

**IN THE COURT OF THE PRL.CIVIL JUDGE AND JMFC., AT
SORABA.**

Present: Sri.Abdul Saleem, B.A. (Law) L.L.B.,
Prl. Civil Judge & JMFC.,
Soraba.

Dated this the 7th day of September, 2022

O.S.No.151/2019

Prashanth D.S

Plaintiff;

V/s.

Smt. Suvarna Bai & Others.

Defendants;

I.A.No.IV

Smt. Sumithra Bai
w/o late Gopalakrishna BG
Aged about 70 years,
R/o Chikkapete,
Soraba Town, Soraba Taluk.

Applicant;
(2nd defendant)
(By Sri. A.C.Y . Adv.)

V/s.

Prashanth D.S

Respondent (plaintiff)
(By Sri. D.K.P. Adv.)

- - -

**ORDERS ON I.A.No.IV FILED BY THE APPLICANT/2ND DEFENDANT
UNDER ORDER VII RULE 11 READ WITH SECTION 151 OF C.P.CODE**

The defendant No.2 has filed the above IA, praying for rejection of plaint.

2. Along with the above I.A, defendant No.2 sworn to an affidavit and submitted that the plaintiff has filed present suit for declaration, declaring that the plaintiff and defendants have got joint right over the suit schedule property ie., passage measuring East to west:3' x North-south 74.2 feet. It is further submitted that the plaintiff has not purchased any property on 17.08.2017 as averred in the plaint as such the plaintiff is not entitled for the relief of declaration. Hence, prayed for rejection the plaint.
3. The plaintiff has filed objection to the above I.A, and submitted that the plaintiff and defendants are the joint owners of the suit schedule property ie., passage measuring 3 x 74.2 feet but the defendants by encroaching the said passage has put up latrine and also extended the sajja of the first floor of the building of the defendants over the said passage. Hence the suit is filed for declaration that the plaintiff is the joint owner of the suit schedule property along with the defendants. Hence, sought for rejection of the above interim application.
4. Heard and perused the materials. The following points arise for consideration of the court.

POINTS

1. Whether the I.A filed by the defendant No.2 deserves to be allowed?
2. What order ?

5. The findings on the above points are as hereunder:

Point No.1: In the negative;

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

REASONS

6. **Point No.1:** It is necessary to note that by filing above, the defendant no. 2 seeks to reject the plaint on the ground that the suit of the plaintiff is not maintainable. It is to be noted that the plaint can be rejected only on the ground envisaged under order 7 rule 11 of Civil Procedure Code, the grounds envisaged under said rules are :-

- (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.

Provided that; the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

7. It is also settled position of law that in dealing with the application u/o 7 rule 11 of Civil Procedure Code, only averments made in the plaint is to be considered and contentions of the defendant made in the written statement are immaterial. Bearing in mind the provision of order VII rule 11 and above preposition of law and provision under order 7 rule 11 of Civil Procedure Code it is proper to evaluate whether the plaint is required to be rejected. It is averred in the plaint that there is a passage in between the property of the plaintiff and defendant measuring. 3' x 74.2'. The defendants with a view to grab the said property has put up a latrine in the said passage and also extended the sajja of first floor of the building of the defendants over said passage. It is further case of the plaintiff that in the said passage the plaintiff and defendants have got right to use. Therefore, the plaintiff has filed present suit, claiming that plaintiff and defendants have got joint right over the suit schedule property and remove extended portion of sajja put up to the first floor of the building in the property of the defendants.

8. On going through the averments of the plaint, the plaint discloses that the suit of the plaintiff not barred by any law, and does discloses the cause of action. The ground urged for rejection of the plaint is the suit of the plaintiff is not maintainable, the maintainability is matter to be adjudicated on going for full pledged trail. Since the suit of the plaintiff does not come under any of the grounds envisaged under order VII rule The ground for rejection of the plaint as stated of CPC.

Therefore, the application filed by the defendant No. 2 is required to be rejected. In view of the same, point No. 1 is answered in the **negative**.

9. **Point No.2:** In view of the discussion, this court proceeds to pass the following:

ORDER

I.A.No.IV filed under order VII rule 11 of C.P.C is rejected on cost of Rs.500/- payable to the plaintiff.

(Dictated to the Stenographer, transcribed and computerized by him, transcription corrected and pronounced by me in the open court on this the 07th day of September 2022.)

(Abdul Saleem),
Prl. Civil Judge and JMFC.,
Soraba.

ORDER

I.A.No.IV filed under order VII rule 11 of C.P.C is rejected on cost of Rs.500/-, payable to the plaintiff.

To hear on IA-VI by 21/09/2022.

Prl. Civil Judge and JMFC.,
Soraba.

*(Order pronounced in the open court, vide
detailed separate order).*

ORDER

I.A.No.V filed under order 1 rule 10 of
C.P.C is rejected on cost of Rs.500/-.

**Civil Judge and JMFC.,
Soraba.**

For plaintiff evidence by 05/08/2022.

**Civil Judge and JMFC.,
Soraba.**

