

KAUK020000632019



O.S./01/2019

IN THE COURT OF
PRL. SNR. CIVIL JUDGE AND CJM COURT, KARWAR AT
KARWAR, UTTARA KANNADA

PRESENT: Smt. Kavita S.Undodi,
B.A. LL.B(Spl)

Prl. Senior Civil Judge & CJM and
1st Addl. M.A.C.T., Karwar.

DATED: THIS THE 23RD DAY OF FEBRUARY-2026

O.S.No.01/2019

PLAINTIFF:

Smt. Kavita D/o Pundalik Naik
And W/o Babu Nailadi Rayarmane,
Age: 46 years, Occ: Service and Agriculturist,
R/o: Billadi Village, Post: Bennekatti,
Udupi, Permanently R/o: Madhewada,
Asnoti, Karwar.

V/s.

DEFENDANTS:

1. Sri. Prashant S/o Pundalik Naik
Age: 36 years, Occ: Service,
R/o: Brandhavan Apartment,
1st floor, Prashanti Nilaya, Niraj Building,
Behind D.F.O. Office, M.G. Road,
Karwar and others.

Parties to I.A No.6

APPLICANTS:

1. Sri. Prashant S/o Pundalik Naik,
Age: 50 years, R/o: M.G.Road,
Karwar.

2. Smt. Savita @ Swati W/o Pandurang Savant,
Age: 51 years, R/o: M.G. Road,
Karwar.

V/s.

OPPONENT:

1. Smt. Kavita D/o Pundalik Naik,
And W/o Babu Nailadi Rayarmane,
Age: 46 years, Occ: Service and Agriculturist,
R/o: Billadi Village, Po: Bennekatti, Udupi,
Permanently R/o: Madhewada,
Asnoti, Karwar.

1	Provision under which the application is filed	:	under Order 7 Rule 1(A) to (D) R/w section 151 of C.P.C. and section 11(2) of Karnataka Court Fees and Suit Valuation Act.
2	Relief sought for	:	For rejection of plaint.
3	The date on which the application is filed	:	I.A.No.6 on 07-04-2021
4	Number of the application	:	I.A.No.6
5	The date on which the objections are filed by different opponents	:	22-07-2021
6	The date on which the orders were passed on the said application	:	23-02-2026

ORDERS ON I.A.No.6

The defendant No.1 and 2 have filed I.A No.6 under Order 7 Rule 11(a) to (d) R/w 151 of C.P.C. for rejection of plaint on the ground that the suit is not maintainable due to non existence of cause of action. The suit is not maintainable for non payment of court fees for the relief claimed by the

plaintiff seeking cancellation of sale deed. The suit is barred by limitation and the suit of the plaintiff is bad for non joinder of necessary parties.

2. In the memo of facts it is stated that the plaintiff has filed suit for partition without impleading necessary parties and without seeking declaration that she is natural daughter of late Pundalik and Sarojini. The plaintiff has claimed the relief that cancellation of sale deed dated 16-11-2015 after lapse of three years from the date of registration and without paying any court fee and suit is filed after lapse of limitation period. These matters goes to the route of maintainability of the suit and unless heard before trial, precious and valuable time of this court cannot be saved. In this case the points raised in the accompanying IA are directly relating to maintainability of the suit and legally required to be considered, before recording evidence and going for full pledged trial, which will lead to sheer wastage of valuable time of the court and prayed to allow the application.

3. On the other hand the plaintiff has opposed the application by filing written objections and stated that after death of mother of plaintiff and defendant No.1 and 2 without knowledge of the plaintiff, the defendant No.1 and 2 obtained surviving member certificate from Tahsildar Karwar and got mutation of these lands under M.E.No.MRH-11 of Madhevada village. After mutation, the Sy.No.191/A1/B has been converted as non agricultural land within a span of a small period. The defendant No.1 and 2 have not taken consent of the plaintiff nor taken signature on documents, therefore any

proceedings is not binding on the plaintiff for assessment of the court fee. After converting the land as NA on 22-11-2024, the defendant No.1 and 2 have alienated the total area of 00.04.00 along with Mangalore tiled house to defendant No.4 for sale consideration amount of Rs.9,79,000/- whereas this land is situated in the heart of the Karwar city and the market value as per gunta is Rs.10,00,000/- and more. But the defendant No.1, 2 and 4 have not taken the signature of the plaintiff hence valuation of court fee raised by them is improper. The defendant No.1 and 2 have raised objection non impleading of sisters and brothers of the defendant No.3 and other co-owners who are be the necessary parties to this suit, but the defendant No.1 and 2 have failed to give the name of the parties to implead the necessary parties and prayed to reject the application.

4. Heard on I.A from both side.
5. The following points arises for my consideration.
 1. **Whether the defendant No.1 and 2 made out grounds for rejection of plaint?**
 2. **What order?**
6. My answer to the above points is as under:
 - Point No.1 – **In the Negative.**
 - Point No.2 – Is as per the final order for the following:

REASONS

7. Point No.1 :- The plaintiff has filed suit for partition and separate possession against the defendants. The defendant No.1 and 2 have filed IA No.6 under order 7 Rule 1(a) to (d) R/w section 151 of C.P.C. for rejection of plaint. After hearing on IA No.6, this court has allowed the IA No.6 and plaint has been rejected for want of cause of action, for non valuation of suit and insufficient court fee and also barred by law of limitation. The plaintiff has challenged order on IA passed by this court before the Hon'ble High Court of Karnataka in RFA No.100220/2021 (PAR/POS). The Hon'ble High Court of Karnataka allowed the RFA and order dated 20-09-2021 passed by this court on order on IA No.6 is set aside and matter is remanded to this court for fresh consideration.

