

KAVP200000462025



IN THE COURT OF THE ADDL.SENIOR CIVIL JUDGE,
AT : BASAVANA BAGEWADI

PRESENT: Sri.ISHWAR S.M.
B.A.LLB., (Spl)
Addl. Senior Civil Judge
& J.M.F.C., B.Bagewadi

Dated this the 13th day of June - 2025

O.S.No.14/2025

PLAINTIFFS: Basavva W/o Basagondappa Aloor and
Others

-Versus-

DEFENDANTS: Gouramma called herself as W/o
Basagondapppa Aloor

I.A. No.IV

Applicant: Gouramma called herself as W/o
Defendant Basagondappa Aloor,
Gouramma D/o Bhimappa Kori,
Age: 60 years, Occ: Household work,
R/o: Rudagi, Tq: Muddebihal,
Dist: Vijayapura

(By Sri B.V.Patil, Advocate)

-Versus-

Opponents Basavva W/o Basagondappa Aloor and
Plaintiffs Others

(By Sri S.S.Kolur, Advocate)

I	Provision under which the application is filed	Under order VII Rule 11 (a) (d) of CPC
ii	Relief sought for	With a prayer to reject the plaint.
iii	The date on which the application is filed	03.03.2025
iv	Number of the applications	Four
v	The date on which the objections are filed by different opponents	Objections filed
	The date on which the orders were passed on the said application	13.06.2025
vii	The application filed by	Defendant
viii	Stage of the suit	For orders on I.A.

(ISHWAR S.M)
 Addl. Senior Civil Judge
& J.M.F.C.,B.Bagewadi

ORDER ON I.A NO.IV

The counsel for defendant has filed I.A.No.IV U/o VII Rule 11 (a) and (d) of CPC, praying this Court to reject the plaint for want of cause of action and suit is hit by the principle of res-judicata, U/o II Rule II of CPC and Limitation Act and other Provisions of Law.

2. The I.A. accompanied with memo of facts. Wherein the defendant has contended that, the plaintiff has filed false suit for declaration and injunction. The plaintiff has wrongly mentioned genealogy in suit schedule "A". Because, non mentioning of name of second wife Gouramma in the genealogy, in para No.2 the plaintiffs have falsely stated that the defendant is not related to them. There is no dispute regarding plaintiff No.1 is first wife of Basagondappa and plaintiff No.2 and 3 are sons of 1st wife Basavva through Basagondappa. The 1st wife deserted the Basagondappa about 40 years, the marriage of defendant with Basagondappa was celebrated at Jaiwadagi, Awwappa Muttya Temple in B.Bagewadi taluka, since, the marriage the defendant has lead marital life with Basagondappa. But, unfortunately no children were begotten. Previously O.S.No.33/2015 was heard and decided finally by this Court with respect to suit land, this property was allotted to share of Basagondappa in partition with plaintiff No.2 and 3 in the year of 1997 as per M.E. No.2822. Wherein Sy.No.91/2B and Sy.No.224 were fallen to the share of plaintiff No.2 and 3. Thereafter the plaintiff No.2 and 3 have got created M.R.No.13/2003-04 entering their

names in the record of suit property stating that, Basagondappa has relinquished his right in favour of plaintiff No.2 and 3. Hence, Basagondappa has filed O.S.No.33/2015 the said suit was heard and decided in favour of the said Basagondappa and said Basagondappa has declared as absolute owner of the suit property, but possession is to be recovered from plaintiff No.2 and 3 by Basagondappa against the said judgment and decree the plaintiff No.2 and 3 preferred appeal in R.A. No. 206/2019, during the pendency of the said appeal Basagondappa was murdered on 07.08.2021. A criminal case was registered against plaintiff No.2 and 3. the said Basagondappa has filed E.P.No.24/2020 as per decree in O.S.No.33/2015 which is pending before this Court. After death of Basagondappa the defendant came on record in R.A.No.206/2019 on the strength of WILL executed by Basagondappa on 07.11.2019. Wherein the Basagondappa has bequeathed the suit property in favour of defendant. Accordingly, the defendant has filed I.A. No. II in the said RA and after recording of evidence of both the parties, the IA No. II was allowed and defendant was permitted to come on record as legal representatives of Basagondappa on the basis of the

WILL. The said order was not challenged by the plaintiff. The defendant is legatee under WILL came on record in R.A. No. 206/2019 and got entered her name in the revenue record of the suit property. Therefore, the said judgment become final until unless appeal is allowed. During the said period, O.S.No. 662/2019 was filed before Addl.Civil Judge and J.M.F.C., B.Bagewadi by the plaintiffs against the defendants for the same relief in the said suit, which is pending for adjudication. The said suit was filed suppressing the result of previous suit. The plaintiffs have admitted that, the deceased Basagondappa was the owner of the suit property. On those grounds, the defendant prays to reject the plaint.

