

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

: P R E S E N T :

SRI. AVINASH M. GHALI,

B.A., LL.B.,

II ADDITIONAL CIVIL JUDGE AND JMFC,
SHIKARIPURA.

DATED THIS THE 18th DAY OF MARCH 2024

O.S. No.332/2023

PLAINTIFFS :-

1. Nasim Unnisa S/o Mohemmad Iqbal,
Aged about 67 years,
R/o Market Road,
Sagar Town and Taluk,
Shivamogga District.
2. Nayimunnisa W/o Shafi Ahmed Khan,
Aged about 65 years,
R/o 3rd Cross, Tippunagara,
Shivamogga District.
3. Shameem Banu W/o Syed Yaqbal,
Aged about 53 years,
R/o Maji Subhedar Keri,
Shikaripura Town & Taluk.
4. Sumayya Begum W/o Munawar Pasha,
Aged about 52 years,
R/o 2nd Cross, Tunga Nagara,
Gopal Extension,
Shivamogga town & Taluk.
5. Munirabi W/o Jakriyasab,
Aged about 51 years,
R/o # 125, Channel Keri,
Shikaripura town & Taluk.
6. Rihana Begum W/o Atheeq Ahmed,
Aged about 46 years,
R/o Urdu School Road,
Harnahalli village,
Shivamogga Taluk.

(By Sri. PJV., Advocate)

// VERSUS //**DEFENDANTS :**

1. G. Sulema Sha Khadri @ G. Suleman Sab
S/o Mohamed Hussen Sab,
Aged about 51 years.
2. G. Ismail S/o Mohamed Hussen Sab,
Aged about 44 years,
Both are R/o Haliyuru Hosakeri,
Shikaripura Town.

(Def. No.1 By Sri BSB., Advocate)
(Def. No.2 By Sri NCS., Advocate)

: : PARTIES TO I.A. No.III: :**APPLICANT/DEFENDANT :**

1. G. Sulema Sha Khadri @ G. Suleman Sab
S/o Mohamed Hussen Sab,

// VERSUS //**OPPONENTS/PLAINTIFF :**

1. Nasim Unnisa S/o Mohemmad Iqbal and others.

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1.	Provision under which the application is filed	I.A.No. III U/o VII Rule 11 R/w Sec. 151 of CPC
2.	Relief sought for	Partition & Separate Possession
3.	The date on which the application is filed	29.12.2023
4.	Number of the application	I.A.No.III
5.	The date on which the objections are filed by different opponents	23-01-2024
6.	The date on which the orders were passed on the said application	18-03-2024

ORDERS ON I.A No.III

The present application is filed by defendants U/o VII Rule 11 R/w Sec. 151 of CPC with prayer to reject the plaint as no cause of action.

2. In the affidavit annexed with the present application it is stated that the suit schedule property and relief under the present suit are not matching with each other. The defendants contended that the plaintiffs have relinquishment their right over the suit property by executing the relinquishment deed as per SR.No.154/2014-15 and got the movable properties mentioned in the said relinquishment deed. The plaintiffs colluded with each other and mutated the names jointly by violating Sec. 25 of the Karnataka Land Revenue Act. The seeking the relief by the plaintiffs before the Court of Thasildar and Civil court is against Civil Rules of Practice being two reliefs in two courts simultaneously cannot be claimed as such if suit is not dismissed, then there is possibility of multiplicity of proceedings.

3. It is further stated that there is no cause of action and no clear details about suit schedule property pleaded in the plaint. As such seeking Interim Relief by misrepresenting

facts before Court is illegal. There is no cause of action arose plaintiff to file the present suit. Hence, prayed to reject the plaint with cost.

4. It is contented that the application is not maintainable and the cause of action has to be decided on merits itself and plaintiff cannot be rejected at this stage.

5. Further it is contended that it is false that plaintiffs executed the relinquishment deed as per S.R.No.154/2014. Relinquishment deed come to knowledge of plaintiff only when defendant No.1 produced the before Thahasildar Shikaripura. The signatures were taken fraudulently and same is pleaded in the plaint. All the properties are not mentioned in the alleged forged register relinquishment deed. The registered relinquishment deed is to be proved on merits. Hence, prays to reject the application.

