



**IN THE COURT OF II ADDITIONAL CIVIL JUDGE AND  
JUDICIAL MAGISTRATE FIRST CLASS AT KUNDAPURA.**

**PRESENT:**

**Smt. Vidya, A.S. B.A., LL.B.  
II Addl. Civil Judge & J.M.F.C.,  
Kundapura.**

**Dated this the 27<sup>th</sup> day of July 2022**

**Original Suit No. 443/2017**

<b>Plaintiff:</b>	<b>B.Hasan Saheb,</b> Aged about 55 years S/o. B.N. Mohammad Saheb, R/at: Niru Oni, Basruru Village, Kundapura Taluk,
<b>Defendant:</b>	<b>M. K. Anil Kumar,</b> Aged about 46 years S/o. K. Annappa Shetty, R/at: Chikkamagalooru District.
	<b><u>Rank of the Parties On I.A.VIII</u></b>
<b>Applicant/Defendant:</b>	M. K. Anil Kumar
	<b>(Rep. By Sri. P.S.R- Advocate)</b>
<b>Opponent/Plaintiff:</b>	B. Hasan Saheb
	<b>(Rep.By Sri. T.G.R-Advocate)</b>

**ORDERS ON I.A. NO.VIII**

The Defendant has filed IA No.VIII under Order VII Rule 11 (d) and R/w. Section 151 of CPC, for rejection of plaint as barred by law.

2. In the memorandum of facts, applicant has stated that the plaintiff has admitted that the defendant has filed a Writ petition in WP.No.6861/2013 with respect to the suit 'A' schedule property wherein the Hon'ble court, by its order dt:06-11-2013, has remanded the matter back to the Land Tribunal, Kundapura in TRI.No.9866/77-78 and the same is still pending disposal till date. Further stated that, the matter in dispute in the present case involves the tenancy right over the 'A' schedule property, this court ceases to have the jurisdiction to try this case. With these averments the applicants has sought for allowing the application.

3. The said application was opposed by the plaintiff by filing a detailed counter by contending that the suit is not barred by law.

4. Heard the learned counsel for the applicants as well as the opponent and perused the materials available on record.

5. Now, the following points arise for consideration of this Court are:

**Point No.1: Whether the suit of the plaintiff is barred by law ?**

**Point No.2: What order ?**

6. The findings of this Court on the above said points are asunder:

**Point No.1: In the Negative.**

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

### **REASONS**

7. **Point No.1** : This court has already narrated the facts stated in the memorandum of facts annexed to the application and the objections filed by the opponent. The present suit is filed for the declaration and cancellation of Adoption deed and permanent injunction against the defendant.

8. For the purpose of convenience, Order VII Rule 11 of the Civil Procedure Code, is extracted below. The same reads thus:

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 returned 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 to comply with the provisions of rule 9.

**9.** It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the Court, insufficiently stamped and not rectified within the time fixed by the Court, barred by any law, failed to enclose the required copies and the plaintiff fail to comply with the provisions of Rule 9, the Court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order VII Rule 11 of the Code can be exercised at any stage of the suit. This Court also noted that while deciding the application under Order VII Rule.11 of the CPC, few lines or passage from the plaint should not be read in isolation and the pleadings ought to be read as whole.

**10.** The plaintiff has pleaded that, the he is the absolute owner and in actual possession and enjoyment of the suit 'A' schedule property by virtue of a registered sale deed dt:12-07-1997. Further pleaded that, the defendant is claiming right over the suit schedule property on the basis of frudlent document.

**11.** It is true that plaintiff has admitted that, the matter is pending before the committee for adjudication. The defendant has filed a Writ petition in WP.No.6861/2013 with respect to the suit 'A' schedule property wherein the Hon'ble court, by its order dt:06-11-2013, has remanded the matter back to the Land Tribunal, Kundapura.

**12.** After considering the averments of the plaint this court view that the suit filed by the plaintiff with respect to suit schedule property as well cannot be thrown out by the civil court, as the revenue court, cannot grant the relief prayed in the plaint, in respect of suit schedule property, such a relief can only be granted by the civil court. The plaintiff has come to the civil court for a relief of cancellation and declaration, which can only be given by the civil court. If a plaintiff comes to the civil court for seeking cancellation of deed which may be void or voidable, the jurisdiction of the

civil court not having been expressly barred to try such suits, the suit will be maintainable in the civil court. The jurisdiction of the civil court is provided under section 9 of CPC cannot be permitted to be curtailed indirectly unless it is expressly barred. Considering all the above stated facts and circumstances, this Court is of the view that the rejection of the plaint is not warranted in this case, based on the grounds raised by the defendant. With these observations, this court answers point No.1 in the Negative.

**13. Point No.2:** For the aforesaid discussion on point No.1, this Court proceeds to pass the following:

**ORDER**

**I.A. No.VIII filed by the defendant under order VII rule 11 (d) R/w. Section 151 of CPC is hereby rejected.**

**For plaintiff Evidence.**

**Call on:20-08-2022**

(Dictated to the stenographer, directly on computer, corrected by me and then pronounced in the open Court on this 27<sup>th</sup> day of July, 2022)

**( Smt.Vidya A.S )  
II Addl. Civil Judge & J.M.F.C.,  
Kundapura.**