

**IN THE COURT OF ADDL. SENIOR CIVIL JUDGE & JMFC.,**  
**AT RAMANAGARA**

**:PRESENT:**

**Smt.Anupama Lakshmi.B., B.A., LL.B.,**  
**Addl. Senior Civil Judge & JMFC.,**  
**Ramanagara.**

**O.S. No.656/2013**

**DATED : THIS THE 14<sup>th</sup> DAY OF NOVEMBER 2019**

**Plaintiff** : Smt.Kamamma and Another

**-V/s-**

**Defendant** : Ventappa and Others

**Applicants** : Giryappa and Others -- (Defendants No.2 to 5, 8, 10 and 12)

**-V/s-**

**Opponent** : Smt.Kamamma and Another -- (Plaintiffs)

**Orders on IA filed under Oder VII Rul 11(d) and Section**  
**11 of CPC.,**

The applicants/defendants No.2 to 5, 8, 10 and 12 filed the application to reject the plaint as the suit is not maintainable in law.

2. The defendant No.4 has sworn to an affidavit annexed to the said application and submitted that, the plaintiffs have no right over the suit schedule properties. The suit schedule properties have already been divided during the life time of Chikkathimmaiah under Panchayath Parikath dated: 26-08-1981. That the defendants No.4 and 5 have instituted O.S.No.148/1988 with respect to the present suit schedule properties on the file of Prl.Senior Civil Judge Ramanagara. The said suit was dismissed on 04-11-2003.

That the defendants No.4 and 5 preferred RFA No.1182/2005 before the Hon'ble High Court of Karnataka. The said appeal was allowed and the Hon'ble High Court observed that, as per Panchayath Parikath dated:26-08-1981 the plaintiffs and the defendants have right over the suit schedule properties. The appeal preferred before the Hon'ble Apex Court against the said judgment was dismissed. As such the decision of the Hon'ble High Court has attained finality.

That the children of the 1st wife of Chikkathimmaiah have instituted suit for partition on the file of Prl.Senior Civil Judge. The present defendants No.4 and 5 filed written statement and issues were framed. Since, the plaintiffs did not adduce evidence the suit O.S.No.365/2008 was dismissed on 27-08-2013. No appeal was preferred against the said orders. Therefore, when the Hon'ble High Court

has decided the case in RFA No.1182/2005 as per the Panchayath Parikath the matter has been finally decided. Hence, the plaintiffs have no right to institute the suit.

Apart from that, the Court fee paid by the plaintiffs is insufficient as the plaintiffs and the defendants are in separate possession of the properties as per the Panchayath Parikath dated:26-08-1981. Hence, the application.

3. The plaintiff No.1/opponent filed statement of objections. According to her suit properties are her ancestral properties and all the children of Chikkathimmaiah have right over the said properties. In the suit O.S.No.145/1988 instituted by the defendants the daughters of Chikkathimmaiah were not parties. Chikkathimmaiah and his sons had not entered into registered partition deed. Only the sons instituted the suit and the same was dismissed.

In the appeal preferred against the said judgment the daughters of Chikkathimmaiah as his LRs were made parties to the suit. In that time the daughters had no share in the properties. As such, though the daughters were parties no notice was served on them.

The Hon'ble High Court has not discussed the right of the daughters. The daughters of Chikkathimmaiah have instituted the suit after passing of Amendment Act. The daughters in the said suit were the sisters of the

defendants. They without the knowledge of the plaintiffs compromised as such the suit was dismissed. After coming to know of the same the present suit is instituted.

That the unregistered partition deed is not maintainable. The suit schedule properties have not been partitioned and all are in joint possession of the suit properties. That the plaintiffs have paid proper Court fee. Hence, the plaintiffs have prayed for dismissal of the application with the costs.

4. Heard.

5. The following points arise for my consideration.

1. Whether the suit is barred by any law?
2. Whether the suit is barred by res-judicata?
3. What order?

6. My answer to the above points is as under:

**Points No.1 and 2:** In the Negative

**Point No.3** : As per the final order for the following:

### **REASONS**

7. **Points No.1 and 2:** These points are inter connected with one another, therefore to avoid repetition and for the sake of convenience they are taken up together for consideration.

The defendants have prayed for rejection of plaint on the grounds that the suit is barred by law and is also barred by the principles of res-judicata.

8. Under Order VII Rule 11(d) of CPC the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. In this case, a perusal of the plaint does not reveal that, the suit is barred by any law. The Court while exercising power under order VII Rule 11 of CPC., has to read only the plaint averments as a whole and at that time stand of defendants in written statement or in application for rejection of plaint is wholly immaterial at that stage as plaint can be rejected only if the averments made therein prima-facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law.

9. In the present case, the defendants though have captioned the application with Order VII Rule 11(d) of CPC., the contents of affidavit do not say that, the suit is barred by law. But, the affidavit discloses that, the matter has attained finality as such the plaint has to be rejected on the ground of res-judicata. However, the present suit is instituted by the daughters and they have contended that, in the earlier suit they were not parties and in RFA, they were made parties as the LRs of their deceased father

Chikkathimmaiah and their rights were not decided in the said suit. Such being the case, the present suit is not barred by any law or by the principles of res-judicata.

10. Further, while deciding the issue of insufficient payment of Court fee, the Court has to considered only the plaint averments. Here, the plaintiffs have contended that, they are the members of the joint family. As such the Court fee paid by them is proper. Hence, I answer **Points No.1 and 2 in the Negative.**

11. **Point No.3:** For the reasons stated above, I proceed to pass the following:

**ORDER**

IA filed by the defendants No.2 to 5, 8  
10 and 12 under Order VII Rule 11(d) of  
CPC and Section 11 of CPC., is rejected.

*(Dictated to the Stenographer in part and dictated directly on the computer and computerized by him, corrected, signed and then pronounced by me in the Open Court on this the 14<sup>th</sup> day of November 2019.)*

**Addl. Senior Civil Judge & JMFC., ,  
Ramanagara.**