separate possession. Further it is alleged that, the item No.3 of the plaint schedule property has been purchased by the defendant No.10 under registered sale deed dated 25.11.2004. From the date of sale deed, he is in possession and enjoyment of the schedule property.

3. Further it is stated that, the item No.4 of the schedule property has purchased by the defendant No.11 under registered sale deed dated 25.11.2004 from S.R.Prakash and others. Therefore, the alienation made by the vendor prior to 20.12.2004. Therefore, the Section 6 of Hindu Succession Amendment Act is applicable. Hence, he prays for reject the plaint.

4. On the other hand, the plaintiffs have filed objection to the application filed by the defendant No.10 under order 7 Rule 11 of Code of Civil Procedure, wherein, they have stated that, the application filed by the defendant No.10 is not maintainable either in law or on facts. The plaintiffs have filed the suit against the

defendants for the relief of partition and separate possession against the defendants. The plaintiffs have admits that, the defendant No.3, 4 and 7 have sold the item No.3 and 4 in favour of defendant No.10 and 11. But, they have denied that, the plaintiffs have no knowledge about the sale transaction between defendant No.3, 4, 7 and 11. The plaintiffs having legitimate share over the schedule property. Therefore, the application filed by the defendant No.10 and 11 is not maintainable. Accordingly, prays to reject the application.

5. Heard arguments on both side.

6. On the basis of the above pleadings, the following points arise for consideration:

***1. Whether the defendant No.10 has made out ground that, the plaint does not disclose cause of action ?***

***2. What order?***

7. 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**

8. **Point No.1:-** It is the case of the plaintiffs is that, they have filed this suit against the defendants for the relief of partition and separate possession. On the other hand, the defendants appeared before this court and filed the present application for rejection of the plaint on the ground that, the suit of the plaintiffs is hit by Section 6 of Hindu Succession Amendment Act. Hence, the plaint may be reject under section 7 Rule 11(d) read with Section 151 of Code of Civil Procedure.

9. Before appreciating the rival contentions of the parties, this court glance the provision of Order 7 Rule 11 of the C.P.C. which reads as under:-

***11- Rejection of the plaint:- The plaint shall be rejected in the following cases;***

***(a) Where it does not disclose a cause of action;***

***(b) Where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so"***

***(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;***

***(d) where the suit appears from the statement in the plaint to be barred by any law;***

***(e) Where is not filed in duplicate***

***(f) Where the plaintiff fails to comply with the provisions of rule 9***

***(Provided that the time fixed by the court for the correction of valuation or supplying the requisite stamp papers shall not be extended unless the court, for the reasons to be recorded, is satisfied that the plaintiff was granted by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers as case may***

***be, with in the time fix by the court and that refusal to extent such time cause grave in justice to the plaintiff).***

10. It is clear from the above that, where the plaint does not disclose a cause of action, the relief claimed is undervalue and not corrected within the time allowed by the court, insufficiently stamped and not rectified within the time fixed by the court, barred by any law failed to enclose copies and the plaintiff fails to comply with the provisions of Rule 9, the court has no other option except to reject the same. A reading of the above provision also make clear that, order 7 rule 11 of CPC can be exercised at any stage of the suit either before registering the plaint or after issuance of summons to the defendant at any time before the conclusion of the trial. The court while deciding in such any application must have due regard only to the statements in the plaint.

11. In the present case on hand, the defendant No.10 taken contention that, the defendant No.10 and 11

have purchased the property item No.3 and 4 from defendant No.3, 4 and 7 under registered sale deeds dated 25.11.2004 and 21.05.2004. In view of Section 6 of Hindu Succession Amendment Act-2005 clearly states that, affect or invalidation any disposition or alienation including any partition or testamentary disposition of property which had taken place before 20.12.2004. Therefore, the suit of the plaintiff is liable to dismissed on this ground. On the other hand, the learned counsel for the plaintiffs has filed the objection stating that, the application filed by the defendant No.10 is not maintainable under law and facts. But, the plaintiffs admit that, the transaction took place between defendant No.3, 4, 7, 10 and 11. But, they have clearly stated that, the transaction took place stated above are not within the knowledge of plaintiffs. Even, the plaintiffs have not signed the alleged sale deeds. Therefore, the plaintiffs have got legitimate share over the item No.3 and 4.

