

KARN320015202012



**IN THE COURT OF THE II ADDL.CIVIL JUDGE & J.M.F.C.,
AT KANAKAPURA.**

Present: Smt. Savita Rudragouda
Chikkanagoudar., B.A., LL.B.,
II Addl. Civil Judge & JMFC.,
Kanakapura.

Dated: This 2nd day of August 2024

O.S. No. 199/2012

- Plaintiffs :**
1. Smt. Chowdamma,
D/o late Chowdegowda
@ Goonegowda,
W/o Honnegowda,
Aged about 53 years,
R/at: Dyapegowdanadoddi Village,
Malagalu Dakhle,
Kasaba Hobli,
Kanakapura Town.
 2. Smt. Jayamma,
D/o Late. Chowdegowda @
Goonegowda,
W/o Dasegowda,
Aged about 52 years,
R/at: Halasinamaradadoddi,
Kanakapura Town.

(By Sri. K.V.Mahadevaiah., Adv.)

//Vs.//

Defendants :

1. Sri. Puttegowda,
S/o Late. Chowdegowda
@ Goonegowda,
Aged about 50 years,
2. Sri. Shivanna,
S/o Late. Chowdegowda
@ Goonegowda,
Aged about 48 years,

Both are R/at:
Cheeranakuppe Village,
Kasaba Hobli,
Kanakapura Taluk,
Ramanagara District.

3. Smt. Shivamma,
D/o Late. Chowdegowda
@ Goonegowda,
Aged about 46 years,
R/at Gerahalli Village,
Kasaba Hobli,
Kanakapura Taluk,

(D.1 Sri. C.M.Jagadeesha., Adv.)
(D.2 & 3 Sri. Muthegowda., Adv.)

I.A.No.V

Applicant

Defendant No.1 :

Sri. Puttegowda and others

-V/S-

Opponents:

Plaintiffs

: Smt. Chowdamma and another

**ORDER ON I.A.V UNDER ORDER VII RULE 11(b) R/w SEC 151
OF CPC FILED BY THE DEFFENDANT No.1**

The present I.A.No.V is filed under Order VII Rule 11(b) R/w Sec. 151 of CPC by the defendant No.1 to reject the plaint .

2. In the affidavit accompanying the application the defendant No.1 states that plaintiffs have filed the present suit for partition and separate possession of their share in the suit schedule properties but the present market value of the suit schedule properties is Rs. 82,00,000/- per acre as per government valuation. So, the market value of the suit item No.1 of the schedule property bearing Sy. No. 102, measuring 1 acre 34 guntas is Rs. 14,90,000/-, the market value of the suit item No.2 of the schedule property bearing Sy. No. 96/1, measuring 0.06.12 guntas is Rs. 16,00,000/-, the market value of the suit item No.3 of the schedule property bearing Sy.No. 98, measuring 0.33.04 guntas is Rs. 85,00,000/- the market value of the suit item No.4 of the schedule property bearing Sy.No.100/1, measuring 0.20 guntas is Rs. 50,00,000/-, the market value of the suit item No.5 of the schedule property bearing Sy.No. 123/3, measuring 0.11.12 guntas is Rs. 27,50,000/- the market value of the suit item No.6 of the schedule property bearing Sy.No.124/1, measuring 1 acre 16 guntas is Rs. 14,00,000/- the market value of the suit item No.7 of the schedule property bearing Sy.No.125/2, measuring 0.34.08 guntas is Rs. 85,00,000/- and

the market value of the suit item No.8 of the 0.05 acre 34 guntas is Rs. 12,50,000/-. Total market value of the suit schedule properties is Rs.5,65,00,000/-. The plaintiffs 1/5th share is Rs.1,13,00,000/-, where as the relief claimed by the plaintiff is undervalued and This court is not having the jurisdiction to try this suit. Hence, it is just and necessary to dismiss the suit for want of jurisdiction. If the present application is allowed, no hardship of any kind will be caused to the plaintiffs . On the other hand, defendants will be put to much hardship and greater injustice, if application is not allowed, Hence prays to reject the plaint.

