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**IN THE COURT OF THE HONOURABLE ADDITIONAL CIVIL
JUDGE & JMFC, AT KRISHNARAJANAGAR.**

**PRESENT: SMT. ASRINA.,B.A, LLB.
ADDL. CIVIL JUDGE AND JMFC, KRISHNARAJANAGAR.**

**DATED THIS 1ST DAY OF FEBRUARY, 2025
O.S.No.76/2022**

BETWEEN

PLAINTIFF	<p>Shri.Naseer Pasha, S/o Mahammed Hasan Sipathi, Aged: 75 years, R/at: Door No.405, 3rd Main, Bannimantapa C Layout, Mysuru 570015.</p> <p>(By Sri.M.C.S. Advocate)</p>
DEFENDANTS	<ol style="list-style-type: none">1. Shri.Noorjeb, S/o A.Mahammedkhan, Aged: 72 years.2. Shri.Noor Abjakhanam, S/o A. Mohammed Khan, Aged: 70 years.3. Shri.Mohammed Navaz Khan, S/o A.Mohammed Khan, Aged: 68 years.4. Shri.Rashidnavaz Khan, S/o A.Mohammed Khan, Aged: 66 years.

KAMS410002902022



	<p>5. Shri.Shayidnavaz Khan, S/o A. Mohammed Khan, Aged: 64 years.</p> <p>6. Shri.Mazeednavaz Khan, S/o A. Mohammed Khan, Aged: 62 years.</p> <p>Defendants No. 1 to 6 are R/at: Door No.137, Haleem Nagar, Bannimantapa, Mysore.</p> <p>7. Shri.Hamzed Iqbal Khan, S/o Mushtaq Ahamed Khan, Aged: 60 years.</p> <p>8. Shri.Javeed Khan, S/o Mushtaq Ahamed Khan, Aged: 58 years.</p> <p>9. Shri.Jahed Khan, S/o Mushtaq Ahamed Khan, Aged: 56 years.</p> <p>10. Shri.Abeed Iqbal Khan, S/o Mushtaq Ahamed Khan, Aged: 54 years.</p> <p>11. Shri.Nowshad Aprez Khan, S/o Mushtaq Ahamed Khan, Aged: 52 years.</p>
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KAMS410002902022



	<p>Defendants No.7 to 11 are R/at: Door No.1821, Rajeev Nagar, 3rd Stage, Lahari Gas Agency, Mysore.</p> <p>12. Smt.Noorsahid Begam, W/o P.K.Mohammed Lafeez, D/o Mohammed Hasan Sipathi, Aged: 75 years. Door No.192, 4th Cross, Bannimantapa A Layout, Mysore-570 015.</p> <p>13. Shri.Valipasha, S/o Mohammed Hasan Sipathi, Aged: 70 years, R/at: Honnenahalli village, Saligrama Hobli, K.R.Nagar Taluk, Mysore District.</p> <p>14. Smt.Haseena Begam, W/o Sayid Abdul Vajeed, D/o Mohammed Hasan Sipathi, Aged: 60 years, R/at: Door No.1785, Sate Street, Lakshmi Devamma Temple road, Lashkar Mohalla, Mysore-570 001.</p>
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KAMS410002902022



	<p>15. Smt.Aneesa Bhanu, W/o Late. Mahabub Pasha, Aged 55 years.</p> <p>16. Smt.Busra Bhanu, D/o Late.Mahabub Pasha, Aged 36 years.</p> <p>17. Shri.Ruman Ahamed, S/o Late. Mahabub Pasha, Aged 34 years.</p> <p>18. Smt.Jahra Phathima, W/o Late. Mahabub Pasha, Aged: 32 years.</p> <p>Defendants No.15 to 18 are R/at: House No.611, Panchaythi Quarters, Ramanathapura Road, Saligrama Town, K.R.Nagar Taluk, Mysore District.</p> <p>(Defendants No.1 to 14, 16, 17 are placed exparte) (Defendants No.15 & 18 By Sri.S.M.M. Advocate)</p>
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IA NO.VII**BETWEEN**