12. On perusal of the plaint it appears that, the suit filed by the plaintiffs for the relief of partition and separate possession against the defendants in respect of the schedule properties. On the other hand, the defendant No.10 contended that, the item No.3 and 4 were sold by the defendant No.3, 4 and 7 in favour defendant No.10 and 11 under registered sale deeds stated supra. Now question arises before this court is that, whether the suit of the plaintiffs is comes under purview of Section 6 of Hindu Succession Amendment Act or not.

13. The defendant No.10 filed this application under order 7 Rule 11(d) of CPC to reject the plaint on the ground that, the suit is barred under proviso to Section 6(1) of Hindu Succession Amendment Act-2005. The reason assigned by him in the application that, the property item No.3 and 4 already disposed by way of executing sale deed taken place before 20.12.2004. Hence, as per proviso to Section 6(1) of Hindu Succession

Amendment Act-2005 the daughters are not entitled for share and they are not copercenar and therefore plaint has to be rejected.

14. It is well settled that, if a partition, alienation testamentary disposition had taken place before 20.12.2004 in a contravention with the provisions of either un-amendment Section 6 of Hindu Succession Act-1956, or Hindu Succession (Karnataka Amendment Act)-1990 then, such partition disposition, alienation and testamentary disposition will not be binding on the interest of daughter. The benefit of the proviso of Section 6(1) of Hindu Succession Amendment Act-2005 is available only if such partition or alienation is made in accordance with law. Therefore, when applications under order 7 Rule 11 of CPC for rejection of the plaint are filed, the courts must be extra cautious to consider all the relevant legislation and decide the said applications on merit. It is relevant to refer the decision of Hon'ble Apex

Court in the case of **John Kennedy V/s Rajanna** reported in **2014(15) SCC 785** wherein, the Hon'ble Apex Court held that, whether the suit schedule property is ancestral property of the plaintiff's father or self acquired property depends upon various factors. Further held that, the law in this regard is well settled and whether the plaintiff is entitled for a right of partition in the suit schedule property by virtue of the amendment carried to the Hindu Succession Act by the state of Tamilnadu in 1989 or subsequently by parliament are matters to be decided after the pleadings or completed and evidence adduced. Further the Hon'ble Court held that without determining these aspects, rejection of plaint is not proper procedure and accordingly direct the parties to prove their respective stands before the court.

15. By applying the ratio laid down in the above case it can be concluded that, when various questions of the fact and law or involved as in in partition, suit including

the crucial questions of when succession opened, applicability of Hindu Succession Act-1956, Hindu Succession Karnataka Amendment Act-1990 or Hindu Succession Amendment Act-2005 and the nature of the property has to be determined and validity of alienations have to be considered, it is just and necessary to adjudicate the rights and liabilities of the parties by way of full pledged trial instead of a summary rejection of plaint. Therefore, the full pledged trial is required to consider validity of the alienation. In this aspect the present application not maintainable at this stage.

16. Further important note that, the defendant No.10 is alone filed the present application. Now the question arisen before this court is that whether order VII Rule 11 of Code of Civil Procedure is permits partial rejection of a plaint? It law settled that a plaint as a whole can be rejected under order VII Rule 11 of CPC. Therefore, rejection of a plaint in part is not permissible in law.

Hence, the present application filed by the defendant No.10 is not maintainable. Therefore, the question of rejecting the plaint in part does not arise. Therefore, the present application filed by the defendant No.2 is not maintainable. **Accordingly, this court answered point No.1 in the Negative.**

17. **Point No.2** : For the above said reasons, this court proceed to pass the following:

**ORDER**

I.A.No.VI filed by the defendant  
No.10 under order 7 Rule 11(d) of  
CPC is hereby ***rejected***.

*[Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the Open Court on this the 18<sup>th</sup> day of April, 2024]*

**(ARAVINDRA B.C)**  
**SENIOR CIVIL JUDGE & JMFC.,**  
**K.R.NAGAR.**