3. On the other hand, the plaintiffs have filed objections to the said I.A. denying all the contents of the affidavit of the defendant. But, the plaintiffs admitted that the decree in O.S.No.33/2015 in favour of Basagondappa and they have preferred appeal on the said judgment and decree under R.A.No.206/2019. The plaintiffs have contended that, during the pendency of the said appeal, the defendant has got created WILL deed and as per the order on IA No.II in appeal has got mutated her name and trying to interfere into the peaceful

possession of the plaintiff over the suit property. The plaintiffs are in peaceful possession and enjoyment of the suit property, the defendant has given application to the revenue authorities stating that, in the appeal the suit property was allotted in her favour and got created the revenue records by mutating her name. On the basis of the said mutation entry the defendant is trying to alienate and transfer the suit property, therefore, the plaintiffs have filed the present suit with respect to suit schedule property after the death of Basagondappa as the suit property is the joint family property of plaintiffs. The plaintiffs denied that, the prayer and facts of O.S.No.662/2019 and the present suit are one and the same. The plaintiffs further contended that, the O.S.No.662/2019 the present plaintiffs No.2 and 3 are only plaintiffs and in the said suit, the deceased Basagondappa and Gouramma are only defendants. The said suit was filed with respect to VPC No.177 of Narasalagi village as the said property is ancestral property of plaintiffs. The said suit was filed for declaration that the plaintiffs of that suit are alone the owners of the said property and the injunction against the defendants for alienating the said property. But, the present suit is filed after death of

Basagondappa stating that after death of Basagondappa the suit property becomes joint family property of plaintiff and declaration in that regard. The present suit is filed by the 03 plaintiffs against the defendant alone. But, not against the deceased Basagondappa, therefore, both the suits are different suits, prayers are also different and parties are also different. That, after death of Basagondappa the plaintiffs becomes the legal heirs and the suit property becomes joint family property of plaintiffs, but the defendant by creating false WILL deed and during the pendency of the appeal as per order on IA No.II has got mutated her name in the revenue record of the suit property, therefore, the cause of action arises for the plaintiff to file the present suit. Therefore, the suit of the plaintiff is not hit by principles of res-judicata and not hit by Order II Rule II, or not barred by Law of Limitation. On those grounds the plaintiffs prayed to reject the IA.

4. Heard both sides. Upon hearing, both the parties the points that would arise for my consideration are;

1. *Whether the defendant has made out grounds to allow I.A.No.IV?*
2. *What order?*

5. My answers to the above points are;

Point No.1 : In the Negative

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

REASONS

6. **Point No.1:** That, in support of her contention the defendant has relied upon the decisions reported in ***AIR 2021 SC 4594 in between Rajendra Bajoria and others V/s Hemanatkumar Jalan and others.*** Wherein the Hon'ble Supreme Court has held that;

Civil Procedure Code Order VII Rule 11 - Partnership Act (9 of 1932), Ss. 40, 42, 8, 43, 44, 48 - Rejection of plaintiff - Averments in plaintiff not disclosing cause of action and reliefs as sought in plaintiff cannot be granted to plaintiff - Rejection of plaintiff, proper.

Whether a cause of action made out or not could be ascertained only on basis of averments made in plaintiff. Also for finding out same, entire pleadings in plaintiff to be read and that too, at their face value. Reading of averments made in plaintiff should not only be formal but also meaningful. If clever drafting has created illusion of a cause of action, and a meaningful reading thereof would show that pleadings are manifestly vexatious and meritless, in sense of not disclosing a clear right to sue, then Court should exercise its power under O.7 R. 11 of CPC. Such a suit to be nipped in bud at first hearing itself and order passed by the Power conferred on Court to terminate a civil action is a drastic one and conditions enumerated to be strictly adhered to. However, under O.7 R. 11 of CPC, duty cast upon Court to determine

whether plaint discloses a cause of action, by scrutinizing averments in plaint, read in conjunction with documents relied upon or whether suit is barred by any law. Court held that underlying object O 7 Rule 11 of CPC, is that when a plaint does not disclose a cause of action, court would not permit the plaintiff to unnecessarily protract proceedings. In such a case, it will be necessary to put an end to sham litigation so that further judicial time is not wasted. Plaintiff filing suit seeking declaration of co-ownership of assets and properties of partnership firm as well as dissolution of said firm. Division Bench of High Court by scrutinizing averments in plaint, reliefs claimed therein, provisions of Act and clauses of partnership deed, held that since reliefs as sought in plaint cannot be granted, plaint liable to be rejected as disclosing no cause of action. Order passed by Division Bench of High Court, upheld.

