

KAMS500000912024



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : **Sri. Kamalaksha D., B.A., LL.B.,**
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 5th day of June 2026

O.S./19/2024

Plaintiffs:

1. Siddamma, aged 75 years,
W/o late Mallappa,
D/o late Siddappa,
residing at Handuvinahalli Village,
Kasaba Hobli,
Nanjangud Taluk.
2. Siddalingamma,
aged 65 years,
W/o Siddalingappa,
D/o late Siddappa,
residing at Belachavadi Village,
Beguru Hobli,
Gundlupet Taluk.
3. Malligamma,
aged 58 years,
W/o Nagarajappa,
D/o late Siddappa,
residing at Yalahalli Village,
Hullahalli Hobli,
Nanjangud Taluk.

-V/s-

- Defendants:**
1. Mallanna M.S.,
aged 70 years,
S/o late Siddappa,
 2. Prakash, aged 42 years,
S/o Mallanna,
 3. Mahadevappa,
aged 63 years,
S/o late Siddappa,
 4. Rathnamma,
aged 55 years,
W/o Mahadevappa,
 5. Shivalingappa,
aged 29 years,
S/o Mahadevappa,

defendants No.1 to 5 are
residing at Muddahalli Village,
Naviluru Post,
Kasaba Hobli,
Nanjangud Taluk.

I.A. V

Applicant : Mallanna
.. defendant No.1
(By Sri. A.P.M., Adv.)

-V/s-

Opponents : Siddamma and others
... plaintiffs
(By Sri. S.V., Adv.)

**ORDER ON I.A.V FILED UNDER ORDER
VII RULE 11 (d) OF CPC**

The defendant No.1 has filed this application on the above said provision to reject the plaint on various grounds.

2. The defendant No.1 has sworn in the affidavit that the suit is filed for partition and separate possession. The plaintiffs have not impleaded all necessary parties in the suit. So, the suit of the plaintiffs has to be dismissed on this count. The items No.2 and 3 are the self-acquired properties of the father of the applicant and the said properties were given by his father through registered gift deed. So, the plaintiffs have no right over the gifted properties. Suit of O.S.No.447/2009 was filed pertaining to item No.10 property and the said suit was ended in compromise. Again the plaintiffs cannot file suit for partition on item No.11 property. This suit is filed after lapse of many years. Hence, the suit of the plaintiffs is not maintainable on the count of limitation. It is further

submitted that the plaintiffs had already given up their right over item No.10 property as per the compromise arrived in O.S.447/2009, because the plaintiffs took Rs.2,40,000/- instead of share in item No.10 property. Item No.11 property of Sy.No.2/7 was purchased property on 04.05.1998 from Shivamma S/o late Madappa, so the plaintiffs have no right over item No.11 schedule property. Item No.9 property was already given to the 3rd defendant and he sold the said property to the 1st defendant. The plaintiffs and defendants are not in possession of the suit schedule properties as on the date of filing of the suit and the said properties are in possession of the third parties. Already one relinquishment deed was executed on 14.06.2024 pertaining to the schedule properties. The plaintiffs failed to produce believable and necessary documents to prove the nature of the schedule properties as joint family properties. Hence, the 1st defendant prays to reject the plaint.

3. Per contra, the plaintiffs filed objections by denying the entire averments of the application. They further taken contention that O.S.447/2009 was filed regarding item No.10 and it is also true that they have make compromise but the said suit filed regarding granted land only not for all the ancestral and joint family properties. Hence, except that property plaintiffs have got rights over other properties. The grounds urged in the application are the defence introduced in the written statement and those grounds cannot be treated to reject the plaint. Hence, the plaintiffs pray so reject the application.

4. The 2nd defendant also filed independent objections saying that application has to be dismissed in limine, because the 1st defendant has given false narration and information to the court. Hence, he also prays to reject the application.

5. Heard. Perused pleadings and materials placed on record. The points that arise for consideration are:

1. Whether the applicant/ 1st defendant has made out suffice grounds to reject the plaint as per Order VII Rule 11(d) of C.P.C. ?

2. What order ?

6. The above points are answered as follows :-

Point No.1 : In the negative

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

REASONS

7. **Point No.1:-** The 1st plaintiff chosen to file application to reject the plaint on various grounds. The prime grounds introduced by the 1st defendant that, items No.2 and 3 properties are the self-acquired properties by his father i.e., Siddappa who purchased the said property, subsequently gifted the said property in favour of the 1st defendant. Hence, the plaintiffs cannot establish their right over the items No.2 and 3 properties. One suit was already filed pertaining to item No.10 property. The said suit of O.S.449/2009 was ended in compromise on

21.11.2009. According to the applicant and as per the submission by the learned counsel for the 1st defendant, the plaintiffs cannot maintain the second round of litigation on same subject matter of item No.10 property, because it was already decided long back in independent suit. Item No.11 property is also purchased property according to the applicant. The applicant further says that the 3rd defendant already sold item No.9 property in favour of the 1st defendant and the suit of the plaintiffs is also rejected on the count of limitation.

8. Order VII Rule 11 of C.P.C. clearly says that a suit may be rejected on the facts mentioned in the plaint, but court need not consider the grounds mentioned in the written statement to reject the plaint. Therefore, the guided principle to reject the plaint under Order VII Rule 11 of C.P.C. that, one suit can be rejected as per the averments of the plaint, but not as per the averments of the written statement. At this juncture, I would like to refer the judgment of the Hon'ble High Court of Karnataka

decided in **Hongeppa Vs. Kamalamma and others** reported in **2025 (4) AKR 545**. In that matter the Hon'ble High Court of Karnataka has held that, *“When Order 7, Rule 11(d) is invoked, that is, barred by law, the same is a mixed question of fact and law. The issue of law and limitation cannot be decided in an application filed under Order 7, Rule 11(d) of C.P.C. without conducting any trial.”* So, the Hon'ble High Court of Karnataka held that, question of limitation in a suit is mixed question of law and facts and suit cannot be rejected and decided on only application filed under Order VII Rule 11(d). Admittedly, the present suit is for partition and separate possession. Now the female is also considered as coparcenary member as per Section 6(5) of Hindu Succession (Amendment) Act. Property right given under statute cannot be withdrawn or extinguished simply. Therefore, question raised by the 1st defendant to decide the matter at this stage is a matter of trial. Therefore, **point No.1** is answered **in the negative**.

9. **Point No.2:-** In view of the findings on the above point, this Court proceeds to pass the following:

ORDER

I.A.V filed by the applicant/defendant No.1 under Order VII Rule 11 (d) of C.P.C. is dismissed.

No order as to cost.

(Dictated to the stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in open Court on this the 5th day of June 2026).

(Kamalaksha D.)

Senior Civil Judge & J.M.F.C.,
Nanjangud.