3. On the other hand in the objection filed to said application, the plaintiff states that calculations mentioned by the defendant No.1 are false and created one. Defendant No.1 had filed similar application even earlier U/O.7 rule 11 of CPC to reject the plaint on 20.02.2016 and to the said application the plaintiff had filed objection and after hearing both the parties, the said application was dismissed and now when the matter is pending for cross of PW1, defendant No.1 has come up with similar application just to drag on the proceedings and with malafide intention to harrash the plaintiff. She further states that the application filed by the defendant No.1 is highly misconceived, vexatious. The present suit being one for partition and separate possession of plaintiff's 1/5th share each , in the suit schedule properties. At the time of filing of the present suit the

value of the share of the plaintiff 's was below Rs.5,00,000/- and hence the suit was filed before this court. The defendants in their written statement have not taken the contention that present suit is not maintainable for want of jurisdiction, it is only at the stage of cross of PW1 present application is filed, to harass the plaintiff . The plaintiffs further submit that valuation of the suit schedule properties must be calculated based on their valuation at the time of filing of the suit and not at subsequent stage, the calculation of value of suit schedule properties given by defendant No.1 is wrong and defendant No.1 has not produced any documents to show the actual land correct value of suit schedule properties at time of filing of the suit. If the present application is allowed, Plaintiff will be put to severe hardship and injury and hence prays to dismiss the application.

4. Heard and Perused material placed on record.

5. Now the points that would arise for my consideration are as follows:-

1. Whether the plaint is liable to be rejected on the ground that the suit is under valued and this court has no jurisdiction ?

2. What Order?

6. My answer to the above points is as follows.

Point No.1: In the Negative

**Point No.2: As per the final order
for the following;**

REASONS

7. **Point No.1:** It is the specific contention of the defendant that, the plaintiff has under valued the suit schedule properties . According to defendant, plaintiffs have filed the present suit for partition and separate possession of their share in the suit schedule properties but the present market value of the suit schedule property is Rs. 82,00,000/- per acre as per government valuation. The market value of the suit item No.1 of the schedule property bearing Sy. No. 102, measuring 1 acre 34 guntas is Rs. 14,90,000/-, the market value of the suit item No.2 of the schedule property bearing Sy. No. 96/1, measuring 0.06.12 guntas is Rs. 16,00,000/-, the market value of the suit item No.3 of the schedule property bearing Sy.No. 98, measuring 0.33.04 guntas is Rs. 85,00,000/- the market value of the suit item No.4 of the schedule property bearing Sy.No.100/1, measuring 0.20 guntas is Rs. 50,00,000/-, the market value of the suit item No.5 of the schedule property bearing Sy.No. 123/3, measuring 0.11.12 guntas is Rs. 27,50,000/- the market value of the suit item No.6 of the schedule property bearing Sy.No.124/1, measuring 1 acre 16 guntas is Rs. 14,00,000/- the market value of the suit item No.7 of the schedule property bearing Sy.No.125/2, measuring 0.34.08 guntas is Rs. 85,00,000/- and the market value of the suit item No.8 of the 0.05 acre 34 guntas is Rs. 12,50,000/-. Total market value of the suit schedule

properties is Rs.5,65,00,000/-. The plaintiff is having 1/5th share valuing Rs.1,13,00,000/-, Hence, the relief claimed by the plaintiff is undervalued and this court is not having the jurisdiction to try this suit. Hence, it is just and necessary to dismiss the above suit for want of jurisdiction. In support of his contention, defendant has furnished the xerox copy of Gazette Notification of Government of Karnataka with respect to average market value of vacant site, agricultural land and buildings coming within the jurisdiction of Sub-registrar Office, Ramanagara District. The said notification is dated 01.01.2019 .

8. At this point of time it is very necessary to look into the provision of order VII Rule 11 of CPC which provides that court shall reject the plaint

- a) where it does not disclose a 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 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 the 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.

9. On going through the said provision it is clear that under Order VII Rule 11 it is mandatory for the court to reject the plaint only when the relief claimed is under valued and plaintiff on being required by the court to correct the valuation within a time to be fixed by court fails to do so. But in the present suit the defendants pray the court to reject the plaint only on the ground that the suit schedule properties are under valued based on the present market valuation of the suit schedule properties . However it is a notable fact that suit cannot be said to be undervalued on the ground that suit schedule properties are valuing more now. Every suit is to be valued for the purpose of determining the court fee and pecuniary jurisdiction, based on its valuation calculated at the time of filing of the suit. Hence, on the ground that suit schedule properties are valuing more now, plaint cannot be rejected now. Further , as the valuation furnished by the defendants is present valuation of suit schedule properties , court cannot consider the same and to determine the pecuniary jurisdiction of a court , it must be determined based on the valuation of the suit as disclosed in the plaint and not as asserted by defendant, in the absence of proof to the contrary. Hence, I answer Point No.1 in the Negative.

10. **Point No.2:** For the above stated reasons , I proceed to pass the following.

ORDER

I.A V filed under Order VII Rule 11(b) r/w
Sec. 151 of CPC by the defendant No.1 is hereby
dismissed.

(Dictated to the Stenographer directly on computer, then corrected and pronounced by me in the Open Court on this 2nd day of August 2024)

II Addl. Civil Judge & JMFC.,
Kanakapura.