

KAMS400010612023



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 02nd day of April, 2024

O.S./53/2023

1. Sri. Vijayakumar A.S.,
S/o Late Shivannegowda
@ Shivanna,
Aged about 37 years.

2. Smt. Mahadevamma,
W/o Late Shivannegowda
@ Shivanna,
Aged about 68 years.

Both are R/at:
#21, Ankanahalli Koppalu village,
Ankanahalli Post,
Chunchanakatte Hobli,
Saligrama Taluk, Mysuru District.

.....Plaintiffs

(By Sri. K.S.M., Advocate)

-Versus-

1. Smt. Jayamma,
W/o Late Sannamarigowda,
Aged about 60 years,
R/at: Ankanahalli Koppalu village,

Ankanahalli Post,
Chunchanakatte Hobli,
Saligrama Taluk, Mysuru District.

2. Sri. Doddegowda,
S/o Late Javaregowda,
Aged about 57 years,
R/at: Byadara Bilaguli village,
Chikkanerale Post,
Haranahalli Hobli,
Periyapattana Taluk,
Mysuru District.

3. Smt. Lakshamma,
W/o Madegowda,
Aged about 55 years,
R/at: Vaddarahalli village,
Kothavalli Post,
Bettadapura Hobli,
Periyapattana Taluk,
Mysuru District.

4. Smt. Mahadevamma,
W/o Javaregowda,
Aged about 51 years,
R/at: Bandahalli village,
Koluru Post,
Chunchanakatte Hobli,
Saligrama Taluk,
Mysuru District.

5. Sri. Amoghas,
S/o Late Eregowda,
Aged about 46 years,
R/at: Haliyuru Extension & village,
Chunchanakatte Hobli,
Saligrama Taluk,
Mysuru District.

6. Sri. A.V.Mahesh,
S/o Late Veerappaji,
Aged about 61 years,

R/at: Ankanahalli village & Post,
 Chunchanakatte Hobli,
 Saligrama Taluk,
 Mysuru District.

.....Defendants

(D1, 2 & 4 Exparte)
 (D3 Absent)
 (By Sri. N.S., Adv. for D.5)
 (By Sri. K.B.G., Adv. for D.6)

Parties to I.A.No.II

Applicant : Sri. A.V.Mahesh,

..... 6th defendant

-V/s-

Opponents : Sri. Vijayakumara and Others

..... Plaintiffs

Provision under which the application is filed	U/o. 7 Rule 11(a) and (d) of CPC.
Relief Sought For	To reject the plaint.
The date on which the application is filed	05.08.2023
Number of the application	IA No.II
The date on which the objections are filed by the different opponents	06.11.2023
The date on which the orders were passed on the said application	02.04.2024

ORDER ON IA.No.II

The defendant No.6 has filed this interlocutory application under Order 7 Rule 11(a) and (d) of Code of Civil Procedure, to reject the plaint on the ground that, the plaintiff suppressed the fact in relating to the suit filed by the defendant No.6 against defendant No.1 to 5.

2. The defendant No.6 sworn to an affidavit which enclosed to the application wherein he has stated that, he filed suit in OS No.209/2011 on the file of learned Civil Judge and JMFC, K.R.Nagar. On contest the said suit was decreed. During pendency of the suit, defendant No.1 to 4 in that case have sold property in favour of 5th defendant. It is further stated that, he preferred an appeal in RA No.45/2017 before this court. During pendency of said appeal, the 5th defendant has executed sale agreement in favour of plaintiff. The plaintiff having knowledge about the dispute arisen

between defendants herein. The said materials facts not disclosed in the plaint. Hence, he filed present application and seeking relief to reject the plaint.

3. On the other hand, the plaintiff filed objection to the application. In the objection statement he has stated that, the application filed by the defendant No.6 is not maintainable both in law or an facts. Accordingly, they prays for reject the application.

4. On the basis of the above said pleadings the following points arise for consideration:

1. Whether the defendant No.6 has made out ground that, the plaint it self of barred by law ?

2. What order?

5. After going through the records and hearing the parties, the above points are answered as follows:

Point No. 1 : In the Negative

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

REASONS

6. **Point No.1:-** The plaintiff has filed this suit against the defendants for the relief of declaration declaring that, they are absolute owners of the schedule properties and consequential relief of permanent injunction with respect to the schedule properties. On the other hand, the defendant No.6 appeared before this court through counsel and filed present application.

7. 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:-

7- 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 it 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, within the time fixed by the court and that refusal to extend such time cause grave injustice to the plaintiff).

8. On perusal of Order 7 Rule 11(d) of Code of Civil Procedure make it clear from the above that, where the plaint does not disclose a cause of action, the relief

claimed is under valued 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, fails to enclose the required copies and the plaintiff fails to comply with the provisions of Rule 9, the court has no other option except reject the same. A reading of the above provision also makes it clear that Under Order 7 Rule 11 of CPC, can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial.

9. Order 7 Rule 11(d) of Code of Civil Procedure provides that, the plaint shall be rejected where the suit appears from the statement in the plaint to be plaint itself does not disclose cause of action and the plaintiff has not comply the order of court in respect of payment of deficit court fee as well as undervalued. The court while deciding in such any application must have due regard only to the statement in the plaint.

10. In the present case on hand, the defendants taken contention that, the plaintiffs have suppressed the material facts. The ground taken by the defendant No.6 is not come under purview of under order 7 Rule 11 of CPC. Therefore, in this ground not tenable.

11. Further important note that, the defendant No.6 is alone files 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.6 is not maintainable. Therefore, the question of rejecting the plaint in part does not arise. Therefore, the present application filed by the defendant No.6 is not maintainable. **In view of above reasons, this court answered point No.1 in the Negative.**

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

O R D E R

I.A. No.II filed by the defendant No.6 Under Order 7 Rule 11(a) and (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 **02nd day of April, 2024**]*

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