APPLICANT/ DEFENDANT NO.15	Smt.Anisha Banu
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KAMS410002902022



OPPONENT/ PLAINTIFF	Shri.Naseer Pasha
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Provision of law	Order 7 Rule 11(a) and (d) R/w Section 151 of CPC.
Relief sought in the application	For rejection of plaint.
Date of filing the application	10/09/2024.
Date of filing the objection to the application	25/09/2024.
Date of order	01/02/2025.

**(SMT. ASRINA)
ADDL. CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR.**

**ORDERS ON IA.NO.7 FILED BY THE DEFENDANT NO.15
UNDER ORDER 7 RULE 11(a) and (d) R/W SECTION 151 OF
CPC**

1. Plaintiff has filed the present suit for the relief of partition of the suit properties as against the defendants.

KAMS410002902022

2. When the above case was at the stage of cross examination of PW-1, the defendant No.15 has filed the instant application praying to reject the plaint.

3. In the affidavit accompanying the IA.No.7 the defendant No.15 has averred that the plaintiff has filed the present suit for the relief of partition. It is averred that the defendants No.15 and 18 have filed their written statement by entirely denying the plaint averments. It is averred that in the written statement the defendants No.15 and 18 have taken up the contention that the husband of the defendant No.15 namely Mr.Mahabub Pasha had executed the relinquishment deed dated 20/03/2014 in favour of the defendant No.15 in respect of the item No.2 of the suit property. It is averred that though there is a registered relinquishment deed dated 20/03/2014 in favour of the defendant No.15, the plaintiff has not sought for the cancellation of the aforesaid relinquishment deed. Therefore, it is averred that since the plaintiff has not sought for cancellation of aforesaid relinquishment deed, the present suit is hit by Section 34 of the Specific Relief Act. It is further averred that the aforesaid relinquishment deed was executed in favour of the defendant No.15 in the year 2014 but the plaintiff has filed the present suit after lapse of 8 years from the date of said registered relinquishment deed. Therefore it is averred that the present suit is also barred by limitation. Therefore, it is averred that in view of the same, the plaintiff has no legal right to continue this suit. It is

KAMS410002902022

averred that since the plaintiff has no legal right to continue this suit, the plaint needs to be rejected. On the above grounds the defendant No.15 has prayed to reject the plaint by allowing the application.

4. The plaintiff has seriously opposed the application by filing his objections. The plaintiff has resisted the application by contending that the application filed by the defendant No.15 is not maintainable either under the law or on facts. The contents of the affidavit accompanying the application are false, irrelevant and baseless. The plaintiff has contended that the suit property was originally belonged to his father namely Mr.Mohammed Hasan Sipathi. It is contended that during his lifetime said Mr.Mohammed Hasan Sipathi has not created any third party rights over the suit properties and that said Mr.Mohammed Hasan Sipathi has died intestate. It is contended that the husband of the defendant No.15 Mr.Mahabub Pasha has illegally mutated to the suit properties to his name on the basis of inheritance without the knowledge and behind back of the plaintiff and on the basis of said illegal mutation the husband of the defendant No.15 has executed the alleged registered relinquishment deed dated 20/03/2014. Hence, the plaintiff has stated that the said registered relinquishment deed will not bind on him. Hence, such being the case there is no necessity for him to seek the relief of cancellation of the said relinquishment deed. Therefore the plaintiff has contended that just because the relief of cancellation

KAMS410002902022



of the relinquishment deed is not sought, the plaint cannot be rejected. Therefore, the plaintiff has expressed his strong objections to reject the plaint. Hence with the above contentions the plaintiff has sought for dismissal of the application.

