

**ORDER ON IA NO II UNDER ORDER VII**  
**RULE 11 OF CPC**

The instant interlocutory application has been filed by the defendant no. 6 U/o 7 Rule 11 of CPC.

2. In the accompanying affidavit, the defendant No.6 Jagadeesh S/o Bhadrarayyagowda, Thavarehalli has sworn the facts that the suit is filed against them by the plaintiff seeking declaration and injunction. Suit is barred by limitation and this suit is filed after filing of four suits. Earlier OS 45/2007 was decreed and this suit is filed contrary to that suit. In OS 45/2007 plaintiffs have obtained a decree and again the suit is filed. OS 66/2000 was also filed which was withdrawn. Therefore after lapse of 10 years suit is not maintainable. Writ petition is filed before Hon'ble High court of karnataka in WP no. 796 and 797/1994 wherein writ was dismissed directing to seek remedy in OS 405/1989, 99/1999 405/2007, and 207/1983. Crl.Rev petition 11/1998 is pending before District court wherein also direction is issued. Therefore, fresh suit is not maintainable.

3. Plaintiffs have orally objected the IA

4. Heard arguments on both sides and perused documents on record.

5. The following points arise for consideration:

***Whether the plaint is liable to be rejected under Order VII Rule 11 ? If so what order?***

6. My findings on the above point is in the negative for the following : -

**REASONS**

7. Admittedly the plaintiff has filed the suit for declaration and permanent injunction

8. It is the say of the applicant that the suit is barred by limitation and this suit is filed after filing of four suits. Earlier OS 45/2007 was decreed and this suit is filed contrary to that suit. In OS 45/2007 plaintiffs have obtained a decree and again the suit is filed. OS 66/2000 was also filed which was withdrawn. Therefore after lapse of 10 years suit is not maintainable. Writ petition is filed

before Hon'ble High court of karnataka in WP no. 796 and 797/1994 wherein writ was dismissed directing to seek remedy in OS 405/1989, 99/1999 405/2007, and 207/1983. Crl.Rev petition 11/1998 is pending before District court wherein also direction is issued. Therefore, fresh suit is not maintainable.

9. On perusal of the plaint it discloses that suit is for declaration and permanent injunction.

10. Defendants contend that this is fourth round of litigation the main contention of the defendant is that the suit is barred by law of limitation.

11. It is a settled principle of law that while considering a case on hand U/o.7 Rule 11 of CPC., the Court has to look into mere averments of the plaint and not beyond the plaint.

12. It is necessary to peruse Order 7 Rule 11 regarding the rejection of plaint. As per Order 7 Rule 11 of CPC., it reads -

**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 provisions  
of Rule 9.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper 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-paper, 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.

13. Order 7 Rule 11 deals with rejection of plaint in a series of circumstances and clauses with regard to rejection of the plaint where it does not disclose the cause of action and clause with regard to the suit barred by any law. Thus, Order 7 Rule-11 provides that, plaint shall be rejected wherein the suit appears from the statement in the plaint to be barred by any law.

14. In the judgment reported in **ILR 2008 KAR 3993 i.e. Hanumappa and Others vs Chikkannaiah and Others** wherein while discussing Order 7 Rule 11 it was held that, *for the purpose of deciding the application under Order VII Rule 11 (a) and (d), averments in the plaint are material- And the plea taken if any, by the defendants in the written statement would be wholly irrelevant at that stage of the proceedings-To reject the plaint on the ground that it does not disclose a 'Cause of Action'. The trial Court should look at the plaint and nothing else-FURTHER HELD, It is now settled position of law that, clever drafting creating illusions of cause of action,*

*are not permitted in law and a clear right to use, should be shown in the plaint.*

15. In the instant case, no doubt the plaintiff has filed suit for declaration and permanent injunction. Whether the plaintiff is absolute owner and is in actual possession of the suit property and whether there has been interference is a matter of merit and it has to be decided later during trial and not at this stage.

16. The contention of the defendant that there were other suits already decided and that suit is barred by limitation is a matter that has to be considered after trial

17. As already stated it is also a settled principle of law that, while considering an application U/o.7 Rule 11 of CPC., mere averments of the plaint has to be looked into and not the defense put-forth by the defendants in the written statement. If the wordings or pleadings in the plaint is of such a nature which discloses any bar by the statute either expressly or impliedly, only then the plaint ought to be rejected. It is true that in the writ direction given by the Hon'ble High

Court to agitate before the civil court  
However the rights of the plaintiff would be  
subservient final decision of those cases. But  
the averments of the plaint at this stage does  
not disclose any material so as to reject the  
plaint U/o.7 Rule 11 of CPC. Thus, I answer  
point for consideration in the negative and, I  
proceed to pass the following:

**ORDER**

The Interlocutory Application no II filed  
by the defendant U/o.7 Rule-11 of CPC., is  
hereby dismissed.

No order as to costs. Call for WS by :  
28.03.2019.

(Sri. Usha Rani R.)  
Senior Civil Judge and JMFC.,  
Soraba.