

KABI200009362016



IN THE COURT OF THE CIVIL JUDGE & JMFC.,

AT: HAGARIBOMMANAHALLI

DATED THIS THE 20th DAY OF FEBRUARY 2025

: **PRESENT:**

SRI. **SAYED MOHIUDDIN URF KHAWAJA PEERAN.**, BA. LLB.,(Spl.)
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI.

O.S.No.115/2016

- PLAINTIFF/s** : 1) **S.S.Siddappa S/o S.S.Kotrappa,**
Aged : 63 years,
- 2) **Basateppa S/o Ugappa,**
Aged : 53 years,
- 3) **Basavaraja S/o Karibasappa,**
Aged : 30 years,
- 4) **Ubemall Sab S/o Munaf Sab,**
Aged : 60 years,
- 5) **Hulugappa S/o Siddappa,**
Aged : 45 years,
- 6) **Basavaraja S/o Mugappa,**
Aged : 46 years,
- 7) **Sogi Karibasappa S/o Sogi Bhjarmappa,**
Aged : 35 years,
- 8) **Byastheri Mallappa S/o Virupakshappa,**
Aged : 36 years,
- 9) **Basavaneppa Hudedda S/o Hanumappa**
Hudedda,
Aged : 43 years,
- 10) **S.S.Adivappa S/o Basappa,**
Aged : 56 years,

All are Agriculturists R/o Enigi Basapura Village,
H.B.Halli Taluk, Ballari District.

Vs

- DEFENDANT/s : 1)Bhasakar Raj S/o ,**
Aged : 63 years, Occ:Business-cum-Agriculturist,
R/o Enigi Village, H.B.Halli Taluk, Ballari District.
- 2) The Assistant Executive Engineer,**
Department of Minor Irrigation,
Huvina Hadagali.
- 3)The Chief Officer/Secretary, Tungabhadra**
Board,
T.B.Dam, Hosapete Taluk, Ballari District.

I.A.No.VII

APPLICANT/DEFENDANT No.2: The Assistant Executive
Engineer, Department of Minor
Irrigation,

(Rep. by learned **A.G.P**)

V/s

RESPONDENTS/ PLAINTIFFS: S.S.Siddappa S/o S.S.Kotrappa
and others,

(Rep. by Sri. **A.K.**, Advocate)

ORDER ON I.A.No.VII

The defendant No.2 has filed I.A.No.VII under Order 7
Rule 11(d) of CPC for rejection of the plaint.

2. In the accompanying memo of fact, it is stated by the Counsel for the defendant No.2 that, the plaintiff has filed the present suit against the defendants for the relief of permanent and mandatory injunction with respect of the suit schedule property. The plaintiff has filed the present suit without complying the mandatory provisions of Section 80 of CPC. Further, the plaintiff has not implead the Secretary, Water Resources Department, Vidhana Soudha Bangalore as necessary party to the present suit. Without filing any Appeal or application before the appropriate authority for challenging the grant the plaintiff has filed the present suit before this Hon'ble Court. This Court has no jurisdiction to entertain the suit. Without impleading the Secretary of the Government as a necessary party in the present suit the suit is not maintainable and hit by Section 79 of the CPC. Hence he prays to reject the plaint.

3. To the said application, the plaintiffs have filed the objections by denying the entire contentions of the defendant No.2. They further contended that, the plaintiffs have filed the present suit in the representative capacity. This Court has

jurisdiction to entertain the suit. They have filed the application under Section 80 of CPC along with the plaint. The plaintiffs have impleaded all the necessary parties in the present suit. With an intention to drag on the proceedings the defendant No.2 has filed the present application. Hence they pray to dismiss the application.