5. Heard arguments from both the side. Perused the records. After going through the application along with affidavit, objection statement and the relevant documents placed on record, the following points arises for my consideration:

Point No.1: Whether there exist any ground to reject the plaint?

Point No.2: What order?

6. My answers to the above points are as hereunder:

Point No.1: In the Negative.

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

REASONS

7. POINT NO.1: Plaintiff has filed the present suit for the relief of partition of the suit properties as against the defendants.

8. The grounds on which the defendant No.15 has sought for rejection of plaint is that since her husband namely Mr.Mahabub Pasha has already relinquished the item No.2 of the suit property in her favour by executing the relinquishment deed dated

KAMS410002902022

20/03/2014 and since the plaintiff has not sought for the cancellation of the said relinquishment deed, the present suit is hit by Section 34 of the Specific Relief Act. It is significant to note here that the present suit is one filed for the relief of partition of the suit properties. The present suit is not filed for any declaratory relief. Hence the present suit will not come under the purview of Section 34 of the Specific Relief Act. Therefore, the rider imposed in proviso appended to the Section 34 of the Specific Relief Act will not become applicable to the case on hand. Hence, in a suit for partition, merely because the plaintiff has not sought for the declaratory relief in respect of the alleged relinquishment deed dated 20/03/2014, the same cannot be a ground to non-suit the plaintiff. Therefore, the plaint cannot be rejected by holding that the same is barred by Section 34 of the Specific Relief Act.

9. One more ground on which the defendant No.15 has sought for the rejection of plaint is that since the plaintiff has filed the present suit after the lapse of 8 years from the date of execution of relinquishment deed dated 20/03/2014, the present is barred by limitation. Therefore, since the suit is barred by law of limitation, even on the said ground also the defendant No.15 has sought for rejection of plaint. It is significant to note here that the question of limitation is a mixed question of law and facts. Therefore, in order to decide the question of limitation, there needs a complete trial. But the trial of this case is just commenced and not yet

KAMS410002902022



concluded. Therefore, at this premature stage it is highly unjust to non-suit the plaintiff on the ground of limitation.

10. It is a settled preposition of law that in order to decide the application for rejection of plaint the court has to only look into the plaint averments and the averments made by the defendants in their written statement and the averments made by the defendants in the application for rejection of plaint is wholly irrelevant. This view of this court receives support from the decision of the Hon'ble Apex Court reported in **(2004) 3 SCC 137 in the case of Sopan Sukhdeo Sable Vs. Charity Commissioner and another decision reported in (2016)14 SCC 275 in the case of R.K.Roja Vs. U.S.Rayudu and another.** I have carefully gone through the averments made in the plaint and also the documents relied on by the plaintiff. The plaint averments as well as the documents relied on by the plaintiff does not makes out any ground for rejection of plaint as mentioned in order 7 rule 11(a) to (d) of C.P.C. Therefore, in view of the same, the contention taken by the defendant No.15 in her written statement and in the I.A.No.7 cannot be considered. The defendant No.15 has sought for rejection of plaint mainly on the basis of contention taken up by her in her written statement. But the plaint cannot be rejected based on the contention taken by the defendant No.15 in her written statement. Therefore, such being the case this court cannot reject the plaint by solely relying on the assertion made by

KAMS410002902022



the defendant No.15 in the instant application. No grounds are made out by the defendant No.15 to reject the plaint. I do not find any merits in the application. The present application being devoid of merits, the same fails. Accordingly, for what has been discussed above **I answer point No.1 in the Negative.**

11. POINT NO.2: In view of my foregoing discussions on point No.1, I proceed to pass the following:

ORDER

IA.No.7 filed by the defendant No.15 Under Order 7 rule 11(a) and (d) R/w Section 151 of CPC is hereby dismissed with costs of Rs.500/-.

(Dictated to the Stenographer, typed by her, and the transcript revised and corrected by me and then pronounced in the open court on this **1st day of February-2025**)

**(SMT. ASRINA)
ADDL. CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR.**