



**IN THE COURT OF ADDL. SENIOR CIVIL JUDGE &
JMFC, GUBBI.**

PRESENT

**SMT. POORNIMA K. YADAV, B.A.LL.B., LL.M.,
Addl. Sr. Civil Judge & JMFC, Gubbi.**

Dated on this the 23rd day of April, 2025

ORIGINAL SUIT NO. 222/2023

Plaintiff/s : 1. Lavanya C.N.
D/o Nataraju
W/o Charan K.N.
Aged about 23 years,
R/at Chelur Hobli,
Gubbi Taluk,
Tumkur District.

2. Swetha C.N.,
D/o Nataraju
Aged about 21 years,
R/at Chelur Hobli,
Gubbi Taluk,
Tumkur District.

(By. Sri. S.S., Adv.)

Vs.

Defendant/s : 1. Basavanna
S/o Late Siddappa,
Aged about 70 years,

2. Shivamma
D/o Late Siddappa
W/o Kempasiddaiah,
Aged about 65 years,
R/at Maranahalli,
Chelur Hobli,
Gubbi Taluk.



- 3.** Suma
W/o Late Gangadharaiah,
D/o Gangamma,
R/at Alilughatta,
Nittu Hobli,
Gubbi Taluk.
- 4.** Mamatha,
W/o Ganganna,
D/o Gangamm,
Aged about 35 years,
R/at Mahadeshwara Badavane,
Chelur,
Gubbi Taluk.
- 5.** Rajanna
S/o Late Siddappa,
Aged about 58 years,
- 6.** Thejamma
D/o Late Siddappa,
Aged about 54 years,
- 7.** Puttasiddaiah,
S/o Late Siddappa,
Aged about 54 years,

Defendant No. 1 to 5 to 7 are
R/at Kodiyala, Chelur Hobli,
Gubbi Taluk.
- 8.** Karegowda,
S/o Late Kempanna,
Aged about 51 years,
R/at Gadiyankanahalli,
Chelur Hobli,
Gubbi Taluk.



(D1, 3, 5,7 by Sri V.T., Adv.,)
(D4 by Sri S.R.P.G, Adv.,)
(D8 by Sri. K.K., Adv.)
(D2 Exparte)
(D6 by Sri R.V. Adv.,)

PARTIES TO I.A.NO.IV

Applicant/ Defendant No.1 : Basavanna & Ors.,
V/S

Opponents/ Plaintiffs : Lavanya & Another

Provision under the Application	Under Order 7 Rule 11(a) and (d) of CPC
Application Relief sought for	For rejection of plaint
The date of the application is filed	28.11.2024
Interlocutory Application Number	IV
Date of objection filed by the plaintiff	10.01.2025
Date of orders passed	23.04.2025

Sd/-
(POORNIMA K. YADAV)
Addl. Senior Civil Judge &
JMFC, Gubbi.

: ORDERS ON I.A.NO.IV:

The defendant No.1 through his counsel filed this application U/O 7 Rule 11(a) & (d) of Code of Civil Procedure seeking to reject the plaint.



- 2.** The application is accompanied with the affidavit of the defendant No.1, wherein it is stated that, in the present suit the cause of action is created one. It is further stated that the plaintiff had filed suit in OS No. 26/2011 on the file of Civil Judge and JMFC, Gubbi which came to be dismissed on 13.06.2013, thereafter the plaintiff has filed this suit by creating cause of action and after lapse of 11 years. The plaintiffs are the children from 2nd wife as such, they are not entitled for share in the properties. Hence, sought to allow the application.
- 3.** On the other hand, the counsel for the plaintiff filed objection and contended that the application is not maintainable and it is liable to be rejected. It is contended that there is no judgment in OS No. 26/2011 as such, the present suit is not hit by provisions of Section 12 of CPC, as such period of limitation does not applied. Hence, sought to reject the application.
- 4.** Heard both the counsel.



5. Upon hearing and based upon materials available on record, the points that arise for my consideration are:

1. Whether there are grounds for rejection of plaint as barred by law in view of proceedings of OS No. 26/2011?
2. What order ?

6. My findings to the above points are as under;

Point No.1: In the Negative

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

: R E A S O N S :

7. **Point No.1 :** This suit is filed seeking relief of partition and separate possession of the plaintiffs 1/3rd share in the suit schedule properties.

8. The defendant No. 1 sought for rejection of the plaint on the ground that the present plaintiffs had filed suit for partition in OS No. 26/2011 before the Prl. Civil Judge and JMFC, Gubbi which came to be dismissed as such, the present suit which is filed again in respect of the same



properties is on the basis of created cause of action.

9. It is settled principles of law that while considering the application for rejection of plaint only the plaint averments has to be considered.
10. As mentioned above the suit is for partition and separate possession. In this background when the plaint of the present suit is considered, it is seen that the plaintiff has not pleaded about OS No. 26/2011. However, the counsel for plaintiff as well as the counsel for defendant produced order sheet of OS No. 26/2011.
11. On perusal of the said document, it is seen that the present plaintiff filed suit for partition and separate possession on 19.01.2011 which came to be dismissed for non prosecution on 13.06.2013.
12. The said document clearly establish that the rights of the parties in respect of the suit schedule properties was not adjudicated in OS No. 26/2011. In the said



circumstances, it cannot be held that the present suit is hit by principles of resjudicata. Hence, the point of limitation does not arise.

- 13.** Further, the cause of action being a bundle of facts for a party to seek remedy before the Civil Court, in this suit same is pleaded as refusal by the defendants to allot the share of the plaintiffs in the suit schedule property. The said fact cannot be considered as created cause of action. Hence, this court is of the opinion that in view of dismissal of OS No. 26/2011 for non prosecution this suit cannot be held as hit by principles of resjudicata and as barred by limitation. Accordingly, point No.1 is answered **in the Negative.**

- 14. Point No.2:** In view of above made discussions, I proceed to pass the following;

ORDER

***I.A. No. IV filed by the
defendant No.1 under Order 7***



***Rule 11(a) & (d) of CPC is hereby
dismissed with Costs.***

(Directly dictated to the stenographer on the computer,
printed through steno, corrected by me and then
pronounced in the open court on this the 23rd **day of April
2025**)

Sd/-
(POORNIMA. K. YADAV)
Addl. Sr. Civil Judge & JMFC,
Gubbi.