8. In the memo of facts it is stated that the plaintiff has not impleaded all the necessary parties to the suit and without seeking declaration that she is natural daughter of late Pundalik and Sarojini. The plaintiff seeking cancellation of registered sale deed dated 16-11-2015 after lapse of three years from the date of registration and without paying any court fee. The suit of the plaintiff is barred by limitation. When the suit is prima facie not maintainable under any of the ground under order 7 Rule 11, the duty of the court to hear the application before proceedings for full pledged trial.

9. On the other hand it is the contention of the plaintiff that without her consent the defendant No.1 and 2 have got converted land bearing

Sy.No.191/A1B as non agricultural land. The defendant No.1 and 2 have sold 00.04.00 along with Mangalore tiled house to the defendant No.4 for sale consideration amount of Rs.9,79,000/-. Therefore question of paying of court fee does not arise. The plaintiff has not put signature to the sale deed executed by the defendant No.1 and 2 infavour of defendant No.4. Further defendant No.1 and 2 have not disclosed the names of the parties to implead in the suit.

10. Order 7 Rule 11 of C.P.C. reads as under;

The Order 7 Rule 11 (a) to (d) reads as under -

- (a) Where it does not disclose a cause of action,**
- (b) Where the relief claim 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) Whether the suit appears from the statement
in the plaint to be barred by any law.**

11. It is specific contention of the plaintiff that the suit schedule properties are joint family properties of plaintiff and defendants and they constitute Hindu joint family. After death of Sarojini Pundalik Naik, the defendant No.1 and 2 fraudulently without knowledge of plaintiff got changed the revenue documents by obtaining surviving membership certificate from the Tahsildar. Soon after the mutation the defendant No.1 and 2 got converted land bearing Sy.No.191/A1B of Baad-I village into non agricultural land without knowledge of plaintiff and alienated the area of 00-04-00 along with Mangalore tiled house to the defendant No.4. The plaintiff obtained the certified copy of sale deed in the month of January 2018 and issued notice to the defendant No.1, 2 and 4.

12. The defendant No.1 and 2 have taken contention that the plaintiff has to seek declaration that plaintiff is daughter of Pundalik Naik and Sarojini. In para No.2 of the plaint the plaintiff has stated that she is daughter of Pundalik and Sarojini and defendant No.1 and 2 are sons of Pundalik and Sarojini. The defendant has taken contention that the plaintiff has to seek declaration. In the written statement the defendant No.1 and 2 have taken contention that the plaintiff has no locus standi to file the suit as she is not daughter of Pundalik. The plaintiff has stated that she is daughter of Pundalik and Sarojini and it is burden on the plaintiff to prove that she is

joint family member along with defendant No.1 and 2. The contention taken by the defendant No.1 and 2 is a matter of trial. Without trial the court cannot held that the plaintiff is not daughter of Pundalik and Sarojini. If the plaintiff proved her relationship then she will get the relief, therefore it needs trial.

13. In the IA No.6 the defendant No.1 and 2 have taken contention that the suit is not maintainable due to non existence of cause of action to file the suit as per clause a of Order 7 Rule 11 of C.P.C.

In para No.5 of the plaint the plaintiff has stated that in the month of January 2018 she got sale deed from Sub-Registrar office Karwar and issued notice to the defendant No.1, 2 and 4 through her counsel and defendant No.1, 2 and 4 refused to take legal notices. Hence cause of action starts from 12-01-2018. Though the defendant No.1 and 2 have taken contention that the plaintiff has not shown the cause of action, but in para No.5 she has narrated the cause of action. The cause of action is bundle of facts it needs trial. The contentions taken by the defendant No.1 and 2 are matter of trial, it will be consider at the time of appreciation of evidence.

14. Further defendant No.1 and 2 has taken contention that suit is not maintainable for non payment of court fee for relief claimed by the plaintiff seeking cancellation of sale deed dated 16-11-2012. The plaintiff has stated that after death of Sarojini Pundalik Naik the defendant No.1 and 2

fraudulently without her knowledge got changed the katha in their names and thereafter they have got converted Sy.No.191/A1B of Baad village as non agricultural land and without knowledge of the plaintiff alienated an area of 00-04-00 along with Mangalore tiled house to the defendant No.4. On perusal of the contention taken by the plaintiff it shows that she is not party to the alleged sale deed. Hence question of payment of court fee on the market value of the property does not arise. If the plaintiff is party to the sale deed then matter would be different. Whether the plaintiff has paid proper court fee or not is matter of appreciation of evidence.

15. Further the defendant No.1 and 2 has taken contention that the suit is barred by limitation. Whether suit is barred by limitation or not is mixed question of law and facts and further the said contention is not covers under Order 7 Rule 11 of C.P.C., hence it needs trial. Furthermore the plaintiff has sought relief for partition and separate possession and she has to prove her case. In Karam Singh V/s Amarjit Singh. It is held that while considering rejection of the plaint there under only averments made in plaint and nothing else is to be considered. The suit is not merely declaration in respect of sale deed but for also partition.

16. The contentions taken by the defendant No.1 and 2 are matter of trial, it will be considered at the time of appreciation of evidence. The defendant No.1 and 2 have not sworn to an affidavit. It is opinion of the court that at this stage the defendant No.1 and 2 have not made out

grounds to allow the I.A., accordingly **Point No.1 is answered in the Negative.**

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

ORDER

**I.A.No.6 filed by the defendant No.1 and
2 under Order 7 Rule 11(a) to (d) R/w 151
of C.P.C. for rejection of plaint is hereby
rejected.**

(Directly dictated to Stenographer on Lap-tap, print out taken by her, corrected and then pronounced by me in Open-Court this the **23rd day of February-2026**).