

**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 19th day of July, 2019.

O.S.No. 44/2019

Plaintiff/s : Sundramma
D/o late. Siddanaika @ Inthanaika
W/o late. Bangaranaika
Aged about 60 years
R/at Thagaduru village
Biligere Hobli
Nanjangud Taluk.

(Rep., by Sri. D.A.R., Advocate)

-V/s-

Defendant/s : 1. Mahadevaiah S.
S/o late. Siddanaika @
Inthanaika
Aged about 73 years

2. Subbamma
D/o late. Siddanaika @
Inthanaika
Aged about 69 years

3. Malligamma
D/o late. Siddanaika @
Inthanaika
Aged about 66 years

All are residing at Hedathale
village, Doddakavalande hobli,
Nanjangud Taluk.

(D1 & 2 Rep., by Sri. S.B.N., Advocate)

I.A.

Applicant/s : Mahadevaiah & others defendants

-V/s-

Opponent/s : Smt. Sundramma
..... plaintiff

**ORDERS ON I.A. DATED 07.06.2019 UNDER ORDER VII
RULE 11(D) R/w SECTION 151 OF CPC**

The defendants have filed I.A. U/o VII Rule 11(D) R/w
section 151 of CPC seeking to reject the plaint as barred by
law.

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 plaintiff has filed this suit seeking for the relief of partition and separate possession of the schedule property and allot half share in favour of the plaintiff. According to the plaintiff, she is the daughter of Siddanayaka through first wife Doddamma and the defendants are unlawful children out of kept mistress Karagamma and the plaintiff has got half share in the schedule property.

7. The grounds on which the defendants prayed to reject the plaint are that while the plaintiff claimed that the schedule properties are the ancestral properties suppressed that her father died on 17.07.1990 and hence, the plaintiff being married daughter is not entitled to claim any share in the schedule property. The plaintiff having

admitted the death of mother of the defendants and the defendants not disputing the nature of the schedule properties, the suit for partition is not maintainable U/s.6 of Hindu Succession Act and hence, prayed to reject the plaint as barred by law.

8. The objections of the plaintiff is that the application is filed with malafide intention and the plaintiff is the only daughter and legally wedded wife of Siddanaika @ Inthanaika who has got every right to obtain legitimate share and hence, application is liable to be rejected, as there is no partition till date between the plaintiffs and defendants.

9. The learned counsel for the defendant relied upon the decision reported in *AIR 2016 SC 769 (Prakash and others Vs. Phulavathi and others)* wherein it is held that *rights under the Amendment Act, 2005 to the Hindu Succession Act is applicable to living daughter of the living co-parcener as on 09.09.2005, irrespective of when such*

daughters were born, partition that has taken place before 20.12.2004 will remain unaffected.

10. The learned counsel for the plaintiff has relied upon the decision in *AIR 2018 SC 721 (Danamma @ Suman Surpur and another Vs. Amar and others)* and the decision reported in *2017(2) KLJ 170 (Miss. Radhika Vs. Smt. Shivamma)*, in the said decision of Hon'ble High Court of Karnataka the law regarding rejection of plaint is discussed and held that plaint can be rejected only on the basis of plaint averments, but not on the basis of defence raised.

11. The law regarding rejection of plaint is well settled. Only the plaint averments are germane but not the defence raised. At this stage, while considering the application for rejection of plaint, the plaint has to be read in isolation to find out whether any of the grounds for rejections of plaint are made out or not. With this clear understanding regarding the law, when this court has perused the plaint in isolation, does not appear to be

barred in law. Whether the version of the defendant is correct or not has to be decided after conducting the trial, but not at this stage. Therefore, valid grounds are not made out to reject the plaint as prayed for. Hence, the point for consideration is answered in the **Negative**. Hence, the following:-

ORDER

The I.A. dated 07.06.2019 filed by the defendants U/o VII Rule 11(d) R/w section 151 of CPC is hereby dismissed.

(Dictated to the Stenographer, typed by her, corrected, initialed and then pronounced by me in open Court on this the 19th day of July 2019).

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

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

ORDER

The I.A. dated 07.06.2019
filed by the defendants U/o VII
Rule 11(d) R/w section 151 of CPC
is hereby dismissed.

Senior Civil Judge, Nanjangud.