



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

Dated on this the 18th day of March, 2024

PRESENT: SMT. POORNIMA .K. YADAV,

B.A.LL.B., LL.M.,

**Addl. Sr. Civil Judge & JMFC,
Gubbi.**

ORIGINAL SUIT NO. 176/2022

Plaintiff/s : A.R. Rudraiah
S/o Late Bochaiah,
Aged about 59 years,
R/o Ankalakoppa,
C.S. Pura Hobli,
Gubbi Taluk.

(By Sri.B.K.C., Adv.)

Vs.

Defendant/s: 1. Shivamma
W/o Late Shankarappa,
Aged about 62 years,

2. Vijayalakshmi
D/o Late Shankarapa,
Aged about 40 years,

3. Manjunatha
S/o Late Shankarappa,
Aged about 37 years,

D1 to D3 are
R/o Bhudevi Nilaya,
Near Mariyamma Temple,
Sharavathi Nagara,
Shivamogga Taluk,
Shivamogga District.



4. Rajanna
S/o Late Bohaiah,
Aged about 50 years,
R/o No.12, Indradhanush,
3rd Main, Yadavgi, Mysore.
5. Gowramma
W/o Ramalingegowda,
Aged about 65 years,
6. Gangadharaiah
S/o Late Ramalingegowda,
Aged about 45 years,
7. Lingegowda
S/o Late Ramalingegowda,
Aged about 38 years,

D4 to 7 are
R/o Ankalakoppa Mazare,
Deverammanapaly,
C.S. Pura Hobli,
Gubbi Taluk.
8. Alumelamma
W/o Late Huchaveeraiah,
Aged about 53 years,
R/o Deverammanapalya,
Ankalakoppa Post,
C.S. Pura Hobli,
Gubbi Taluk.
9. Shilpa D.H.
W/o Gangadharaiah,
Aged about 34 years,



R/o Guddadapalya,
Nettekere Hobli,
Kunigal Taluk.

10. Sunil D.H.
S/o Late Huchaveeraiah,
Aged about 29 years,
R/o Deverammanapalya,
Ankalakoppa Post,
C.S. Pura Hobli,
Gubbi Taluk
11. Ningamma
W/o Late Boraiah,
Aged about 80 years,
12. Jayamma
W/o Late Shivanna,
Aged about 55 years,
13. Ravikumar
S/o Late Shivanna,
Aged about 37 years,
14. Nagaraju
S/o Late Shivanna,
Aged about 35 years,
15. Ganganna @ Gangadaraiah,
S/o Late Boraiah,
Aged about 57 years,
16. Shankraiah
S/o Late Boraiah,
Aged about 55 years,



D-11 to 16 are
R/o Deverammanapalya,
Ankalakoppa Post,
C.S. Pura Hobli,
Gubbi Taluk.

(D1 to 3 by Sri P.K., Adv.,)
(D 4 Exparte)
(D11 to 16 by Sri. K.C.N., Adv.)
(D8 to 10 by Sri R.S.R. Adv.)

PARTIES TO I.A.NO.4

Applicant / Defendant No.6 : Gangadharaiah

Vs.

Opponent/plaintiff : A.B. Rudraiah

Provision under the Application	Under Order 7 Rule 11(a) & (d) of CPC
Application Relief sought for	Return of Plaint
The date of the application is filed	11.02.2023
Interlocutory Application Number	IV
Date of objection filed by the defendants	23.01.2024
Date of orders passed	18.03.2024

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



: ORDERS ON I.A.NO.4:

When the matter was pending for compliance under Section 89 of CPC, the defendant No.6 filed the present application.

2. The defendant No.6 through his counsel filed this application U/O 7 Rule 11(a) and (d) R/w Section 151 of Code of Civil Procedure seeking to rejection of plaint.
3. The application is accompanied with the affidavit of the defendant No. 6, wherein it is stated that all the properties have been partitioned among the family members on 01.06.1958 and 06.07.1976 as such, there is no property available for partition. There is no recital in the sale deed that the suit schedule property is left for partition. The family member including the plaintiff have sold properties fallen to their share in the partition. The plaintiff filed this suit after lapse of 47 years knowing the fact that there is already partition in the family. Hence, sought to allow the application.
4. On the other hand, the counsel for the plaintiff filed objections



and contended that the application is not maintainable and it is liable to be rejected. It is contended that the suit schedule property is the ancestral property and the plaintiff is having rights over the suit schedule property. The alleged partition as stated by the defendant is without the knowledge of the plaintiff as the plaintiff was not born during 1976. The plaintiff has taken contention that there is no partition in the family and the joint family members are in joint possession and enjoyment over the suit schedule property. It is further stated that revenue proceedings before the Assistant Commissioner shows that there is no partition and the present application is filed only to grab the suit schedule property. The defendant No.6 has not produced any material to show that the plaintiff was aware of alleged partition. 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 as barred by law ?

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 ;

: REASONS :

8. **Point No.1** : This suit is filed seeking relief of partition and separate possession of plaintiff's 1/6th share in the suit schedule property.

9. The defendant No.1 sought to reject the plaint on the ground that as there is partition in the family dated 01.06.1958 and 06.07.1976, the plaintiff has filed false suit. It is also contended that some of the family members including the plaintiff have sold some of the properties allotted to their share in the family partition as such, this suit is not maintainable in view of earlier partition between the family members.

10. The plaintiff objected the said application on the ground that



on the date of alleged partition the plaintiff was not born as such the plaintiff is not aware of any such partition and as the suit schedule property is the ancestral property which is in joint possession and enjoyment by the joint family members, the plaintiff has rights over the suit schedule property.

- 11.** It is settled principles of law that for considering an application seeking for rejection of plaint, the Court must look into the plaint averments and the materials produced by the plaintiff to consider the fact if plaint can be rejected by considering such materials.
- 12.** In this case the defendant No.6 alleged that though the plaintiff is aware of partition in the family dated 01.06.1958 and 06.07.1976, the present suit is filed to grab the suit schedule property. On perusal of plaint averments it is seen that there is no pleading with regard to partition dated 01.06.1958 and 06.07.1976. But on perusal of the documents produced by the plaintiff, it is seen that the plaintiff has produced certified copy of the partition deed date 01.06.1958 along with its typed copy



said to have been obtained from Thasildar, Gubbi under RTI. The said documents establishes the fact that there was partition in the family of the plaintiff and the defendant way back in the year 1958 and production of copy of the partition deed after obtaining the same from Thasildhar, Gubbi under RTI shows that the said partition deed is acted upon. However, on perusal of the said partition deed of the year 1958 it is seen that the suit schedule property is not the subject matter of division among the family members. The documents of revenue proceedings produced by the plaintiff shows that the old survey number of the suit schedule property is survey number 48. when the said Sy. No. 48 is considered in the partition deed of the year 1958, same is not subject matter of partition among the family members. In the said circumstances, the claim of the plaintiff and the contention of the defendants in respect of a suit schedule property has to be decided only after trial. Further, as the question of limitation is a mixed question if law and fact, it again requires adjudication by way of trial. This shows that the plaint cannot be rejected as barred by law.



Accordingly, Point No.1 is answered **in the Negative.**

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

ORDER

***I.A. No.4 filed by the defendant No.
6 under Order 7 Rule 11(a) & (d) R/w
Sec.151 CPC 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 18th day of March 2024)

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