

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

Present : Sri. Ganapathi Prashanth.M, B.A., LL.B.,
Senior Civil Judge, Nanjangud.

Dated : This the 23rd day of January 2020.

O.S.No. 10/2017

Plaintiff/s : Sampath Kumar
(Rep., by Sri. S.B.R., Advocate)

-V/s-

Defendant/s : Puttamadappa and others
(D.1 Rep., by Sri. H.M.M., Advocate)

I.A.

Applicant/s : Puttamadappa defendant No.1

-V/s-

Opponent/s : Sampath Kumar
..... plaintiff

**ORDERS ON I.A. DATED 26.09.2019 UNDER ORDER VII
RULE 11(a)(d) R/w SECTION 151 OF CPC**

The defendant No.1 has filed I.A. U/o VII Rule 11(a)
and (d) R/w section 151 of CPC seeking to reject the plaint
for want of cause of action.

2. The plaintiff has filed objections.
3. Heard both sides. Perused the pleadings, evidence and materials on record.
4. The point that arises for consideration is as follows:-
 1. Whether the valid grounds are made out to reject the plaint as prayed for ?
5. The above point is answered in the **Negative** for the following:-

REASONS

6. The grounds urged for rejection of plaint are that as per judgment and decree in O.S. No.112/2007 dated 13.03.2008, the plaintiff of this suit does not have any right over the suit property as it originally belonged to defendant No.1's wife late. Lingamma and hence second wife's children i.e, the plaintiff does not get any share in the schedule property and the plaintiff filed this false suit

in respect of already adjudicated aspect and prayed to reject the plaint.

7. The objections of the plaintiff is that the grounds urged is not maintainable and the suit property belongs to defendant No.1 and plaintiff has equal right and hence, valid grounds are not made out for rejection of plaint and prayed to dismiss the I.A.

8 The suit is filed seeking for cancellation of the judgment and decree in O.S. No.112/2007 and to allot the 1/6th share to the plaintiff in the suit property. It is alleged that the defendant No.3 and 4 filed the suit without joining the plaintiff and obtained exparte decree. The documents produced by the defendant No.1 i.e, judgment in O.S. No.112/2007 discloses that the plaintiff B.P.Sampathkumar is not a party to the said suit. Therefore, whether the said suit would be binding upon the plaintiff requires to be adjudicated in the present suit. Even the documents produced by the plaintiff discloses

that the plaintiff was not a party in FDP No.9/2008. Hence, does the said final decree binds the plaintiff requires to be adjudicated in the present suit. Succinctly stated that there is a triable issue involved in the suit which requires recording of evidence and decision on merits. Therefore, without trial the suit cannot be disposed off on a technical grounds at this preliminary stage. Therefore, I.A. filed by defendant No.1 U/o VII Rule 11(a)(d) R/w section 151 of CPC on 26.09.2019 requires to be dismissed. Hence, the point for consideration is answered in the **Negative**. Hence, the following:-

ORDER

The I.A. dated 26.09.2019 filed by the defendant No.1 U/o VII Rule 11(a)(d) of CPC is hereby dismissed.

(Dictated to the Stenographer, transcribed by her, corrected, initialed and then pronounced by me in open Court on this the 23rd day of January 2020).

(Ganapathi Prashanth.M)
Senior Civil Judge, Nanjangud.

**Order pronounced in the open court
vide separate order**

ORDER

The I.A. dated 26.09.2019
filed by the defendant No.1 U/o
VII Rule 11(a)(d) of CPC is hereby
dismissed.

Senior Civil Judge, Nanjangud.