



**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 3rd day of December, 2024

O.S. 228/2023

- Plaintiff/s** :1. Sri. Govindaraju
S/o Late Venkate Gowda,
Aged about 70 years,
2. Sri. Annayappa,
S/o Venkategowda G
Aged about 67 years,
3. Smt. Lakshmidevi
W/o Late Thirumale Gowda,
Aged about 48 years,
4. Sri. Venkatesh Murthy,
S/o Late Naraismhaiah,
Aged about 48 years,
5. Sri. Chandra,
S/o Late Narsimhaiah,
Aged about 48 years,

All are R/at Cheelanahalli Village,
C.S.Pura Hobli,
Gubbi Taluk.

(By Sri. H.G.P., Adv.)

Vs.



Defendant/s : Sri. C.Srinivasa,
S/o Late Chikkahanumaiah,
Aged abot 40 years,
R/at Cheelanahalli Village,
C.S. Pura Hobli,
Gubbi Taluk.

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

PARTIES TO I.A.NO.IV

Applicant/ Defendant : C.S. Srinivasa

Vs.

Opponents/ Plaintiffs : Govindaraju and Ors

Provision under the Application	Under Order 7 Rule 11(d) R/w Section 151 of CPC and Under Section 4, 5 and 8 of PTCL Act.
Application Relief sought for	For rejection of plaint
The date of the application is filed	03.08.2024
Interlocutory Application Number	IV
Date of objection filed by the plaintiff	24.08.2024
Date of orders passed	03.12.2024

Sd/-

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



: ORDERS ON I.A.NO.IV:

When the matter was pending for further examination in chief of PW1, the defendant filed the present application.

- 2.** The defendant through his counsel filed this application U/O 7 Rule 11(d) R/w Section 151 of Code of Civil Procedure and Under Section 4, 5 and 8 of PTCL Act of seeking for rejection of plaint.
- 3.** The application is accompanied with the affidavit of the defendant, wherein it is stated that, the present suit is filed seeking relief of declaration of title and consequential relief of permanent injunction. The Civil Court does not have jurisdiction to try suits pertaining to the lands granted under PTCL Act. land bearing Old Sy No.24 totally measuring 15 acres 33 guntas is Gomal land as such, extent of 5 acres each was granted in favour of Huchhahanumaiah S/o Chinnaiah, Karehanumaiah S/o Chinnaiah, Venkatahanuma S/o Huchha under PTCL



Act. The defendant is the legal heir of the said Chikkahanumaiah. Hence, sought to allow the application.

4. On the other hand, the counsel for the plaintiff filed objection and contended that Hucchahanumaiah, Thirumalamma W/o Venkatahanumaiah, Sannahanumaiah and Chikkahanumaiah jointly sold Land bearing Sy. No. 24 measuring 3 acres and 5 acres in favour of Gowdegowda S/o Venkategowda under registered sale deed dated 28.05.1952. The said Karehanumaiah S/o Channaiah executed registered sale deed dated 18.03.1956 to an extent of 3 acres and sale deed dated 17.04.1960 to an extent of 2 acres in Sy. No. 24, New Sy. No. 223. The said Gowdegowda and his sons cultivated the said lands jointly and the revenue records are reflecting the names of Children of Gowdegoda from 1972 to 2014-15. Narasimahaiah S/o Govindegowda filed application for change of katha from Venkatahanuma on the basis of Sale deed dated 28.05.1952 but the Thasildhar, Gubbi



mistakenly changed the katha in the name of Narasimahaiah on the basis of Pouthi Varasu. The Grandsons of Govindgowda i.e. the plaintiffs filed suit for partition in OS No. 189/2019 on the file of Prl. Senior Civil Judge and JMFC, Gubbi which ended in compromise on 28.02.2020. The registered sale deed was executed in the year 1952, at that time PTCL Act was not in force. The defendant has not filed any petition before the competent authority under Section 4 and 5 of PTCL Act. The proceedings before the Asst. Commissioner and Deputy Commissioner was regard to Mutation proceedings. Hence, sought to reject the application.

- 5.** Heard both the counsel.
- 6.** Upon hearing and based upon materials available on record, the point that arise for my consideration is:
 - 1.** Whether there are grounds for rejection of plaint?
 - 2.** What order ?



7. 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 :

8. **Point No.1:** This suit is filed seeking relief of Declaration of title and permanent injunction in respect of suit schedule property.
9. The defendant sought to reject the plaint on the ground that the suit schedule property is granted under PTCL Act as such, the present suit is not maintainable before the Civil Court.
10. The plaintiff objected the said application on the ground that the suit schedule property is purchased by Gowdegoda i.e. Hucchahanumaiah, Thirumalamma W/o Venkatahanumaiah, Sannahanumaiah and Chikkahanumaiah jointly sold Land bearing Sy. No. 24



measuring 3 acres and 5 acres in favour of Gowdegowda S/o Venkategowda under registered sale deed dated 28.05.1952. The said Karehanumaiah S/o Channaiah executed registered sale deed dated 18.03.1956 to an extent of 3 acres and sale deed dated 17.04.1960 to an extent of 2 acres in Sy. No. 24, New Sy. No. 223. It is further stated that, the sale deed is of the year 1952, at that time PTCL Act was not in force. It is further objected on the ground that the plaintiff has not filed petition before the competent authority under section 4 and 5 of the PTCL Act.

11. At this juncture, I would like to place reliance on the ratio of **Hon'ble Apex Court in its judgment in Civil appeal No. 4665/2021 between Srihari Hanumandas Totala Vs. Hemanth Vittal Kamath and others dated 09-08-2021 reported in 2021 SCC Online SC 565**, it is held that,

“16. Order 7 Rule 11(d) of CPC provides



that the plaint shall be rejected “where the suit appears from the statement in the plaint to be barred by any law.” Hence, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The court while deciding such an application must have due regard only to the statements in the plaint. Whethre the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case.

13. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarized as follows;

- (i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;*
- (ii) The defense made by the defendant in the suit must not be considerd while deciding the merits*



of the application;

(iii) To determine whether a suit is barred by res judicata, it is necessary that (i) the previous suit is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit ; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and

(iv) Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the 'previous suit', such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused."

- 12.** From the said ratio of the Hon'ble Apex Court, it is clear that the court while deciding the application for rejection



of plaint U/O 7 Rule 11 of CPC only the plaint averments must be construed.

- 13.** In this case the plaintiff averments discloses that the defendant with Mala-fide intention to cause loss to the plaintiff filed application before the SC/ST Commissioner for cancellation of Katha. The cause of action pleaded by the plaintiff is when the notice was issued by the Commissioner.
- 14.** On perusal of the documents produced by the plaintiff, it is seen that there is no order of competent authority under PTCL Act in respect of suit schedule property. The proceedings before the Asst. Commissioner, Tumkur was with regard to change of mutation in respect of suit schedule property.
- 15.** The contention taken by the defendant in the present application regarding the suit schedule property within PTCL Act is not the contention taken by the plaintiffs. There is no plaint averment to that effect.



16. Hence, the grounds urged by the defendant seeking for rejection of plaint cannot be considered on the basis of plaint averments. That apart the said grounds requires adjudication. This shows that the plaint cannot be rejected. Accordingly, Point No.1 is answered **in the Negative.**

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

ORDER

***I.A. No.IV filed by the defendant
under Order 7 Rule 11 (d) R/w Section
151 of CPC and Under Section 4, 5
and 8 of PTCL Act is hereby rejected.***

Parties to bear their own 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 **03rd day of December 2024**)

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