



**IN THE COURT OF THE ADDITIONAL CIVIL
JUDGE AND JMFC., AT PERIYAPATNA**

Present: **Smt. Shwetha.J. B.Com, L.L.B.,**
Addl. Civil Judge & JMFC.,

Dated this 24th day of July 2023

O.S.No.291/2014

PLAINTIFF : MASTHAMMA
V/s.,
DEFENDANT : KAVERAMMA

IA.No.XII

APPLICANT/
DEFENDANT NO.12: P.V.NAGARAJU
[By Sri.NK.,Adv.,]

V/s.,

OPPONENT/
PLAINTIFF : KAVERAMMA
[By Sri.GCA.Adv.,]

ORDERS ON IA.No.XII

I.A.No.XII is filed u/O VII Rule 11 r/w Sec.9 and
151 of CPC by the defendant No.12 praying to reject the
plaint.

2. The brief facts narrated in IA.No.XII are as follows:

The plaintiff filed the suit against the defendants for the reliefs of partition and separate possession. Earlier the plaintiff No.3 has entered in to the Sale Agreement with the defendant No.12 on 18.01.2012 for an amount of Rs.2,53,000/-. Out of which an advance amount of Rs.1,53,000/- was received by the plaintiff. That when the plaintiff No.3 failed to execute the Sale Deed, the defendant No.12 has filed suit against the plaintiff No.3 in OS.No.78/2014. In the said suit, the plaintiff No.3 took defence that the suit property of that suit is ancestral property and his siblings are entitle for share in it. That the said suit was decreed in favour of defendant No.12. The appeal in RA.No.29/2011 filed by the plaintiff No.3 challenging the said judgment was also dismissed. As the said judgment attained its finality, this suit is not

maintainable and the same is liable to be rejected. Hence prayed to allow this IA.No.XII by rejecting the plaint.

3. The plaintiffs have filed objections to the IA.No.XII stating that this suit is filed for partition and separate possession in respect of 2 acres 1 gunta whereas suit in OS.No.78/2012 is only in respect of 16 guntas of Sy.No.10/1. Since no partition is effected between the family members, the plaintiff No.3 alone cannot sell the suit property to an extent of 16 guntas. That the judgments in OS.No.78/2012 and RA.No.29/2019 were disposed off only on the basis of plain reading of pleadings of both parties and no issues were framed regarding the family partition in respect of Sy.No.10/1. That the plaintiff No.1 and 2 and the defendant No.1 to 11 are not parties to the OS.No.78/2012 or RA.No.29/2017. Hence only on the basis of pleadings in written statement, the suit under consideration cannot be rejected without trial. This court has already framed

issue on the basis of rival pleadings of the parties and findings given in OS.No.78/2012 and RA.No.29/2017. Hence the rights of the parties shall be settled only on merits of the case. Therefore prayed to dismiss the IA.No.XII.

4. Heard arguments of learned Counsels for the plaintiff as well as the defendants.

5. The Points that arises for my consideration are as under:-

Point No.1: *Whether the defendant No.12 has made out a case to allow IA.No.XII filed under Order VII Rule 11(d) r/w Section 9 and 151 of CPC and the suit is liable to be rejected?*

Point No.2: *What order?*

6. My findings to the above points are as under:

Point No.1: In the **Negative**,
Point No.2 : As per final Order
for the following;

REASONS

7. Point No.1: Since the defendant No.12 filed IA.No.XII for rejection of plaint u/O VII Rule 11 r/w Sections 9 and 151 of CPC, it is pertinent to reproduce the said provisions.

11. Rejection of plaint.— The plaint shall be rejected in the following cases:—

- (a) Where it does not disclose the cause of action;*
- (b) Where the relief claimed is undervalued and the plaintiff on being required by the court to correct the valuation within a time to be fixed by the Court fails to do so.*
- (c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) Where it is not filed in duplicate;*
- (f) Where the plaintiff fails comply with the provision of Rule 9.*

Section-9. Courts to try all civil suits unless barred .-

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all Suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

8. In this case, the plaintiffs have filed the suit for partition and separate possession. The defendant No.12 has not filed his written statement, but filed the present application for rejection of plaint stating that the plaintiff No.3 has executed Sale Agreement in his favour. He has filed suit against the present plaintiff No.3 in OS.No.78/2014, which came to be decreed in favour of the defendant No.12. The appeal in RA.No.29/2011 filed by the plaintiff No.3 and others challenging the judgment in OS.No.78/2014 was dismissed. Hence the suit is liable to be rejected.

