



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE &
J.M.F.C., AT:MAGADI.**

DATED : THIS THE 6th DAY OF JULY, 2026

**Present: Sri. Shivakumar R., B.A., LL.B.,
Addl. Senior Civil Judge & JMFC., MAGADI.**

O.S.No.356/2019

Plaintiff : Sri. Chikkahanumaiah

(By **Sri. S.C.R.** Advocate)

---V/s---

Defendants : Smt. Giriyamma & Ors.,

(D1 by **Sri. S.G.R.** Advocate)

(D2 by **Sri. M.R.R.** Advocate)

(D3 & 4 **Exparte**)

Parties to I.A.No.3

Applicants : Sri. Gangahanumaiah
@ Hanumaiah (D2)

V/S.

Opponent : Sri. Chikkahanumaiah

ORDER ON IA No.3

The defendant No.2 has filed I.A.3 U/O.VII R.11(d) r/w.

Sec.151 of C.P.C., praying for rejection of plaint on the ground that,



for want of cause of action.

2. In the accompanying affidavit, the defendant No.2 has stated that, the plaintiff has filed the above suit against the defendants for the relief of partition and separate possession and other reliefs with respect to suit schedule properties. The plaintiff has got issued the false contents legal notice dated 5-8-2019 to the defendant No.2 and in the alleged legal notice he himself admitted that there was a partition took place between defendant No.2, plaintiff and other defendants and it is stated in the legal notice that they are in the separate possession and enjoyment of the notice schedule properties. Now the plaintiff averred in the plaint that, they have not partitioned in respect of the suit schedule properties and praying for partition. When he is admitting in the legal notice that, they have already partitioned in the suit schedule properties, once again he is seeking partition will not arise and there is no cause of action to that effect. The plaintiff cannot permitted to take hot and cold contention in the plaint and he cannot take dual contention as per his whims and fancy. Hence the



plaint itself is not maintainable as there is no cause of action. The plaintiff suppressed the above said fact and filed the said suit, consequently the plaint will be rejected. Under these circumstances if this Court may reject the plaint, no hardship or injury will be caused to anybody on the other hand, the defendant No.2 will be put to great hardship, which cannot be compensated by any means. Hence, this I.A.

3. The copy of I.A., was served to the other side. The plaintiff has filed the detailed statement of objections and resisted the I.A., filed by the defendant No.2. In the statement of objections the plaintiff has contended that, the defendant No.2 has filed a very vague and bald application under order 7 rule 11 (d) of CPC and he has miserably failed to fulfill the ingredients of the provision. It is further contended that, while considering the application U/O. VII Rule 11(d) of C.P.C., the Court should consider only the statements made in the plaint and the contentions of the written statement and I.A., are wholly irrelevant. For all these grounds, the plaintiff prays for to reject the aforesaid I.A., with exemplary cost.



4. Heard arguments on both sides.

5. On perusal of the materials placed on record, the following points would arise for my consideration are :

1) Whether the defendant No.2 has made out sufficient grounds in I.A.No.3 to reject the plaint?

2) What Order?

6. My findings on the above points are as follows :

Point No.1: In the Negative,

Point No.2: As per the Order,

for the following:

REASONS

7. **POINT NO.1:** On perusal of the materials available on record, admittedly the plaintiff has filed present suit against the defendants for the relief of partition and separate possession against the defendants in respect of suit schedule properties. Before advertng to the factual matrix of the interim application, it is just and necessary to keep in mind the law laid down regarding Order VII Rule 11 of CPC, which reads as follows :



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

(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, 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.

8. It is urge of the defendant No.2 that, the plaintiff got issued Legal Notice dated: 05.08.2019 to the defendant No.2 herein and in the alleged Legal Notice the plaintiff himself admitted that, there



was a partition was took place between the plaintiff and defendants and it is stated in the Legal Notice that, we are in the separate possession and enjoyment of the notice schedule property. Now the plaintiff averred in the plaint that, there is no partition in respect of the suit schedule properties. Once again plaintiff is seeking partition will not arise. Hence, there is no cause of action to file this suit.

9. On the other hand, the plaintiff has contended that, while considering the application U/O.VII Rule 11, the averments made out in the plaint is to be considered, the averments made out in the application or written statement is only irrelevant. Hence, the application filed by the defendant No.2 is not tenable in the eye of Law.

10. Admittedly, the plaintiff has filed this suit against the defendants for the relief of partition and separate possession of his legitimate share in respect of the suit schedule properties. The defendant No.2 has filed the instant I.A., for rejection of plaint stating that there is no cause of action to file the above suit. It is



well settled preposition of law that, while considering the application under Order VII Rule 11 of the CPC, the court has to consider the averments made out in the plaint, but not the averments made out in the written statement. At this juncture, I would like to refer the decision of the Hon'ble Apex Court of India between **Salim Bai and others Vs. State of Maharashtra and others**, the same is reported in **(2003) 1 SCC 557**, wherein the Hon'ble Apex Court pleased to held that:

For the purpose of constituting under Order VII Rule 11 of CPC, the averments made out in the plaint alone should be germane and plea taken in the written statement or in the I.A., would be wholly irrelevant.

11. It is relevant to note that, the main contention urged by the defendant No.2 to reject the plaint on the ground that, there is no cause of action to file the above suit. On careful perusal of the plaint averments, it discloses the cause of action is pleaded. Therefore, as per the plaint averments, it discloses that, cause of action to file this suit. The probability of said cause of action is



sufficient to reject the I.A. filed by the defendant No.2. It is to be noted that, the cause of action means nothing but a bundle of facts. Whether there is a cause of action to file a suit or not, it can be considered after conclusion of trial, but not at this stage. At this juncture, I would like to referred the decision rendered by the Hon'ble Apex Court of India in the case of **State of Orissa Vs. Kiockner and Co., and others**, the same is reported in **AIR 1986 SCC 2140**, wherein the Hon'ble Supreme Court of India has clearly held that:

There is a distinction between the plea that, there was no cause of action for the suit and the plea that, plaint does not disclose any cause of action and rejection of the plaint on the ground that, plaintiff has no cause of action is not proper'.

On perusal of the ratio laid down in the aforesaid decision, is aptly applicable to the present case on hand. It is very relevant to note that, in plaint averments it discloses that the cause of action to file the suit. At this stage, the defendant No.2 has not made out any valid grounds to reject the plaint. Therefore, the I.A.,



filed by the defendant No.2 is devoid of merits. For considering all these reasons, I answer Point No.1 in the '**Negative**'.

12. **POINT NO.2** : In view of my findings on Point No.1, I proceed to pass the following :

ORDER

I.A.No.3 filed by the defendant No.2 under Order VII Rule 11(d) r/w. Section 151 of CPC is hereby rejected on cost of Rs.500/-.

(Dictated to the Typist directly on the computer, typed by her, corrected by me and then pronounced in the open court on this the **6th day of July, 2026.**)

(Shivakumar R.)
Addl. Sr. Civil Judge & JMFC.,
Magadi.