2022 (1) KCCR 13 between M/s Metropoli Overseas

Limited V/s H.S.Deekshit and Others. Wherein the Hon'ble

High Court of Karnataka has held that;

A: CIVIL PROCEDURE CODE, 1908 - Order 7. Rule 11 (a) & (d)- Rejection of Plaint - Suit for Partition – Prayer to declare the sale deeds to be invalid and not binding – Limitation is mixed question of law and fact - Meaningful reading of the plaint discloses that suit is ex facie barred by limitation – Powers could be exercised Under Order 7, Rule 11(d) of CPC by the Court to reject the plaint.

2023 SAR (CIV) 740. In case of **Ramisetty Venktanna and Another V/s Nasyam Jamal Saheb and Others.**

Wherein the Hon'ble Supreme Court has held that;

"Civil Procedure Code, 1908 - Order VII Rule 11, Sec. 115 - Rejection of Plaint – Revision - Grievance that the suit was barred by limitation however, Application for rejection of plaint U/o 7 R 11 (d) of CPC, 1908 and Revision U/s 115 of CPC, 1908 stood dismissed by both Courts below, Whether sustainable? - Considering the reference verdict of "Ram Singh Vs. Gram Panchayat Mehal Kalan, 1986 SAR Online (SC) 3" and, "Raj Narain Sarin Vs. Laxmi Devi and Ors. 2001 SAR Online (SC) 498" wherein its stated that "when the suit is barred by any law, the plaintiff cannot be allowed to circumvent to avoid mention of those circumstances by which the suit is barred by law of limitation" – Thus, applying the law laid down by Supreme Court in the aforesaid decisions on the applicability of "Order 7 Rule 11 of CPC. 1908 to the facts thereof, the plaint ought to have been rejected the exercise of powers under Order 7 Rule 1104) and (d) of CPC, 1908 being vexations illusory cause of action and barred by limitation and it is a clear case of clever drafting – Apparently, by clever drafting and not asking any relief with respect to partition deed, the plaintiffs have tried to circumvent the provision of limitation act

and have tried to maintain the suit which is nothing but abuse of process of court and the law - Hence, the impugned judgment and order passed by the High Court and that of Trial Court rejecting the application under Order 7 Rule 11 are unsustainable thus, quashed and set-aside and Application is allowed consequently, the plaint is rejected - Held, appeal allowed.

2022 SUPP.SAR (CIV) NOC 308. In case of **S.Ramachandra Rao V/s S.Nagabhushana Rao and others.** Wherein the Hon'ble Supreme Court has held that;

A. *Civil Procedure Code, 1908 – Secs. 11, 151, Order III Rule 2, Advocates Act, 1961, Sec. 32 and Indian Evidence Act, 1872, Sec. 120 – Res-Judicata – Inherent Power of Court – Pleadings in a proceeding shall be made by the party in person, or cases – Parties to Civil Suits and their wives or their husbands – Apex Court while considering questions involved observed that, appellants wife who is General Power of Attorney (GPA) holder of the appellant (plaintiff) and is also an enrolled advocate, appeared in the civil proceedings preferred by Appellant (Plaintiff) against the contesting respondent (defendant) which led to framing of questions; (1) Whether the previous orders in relation to these proceedings, as passed by the High Court between the same parties and dealing with the same issues*

relating to the capacity of the wife of appellant (plaintiff), could be said to be not conclusive and not operating as res-judicate because of any question of jurisdiction or of statutory direction or prohibition?;

(ii). Whether, appellant's wife, being his GPA holder having been permitted to appear as such, despite having been enrolled as an advocate during the pendency of proceedings, was not entitled to cross-examine the witnesses? Apex Court while answering issue (i) pertaining to res-judicata in negative held that, High Court has viewed the entire case from an altogether wrong angle, i.e, by misdirecting itself on the real point for determination; by not taking into comprehension the meaning, between the same parties in the and effect of the previous binding orders proceedings and by misapplication of m Court

- This misdirected approach has resulted in the High Court ignoring the doctrine of res-judicata and issuing such directions which are squarely opposite to the directions contained in the previous binding orders –

However, Apex Court while answering issue (ii) pertaining to appellant's wife held that, appellant's wife who would be appearing only as GPA holder through provision of order 3 rule 2 of CPC, 1908 and not as an advocate as per binding orders passed in these cases hence Apex Court upheld Trial court order being restored while setting aside impugned order of High Court – Appeal allowed.