4. Heard and perused the documents.

5. The following points arise for my consideration:

1) **Whether the defendant No.2 has made out proper grounds for rejecting the plaint U/O.7 Rule 11(d) of CPC as prayed in the I.A?**

2) **What order?**

6. My answers to the above points are as under:

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

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

REASONS

7. The present suit is filed by the plaintiffs against the defendants for the relief of permanent and mandatory

injunction with respect of suit schedule property. In the present case on hand the defendant No.1 and 3 have filed the written statement. The defendant No.2 has not filed any written statement. After framing of Issues case was posted for plaintiffs evidence. When the case was posted for cross-examination of PW1, the defendant No.2 filed the present application for rejection of plaint. Order 7 Rule 11 of CPC provides as under;

11. Rejection of plaint.— 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:]

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is

satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

8. The defendant No.2 taken a contention that the plaintiffs not made the Secretary, Water Resources Department, Vidhana Soudha, Bangalore as a party to the present suit. The issue of non-joinder of necessary party does not fall within the ambit of Order 7 Rule 11 of CPC. As per the provisions of Order 7 Rule 11 of CPC on the basis of above said contention for non-joinder of necessary party taken by the defendant the plaint cannot be rejected at the threshold under the provisions of Order 7 Rule 11 of CPC. In the reported decision **2022 SCC OnLine Delhi 3674 (Silvermaple Health Care Services Pvt. Ltd vs. Dr. Tajinder Bhatti)** the **Hon'ble Delhi High Court** in **Para No. 12 to 16** of the said decision held as under.

12. In the opinion of this Court not much cogitation is required to answer the question as the same question came up before this Court in Gajinder Pal Singh v. Mehtab Singh, 2001 SCC OnLine Del 1682. In the said case, an

*application was filed on behalf of some of the Defendants under Order VII Rule 11 CPC for rejection of the plaint for non-joinder of necessary party. After considering the submissions of both parties, the Court held that the ground taken, namely, non-joinder of necessary party is not covered by any of the Clauses (a) to (d) of Rule 11 of Order VII CPC. This was a matter which will have to be considered at the appropriate stage after framing of issues including the issue on this aspect. After framing of issues, this particular issue can be treated as 'preliminary issue' and if no evidence is required, it can be listed for arguments. It was further held that even if it is ultimately held that the party alleged to be a necessary party is found to be one, the suit may not necessarily be dismissed without giving an opportunity to the Plaintiff to amend the plaint by adding the absent party. The application was dismissed by holding that on the basis of Order VII Rule 11 CPC, the suit could not be dismissed and the Court can always exercise power under Order I Rule 10 and Order VI Rule 17 CPC, as also held by the Guwahati High Court in *Motoi Mia v. Abdul Haque*, 1983 SCC OnLine Gau 20.*

*13. This Court in *Prem Prakash Dhawan v. Aman Dhattarwal*, 2021 SCC OnLine Del 2547, while dealing with a similar objection has held that ground of non-joinder of parties is not available in an application under Order VII Rule 11 CPC and to the same effect is the decision of the Bombay High Court in *Ramesh Shriram Sule v. Dilipraj Niranjankumar Goenka*, 2008 SCC OnLine Bom 1118.*

*14. In the case of *P. Govindasamy v. Manickam*, 2015 SCC OnLine Mad 13147, one of the questions before the Division Bench of the Madras High Court was whether the objection of nonimpleadment of necessary parties or proper*

parties is an issue to be determined in the suit on the basis of evidence adduced by the parties at the time of trial or was the same to be decided in an application filed under Order VII Rule 11(a) and (d) CPC. After analysing the provisions of Order I Rule 10 CPC as well as various eventualities where a party may be considered as a necessary party, the Court observed that learned Single judge fell in error in rejecting the plaint under Order VII Rule 11(d) CPC on the ground of non-joinder of a necessary party.

15. In Civil Revision Petition No. 3026/2019 titled as Soyala Infra v. Smt. Rameez Bee, vide order dated 09.03.2022, the Telangana High Court has reiterated the position of law that non-joinder of necessary parties is not a ground for rejection of plaint under Order VII Rule 11 CPC. It was held that even if there is non-joinder of necessary parties, Plaintiffs can be afforded opportunity at appropriate stage of the suit by framing an additional issue for impleading necessary parties, if required. However, the same cannot be stretched to reject the plaint without any opportunity for impleadment. If after an opportunity being granted, Plaintiffs fail to act upon and do not implead the necessary party, the suit can always be ultimately dismissed, but only after framing of issues and trial. Accordingly, the Court had rejected the contention that non-joinder of parties can be a ground for rejection of the plaint.