9. The defendant No.12 filed this application under Order VII Rule 11 r/w Section 9 of CPC seeking rejection of the plaint. It is well settled law that the plaint **shall** be rejected on any one of the grounds enumerated

in clauses (a) to (e) of Order VII Rule 11 of CPC, but no plaint can be rejected on the basis of the defence taken by the defendant in the written statement. That should be established only on the basis of pleadings of the plaint. The pleas taken by the defendants are irrelevant and no material. The provision of Order VII Rule 11 is mandatory in nature. It states that if any of the grounds satisfied or that the suit is barred by any law, the Court has no option, but to reject the plaint.

10. The plaintiffs assert that the suit property is their ancestral property. Except the suit property bearing No.10/1 measuring 2 acres 1 gunta, the plaintiffs and their family members have got partitioned the other family properties through oral partition. The defendant No.12 claims that already Appellate Court has made an observation of family partition hence, the present suit is not maintainable. On perusal of the judgment and decree the said judgment was passed only in respect of 16

guntas of land in Sy.No.10/1. In view of the same, it is pertinent to reproduce the observations of Hon'ble Supreme Court in **Madav Prasad Agarwal Vs., Axis Bank Limited reported in (2019) 7 SCC 158**. In the said judgment it is held that,

10. *We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) of CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power Order 7 Rule 11 (d) of CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in the case of Sejal Glass Limited (supra) is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) of CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the director's defendant(s) 2 to 4 therein. On*

that basis, the High Court had opined that the suit can continue against defendant No.1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) of CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) of CPC will have no application at all, and the suit as a whole must then proceed to trial.

11. In view of the same, the judgment in OS.No.78/2014 was passed only in respect of 16 guntas of land in Sy.No.10/1. Whereas the plaintiffs in this case have sought for partition to the total extent of 2 acars 1 gunta. Hence the plaint cannot be rejected in part and it requires trial as a whole.

12. The counsel for the defendant No.12 has contended that already finding has been given by the Appellate Courts about partition and it acts as resjudicata. Hence as per Section 9 of CPC, the suit is not maintainable. At this juncture, it is pertinent to expound the observation of Hon'ble High Court of Bombay in **Smt. Sita Shripad Narvekar and others Vs., Auduth Timblo**. In which, it is held that "For the purpose of reaching an inference on the application of Order 7 Rule 11(d), the averments in the plaint must be scrutinized without adding or subtraction anything. Since res judicata is both – a mixed question of law and fact, the Court will have to inspect it on the basis of evidence produced by the parties on the merits of the claim." Therefore, in view of the same which requires full trial.

13. The Hon'ble Supreme Court in **K.Roja Vs., Rayee** has held that "An application for rejection of plaint can be filed at any stage. The court needs to dispose of

such an application before the trial starts.” In view of the said observation by Hon’ble Supreme Court in the instant case, the trial has already began and document were marked. At this stage, the present application is liable to be rejected. The averments made in the application are subject to the proof by the defendants at the time of trial and would effect the result of suit based on what is proved. But unless established, such facts cannot affect the maintainability of the suit.

14. Since the trial has began, this Court cannot come to the conclusion that the plaint shall be rejected merely on the basis of application and its contents. More over the parties to the present suit are not parties to the earlier suit. That on reading of plaint averments, the plaint averments do not make out any case to reject the plaint. For the afore-said reasons, this Court is of the opinion that the defendant No.12 has not made out a

case to allow the IA under consideration. Accordingly,
point No.1 is answered in the Negative.

15. Point No.2: In view of the discussions made above, this Court proceeds to pass the following:

ORDER

I.A.No.XII filed by the defendant No.12
u/O VII Rule 11 r/w Section 9 and 151 of CPC
is hereby rejected on costs of Rs.500/-.

(Dictated to the Stenographer on Computer, revised, corrected and then pronounced by me in the open Court on this the 24th day of July 2023)

(Shwetha.J)
Addl. Civil Judge and JMFC
Periyapatna