6. Heard the learned counsel for defendant and perused the materials available on record.

7. The following points that would arise for consideration by this court :

POINTS

1. *Whether the plaint does not disclose cause of action to file the present suit?*
2. *What Order?*

8. The findings of this court to the above Points are as follows:

POINT NO.1 : *In the Negative.*

POINT NO.2 : *As per order for the following: -*

REASONS

9. POINT NO.1: The present application is filed by defendants U/o VII Rule 11 R/w Sec. 151 of CPC with prayer to reject the plaint as no cause of action.

10. It is to be noted that the suit is filed for relief of partition and separate possession by allotting legitimate share to the plaintiffs and also to declare partition as per MR.No.10-1995-96 is not binding upon the share of plaintiffs. Notedly, schedule A and schedule B and schedule C properties are agricultural lands and also the plaintiffs are claiming as the daughter of one Mohammed Husain Sab and Mehaboob bi. It is relevant to note that the main contention of defendants for rejection of plaint that there is no cause of

action arose to the plaintiffs to file the present suit. Further the defendants claimed that the plaintiffs have relinquished their rights over the suit schedule property by executing the registered relinquishment deed. However, it is contention of the plaintiffs at para No.3(a) of the plaint that the defendants have got the signature of the plaintiffs on one document in the year 2014 without disclosing the true facts. The plaintiffs have got to know recently about execution of relinquishment deed when the searching documents in the house. Further it is relevant to refer the para No.7 of the plaint, wherein it has been specifically stated that defendants neglected welfare of the joint family properties and even last week of August 2023 the plaintiff sought share over the suit schedule properties. However, it is evident that the parties of present suit are governed by the Muslim Law and even it is not disputed by the defendants that the plaintiffs are the daughters of Mohammed Husain Sab. Notedly, the suit being partition and separate possession for allotting share of the plaintiffs. The learned counsel for defendant No.1 relied on the Judgment of Hon'ble Apex court in the case of ***Gulam Vs Haji Kayyum Ali and others Judgment dated 18.09.1972***

reported in AIR 1973 SC 554. Perused the said ratio wherein it has held that execution of deeds acknowledging the receipt of valuable consideration and released the future possible rights of inheritance then Rule of estoppel is applicable. Further the Judgment of Hon'ble High court of Karnataka in the case of **R. Sampath S/o Rajagopal Vs State of Karnataka by its secretary dated 05.11.2020 bearing WP.No.1860/2013 dated 05.11.2020** is relied by the counsel for defendant No.1. Perused the said Judgment wherein it has been held about procedure before sub-registrar about Registration of deeds. Thus, the said ratio is not helpful to the defendant No.1 the reject of plaint at this stage. However, ratio of Hon'ble Apex court referred, above with respect to estoppel against the person who executed the deeds is well settled principle of law. However, in the present case the defendants has to establish the validity of relinquishment deed during course of trial. Hence, said ratio will not assist the contention of defendant No.1 for rejection of plaint at this stage. It is important to note that as per Judgment of Hon'ble Apex court with respect to rejection of plaint, the contents of Written Statement or any defence

setup by the defendants or any documents produced by the defendants are immaterial in determination rejection of plaintiff. Hence, the contention of defendants that plaintiffs have executed registered relinquishment deed, However, the defendants denied the same. It is evident that the plaint cannot be rejected for want of cause of action. Whereas at para No.11 and 15 the cause of action specifically pleaded by plaintiffs. Even other wise, the cause of action is bundle of rights, the defence setup by the defendants cannot be looked into in determination of rejection of plaint. The plaintiffs have stated in the plaint about one document has been got executed by the defendants. Therefore, the established facts suit being partition, the parties govern by Muslim Law, there will be fixed shares. Thus, when the plaint contents the cause of action at para No.7 and 12 the plaint cannot be rejected for want of cause of action but clearly pleaded on the want of cause of action Thus in light of aforesaid discussion this court answered the **Point No.1 in the Negative.**

11. POINT NO.2 : For foregoing reasons and discussions held above, this court proceeds to pass the following :

ORDER

I.A.No.III is filed by defendants U/o.
VII Rule 11 R/w Sec. 151 of CPC., is
hereby rejected.

No order as to cost.

(Dictated to the Stenographer, transcribed by her, Order corrected and signed by me, then pronounced by me in the Open Court on this the 18th day of March-2024)

(SRI. AVINASH M. GHALI)
II Addl. Civil Judge & JMFC.,
Shikaripura.