16. From a conspectus of the aforesaid judgments, it is indisputably clear that plaint cannot be rejected at the threshold for non-joinder of necessary party under Order VII Rule 11(d) CPC. Even assuming that the Plaintiff has not impleaded the franchisor as a party in the present suit, Court can always frame a

preliminary issue on this aspect, as expounded in the aforesaid judgments and if the Court comes to a conclusion that the franchisor of the Plaintiff and the owner of DHI brand is a necessary party, opportunity can be given to the Plaintiff for impleadment under Order I Rule 10 CPC.

On going through the above said contentions of the defendant No.2 it clearly discloses that, rejection of plaint on grounds of non joinder necessary party is not covered under the provisions of Order 7 Rule 11 of the CPC.

9. Further the defendant No.2 taken a contention that the plaintiffs have not issued the pre-suit notice to the defendants as required under Section 80(2) of the CPC. As such, the suit is not maintainable.

I have perused the plaint averments and materials available on record. The plaintiffs in para No.12 of the plaint they prays to dispense the issuance of notice under Section 80 of CPC against defendant No.2 and 3. Further the plaintiffs have also filed I.A.No.II under Section 80(2) of CPC prays the Court to dispense the issuance of notice under above said provisions of law against the defendant No.2

and 3. The defendant No.2 taken a contention that this Court has no jurisdiction to entertain the present suit. Lack of jurisdiction is not a ground to reject the plaint. In the reported decision **(2020) 7SCC 366 DAHIBEN V/S ARAVINDBHAI KALYANJI BHANUSALI (GAJRA) DEAD THROUGH LEGAL REPRESENTATIVES AND OTHERS.** In **para No.23.10** the **Hon'ble Supreme Court of India** held as under;

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

In the above said decision the Hon'ble Supreme Court of India clearly held that for deciding the application under Order 7 Rule 11 of CPC plea taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant and cannot be averted to or taken into consideration.

11. In the reported decision **2023 SCC OnLine SC 1270 (G. Nagaraj and Another vs. B.P. Mruthunjayanna**

and Others) the **Hon'ble Supreme Court of India** in **Para No.6** of the said decision held as under.

6. The law is well settled. For dealing with an application under Rule 11 of Order VII of CPC, only the averments made in the plaint and the documents produced along with the plaint are required to be seen. The defence of the defendants cannot be even looked into. When the ground pleaded for rejection of the plaint is the absence of cause of action, the Court has to examine the plaint and see whether any cause of action has been disclosed in the plaint.

As per the above said decision the relevant fact which need to be looked into for deciding the application under Order 7 Rule 11 are the averments of the plaint only. For considering the application under Order 7 Rule 11 averments in the plaint alone are to be examined and no other extraneous factor can be taken into consideration. Further held that for dealing with an application under Order 7 Rule 11 of CPC only the averments made in the plaint and the documents produced along with the plaint are required to be seen. The defense of the defendant cannot be even looked into. On going through the entire plaint averments it clearly discloses that there is no statement in the plaint to show that

the suit is barred by any law. On the basis of above reasons and discussions, I am of the opinion that the present application filed by the defendant No.2 is not maintainable, hence same is liable to be dismissed. As such, I answer **Point No.1 in the Negative.**

12. Point No.2 :- For the aforesaid reasons and discussions made above, I proceed to pass the following:-

ORDER

I.A.No.VII filed by the defendant No.2
under Order 7 Rule 11(d) of CPC is hereby
dismissed.

*(Dictated to the Stenographer, transcribed and computerized by her, corrected by me, and then pronounced in the open court on this the **20th day of FEBRUARY 2025.**)*

(SAYED MOHIUDDIN URF KHAWAJA PEERAN)
CIVIL JUDGE & JMFC., H.B.HALLI.