

KAMS600021582022



O.S./163/2022

**IN THE COURT OF THE SENIOR CIVIL JUDGE, AT  
PERIYAPATNA**

**Present**

**Sri.A.SAMIULLA.**

**B.Sc, LL.B.,**

**Senior Civil Judge,  
Periyapatna.**

**Dated: 23<sup>rd</sup> Day of February 2023**

**OS.No.163 of 2022**

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**Plaintiff:**

Smt.Meenakashi.

**V/s**

**Defendants:**

Sri.Cheluvegowda & Ors.

**IA.No.4**

**Applicant/Defendants.**

Sri.Cheluvegowda

**V/s**

**Opponent/plaintiff**

Smt.Meenakshi.

**ORDER ON IA.No.4, U/O 7 RULE 11 (D) CPC**

Defendants-1 to 3 moved this application seeking  
to reject the plaint on the ground the plaintiff has no

right to file the suit.

2. Plaintiff resisted the application by filing objection statement.

3. Heard arguments.

4. Following point arises for consideration;

*Whether the defendants-1 to 3 have made out a case to reject the plaint as prayed?*

5. Answer to the above point is in **negative** for the following;

### **REASONS**

6. At the outset; suit is filed for partition and separate possession by asserting that; propositus Cheluvegowda (D1) had two wives Sharadamma (mother of plaintiff and defendant-2) and Kempamma (mother of defendants-3 & 4); they constituted joint family; suit properties are ancestral and joint family properties and there is no severance of joint status. When such being the fact; defendants-1 to 3 colluding together with an intention to defraud her legitimate share have executed gift deed in favour of defendant-4

as per MR.No.H6/21-22, which is not binding on her. She demanded to allot her legitimate share but to no avail. Hence, suit is filed.

7. Defendants-1 to 3 resisted the suit by filing written statement denying plaint averments in toto and inter alia contended that; plaintiff is not having right to file suit; genealogy shown in the plaint is false. They denied that defendant-1 had two wives and plaintiff is daughter of first wife Sharadamma, who is not the wife of defendant-1. They denied that suit properties are ancestral & joint family properties. They contended that suit item-1 is the self-acquired property of defendant-1. Suit item-2 is allotted to the share of defendant-1 in family partition effected between him and his brothers. Defendant-1 has executed gift deed in favour of defendant-4 in respect of suit item-2. Among these grounds, they prayed to dismiss the suit.

**8.** Along with written statement defendants filed the application at hand for the relief stated *supra* by stating the facts asserted in the written statement. Plaintiff objected the application by filing statement of objections by contending that; no grounds made out in the application to reject the plaint and the application is filed to drag the proceedings.

**9.** Here, application is filed invoking provision Order 7 R 11(d) CPC, which reads thus; the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law.

**10.** Before adverting to unearth the truth regarding the contentions raised by the parties to lis it is just and necessary to highlight some of the well settled principles regarding the rejection of plaint under Order 7 Rule 11 CPC.

**i)** For the purpose of decision on application under Order 7 Rule 11 (d) of CPC, the averments in plaint are important; plea taken by the defendant in the written statement would be wholly irrelevant.

**ii)** When the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised.

**iii)** Power of the Court under Order 7 Rule 11 can be exercised both at the threshold of the proceedings and in the absence of any statutory restriction, at any stage of subsequent proceedings.

**11.** Coming back to the facts at hand; the defendants herein sought for rejection of plaint on the ground that the genealogy projected by the

plaintiff is false and she is no way related to the family of defendants and she has no right over the suit properties.

**12.** It is worth to note that as stated *supra* while dealing with provision Rule 11 of Order 7 CPC the plaintiff averments alone plays a role and not the plea taken by the defendants. In this backdrop on careful and meaningful scrutiny of plaintiff averments one can see that; plaintiff claims to be daughter of defendant-1 through his deceased first wife Sharadamma and according to her the defendant-2 is her sister and the defendants-3 & 4 are the sons of defendant-1 through second wife Kempamma. Further she asserted that suit properties are ancestral and joint family properties and she is having share in the properties and gift deed executed by defendant-1 in favour of defendant-4 is

not binding on her. Whether the relationship projected by the plaintiff and the nature of suit properties asserted by her are true or false is to be adjudicated only after full-fledged trial and the same cannot be decided at the threshold.

**13.** It is pertinent to note that; none of the grounds urged by the defendants come within the four corners of provision Rule 11(d) of Order 7 of the Code to say that; the plaint is barred by law. Hence, above point is answered in negative and proceeds to pass the following;

**ORDER**

IA.No.4 filed by the defendants u/O 7 Rule 11 (d) CPC is rejected.

No order as to costs.

(Dictated to the Stenographer directly typed by her, corrected and initialed by me and then pronounced in the open Court on 23.02.23)  
sd/-

**(A.SAMIULLA)**  
**Senior Civil Judge**  
**Periyapatna.**