

KABI200012412014



**IN THE COURT OF THE CIVIL JUDGE & JMFC.,**

**AT: HAGARIBOMMANAHALLI**

DATED THIS THE 23<sup>rd</sup> DAY OF AUGUST 2024

: **PRESENT:**

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

**O.S.No.242/2014**

**PLAINTIFF/s : Smt.Anchi Sanna Durugavva**  
**W/o Mallappa,**  
Aged about : 45 years, Agriculture-coolie,  
R/o: Bannikallu Village, H.B.Halli Taluk,  
Bellary District.

**Vs**

**DEFENDANT/s : Smt.Tharihalli Kotramma W/o J.Ningappa,**  
Aged about: 40 years, Housewife, R/o: Bannikallu  
Village, H.B.Halli Taluk, Bellary District.

**I.A.No.VII**

**APPLICANT/DEFENDANT : Smt.Tharihalli Kotramma**  
**W/o J.Ningappa,**  
(Rep. by Sri. **S.B.V.**, Advocate)

**V/s**

**RESPONDENT/ PLAINTIFF : Smt.Anci Sanna Durugavva  
W/o Mallappa,**

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

**ORDER ON I.A.No.VII**

The defendant has filed I.A.No.VII under Order 7 Rule 11(a) and (b) of CPC for rejection of plaint filed by the plaintiff.

**2.** In the accompanying affidavit to the said IA, it is stated by the defendant that, the suit of the plaintiff is not maintainable as there is no cause of action to the suit. The plaintiff in her plaint pleaded that defendant has created the partition deed. But in the plaint there is no averments as to when the plaintiff came to know about the document. The date mentioned by the plaintiff in the plaint are all false and invented by the plaintiff in order to file the false suit. The plaintiff is seeking the direction to the Tahasildar, H.B.Halli to change the khata of the suit property in the name of plaintiff, but the Tahasildar, H.B.Halli is not at all party to the suit, as the suit is not maintainable. The plaintiff has not valued the

suit properly and not paid the proper Court fee, hence he prays to reject the plaint.

3. To the said application, the plaintiff has filed the objections by denying the entire contentions of the defendant. She further contended that, when the case was posted for cross-examination of defendant and her witnesses the present application was filed with an intention to drag on the proceedings. The averments made in the applications and affidavits are false. She has properly valued the suit and paid the sufficient Court fee. Hence she prays to dismiss the application.

4. Heard and perused the documents.

5. The following points arise for my consideration:

1) **Whether the defendant has made out proper grounds for rejecting the plaint U/O.7 Rule 11(a) and (b) 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 plaintiff against the defendant for the relief of declaration of title and permanent injunction with respect of suit schedule property. When the case was posted for further examination in chief of DW1 to DW3, the present application is filed by the defendant. 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 contention taken by the defendant is that the suit of the plaintiff is not maintainable as there is no cause of action to the suit, and the plaintiff in her plaint pleaded that defendant has created the partition deed, but in the plaint there is no averments that when the plaintiff has come to know about the said document. I have perused the plaint averments. In plaint para No.8, the plaintiff shown the cause of action for filing the present suit. The para No.8 of the plaint is as under;

***VIII. “ Cause of Action:- The cause of action for the suit arose on when the Tahasildar, H.B.Halli issued Form No.VII patta on 07.05.1994 in favour of plaintiff, and on 25.01.2012 when the defendant***

***illegally got mutated the property in her name, and on 22.10.2014 and 10.11.2014 the dates on which the defendant tried to trespass into the suit schedule property and tried to dispossess the plaintiff from the suit schedule property and same is continuing at Bannikallu Village, in Hagaribommanahalli Taluk where property is situated, within the jurisdiction of this Hon'ble Court.***

On going through the same, prima facie it appears that plaintiff clearly shown the cause of action for filing this suit in her plaint. Further as per the averments of plaint Para No.6 it appears that the cause of action for filing the present suit to the plaintiff accrued on 22.10.2014 and 10.11.2014. The defendant contended that the dates mentioned in the plaint by the plaintiffs are false and she prays to reject the plaint. Whether the said cause of action is real or false will be decided only after full fledged trial. The defendant contended that the plaintiff not discloses the fact in the plaint that when she came to know about the alleged partition deed. The said fact also will be decided only after full fledged trial. 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, 23.11, 23.12* 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.**

**23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in *Liverpool & London S.P. & I Assn.Ltd., v M.V.Sea Success* /which reads as: (SCC p.562, para 139).**

**“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”**

**23.12. In *Hardesh Ores(P) Ltd., v. Hede & Co.*, the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without**

**addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D.Ramachandra v.R.V.Janakiraman.”**

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. As stated above the plaintiff contended that the cause of action shown by the plaintiff is imaginary, false and not real. In the above said decision in para No.23.12 the Hon’ble Supreme Court of India clearly held that if the allegations in the plaint prima facie shows a cause of action the Court cannot embark upon an enquiry whether the allegations are true in fact.

9. Further the defendant taken a contention that the plaintiff seeking the relief of direction against the Tahasildar, H.B.Halli to change the khata of suit property, but the plaintiff has not made the Tahasildar, H.B.Halli as a party to

the present suit, as such suit is not maintainable. 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 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.

**10.** The defendant taken a contention that the plaintiff has not valued the suit properly, and not paid the proper Court fee on the market value of the suit property. Hence, she prays to reject the plaint. As per the plaint averments the suit schedule property is the agricultural land. As per para No.9 of the plaint the plaintiff valued the suit schedule property for Rs.1,000/- for the purpose of jurisdiction, in the said para it is mentioned that as per Section 7(2)(a) of KCF and SV Act 1958, the plaintiff valued the suit schedule property on the basis of Land Revenue and it is further mentioned that the plaintiff has paid the Court fee of Rs.25/- and Rs.50/-. On going through the same prima facie it appears that the plaintiff has properly valued the suit schedule property and Court fee paid by the plaintiff is sufficient.

**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 decisions 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 in the above said decisions of **(G. Nagaraj and Another vs. B.P. Mruthunjayanna and Others)** the **Hon'ble Supreme Court of India** clearly 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 the basis of above reasons and discussions, I am of the opinion that the present application filed by the defendant 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 under  
Order 7 Rule 11(a) and (b) 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 **23<sup>rd</sup> day of AUGUST 2024.**)*

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