B. Civil Procedure Code, 1908 -Sec. 11 – Res-judicata
- Doctrine that 'res-judicata is correct; *pro veritate occipitur*, which means, a judicial decision must be accepted as correct; and *nemo debet bis vexari pro una et eadem causa*, which means, no man should be vexed twice for the same cause, and interest *reipublicoe ut sit finis litium*', which means, it is also in public interest that individual should not be vexed twice with the same kind of litigation_Principle that; the doctrine of res-judicata is attracted not only in separate subsequent proceedings but also at subsequent stage of the same proceedings That: that even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered between the same parties by a Court of competent jurisdiction since, it is settled law, that, binding decisions cannot be ignored even on the principles of *per-incuriam* because those principles have relevance to the doctrine of precedents but have no application to the doctrine of res-judicata Hence, the doctrine of res-judicata is fundamental to every well regulated system of jurisprudence, for being founded on the consideration of public policy that a judicial decision must be accepted as correct and that no person should be vexed twice with the same kind of litigation-This doctrine of res-judicata is attracted not only in separate subsequent proceedings but also at the

subsequent stage of the same proceedings-Moreover, a binding decision cannot lightly be ignored and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered by a Court of competent jurisdiction-Such a binding decision cannot be ignored even on the principle of per incuriam because that principle applies to the precedents and not to the doctrine of res-judicata.

2017 SAR (Civi) 637. In case of **M/s Kaushik Coop Building Society V/s N.Parvathamma And others.** Wherein the Hon'ble Supreme Court has held that;

R. *Res-judicata – Principle of – Applicability – It may be true that the Court at --- (not legible) --- Its opinion in the nature of things would be a prima facie one-But the Court must also consider that the analogy of res-judicata or of the technical rules of civil procedure is appropriate and the Courts are expected to administer the law so as to effectuate its underlying object-Court shall also bear in mind that the basic character of this principle is public policy and preventive as to give finality to the decision of the Court of competent jurisdiction and prevent further litigation.*

A. *Res-judicata - Principle of Applicability-The question of res-judicata is ancient precedent is*

dictated by a wisdom which is for all time and that the application of the rule by the Courts should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law-Furthermore, it is well settled that the principle of res-judicata is applied for the purpose of achieving finality in litigation - To constitute a matter res-judicata, the following conditions must be proved: (1) that the litigating parties must be the same; (2) that the subject matter of the suit also must be identical; (3) that the matter must be finally decided between the parties; and (4) that the suit must be decided by a court of competent jurisdiction-It may be true that the Court at initial stage may not enter into the merit of the matter-Its opinion in the nature of things would be a prima-facie one-But the Court must also consider that the analogy of res-judicata or of the technical rules of civil procedure is appropriate and the Courts are expected to ad-minister the law so as to effectuate its underlying object-Court shall also bear in mind that the basic character of this principle is public policy and preventive as to give finality to the decision of the Court of competent jurisdiction and prevent further litigation.

2012 (3) KCCR 2395. In case of **Smt.Shakunthamma v/s Smt.Koushalya and Others.**

Wherein the Hon'ble High Court of Karnataka has held that;

C. PRACTICE AND PROCEDURE- Role of a lawyer -

A lawyer is supposed to make submissions and not to lead evidence. A lawyer is neither a party to the proceedings nor has been examined as a witness on behalf of a party and a submission made at the Bar as a lawyer is not a substitute either for the pleading of the party or the evidence on behalf of the party-this rather unfortunate, that lawyers are of late converting their role, getting confused about the nature of their profession, starting to give evidence through arguments and even have assumed the status of an expert witness calling upon judges in the Courts to accept their submissions as gospel truth and to act accordingly!.

D. JUSTICE IN OUR LEGAL SYSTEM - Justice in

our legal system is not based on personal perceptions of lawyers or even judges. It is justice in accordance with law and not justice in accordance with the perception of the lawyer or judges-The concept of justice cannot be linked more to equitable principles or as, thought to be fit or not for judgment by individual judges, but the legislation has stepped in and a law is made for such purpose, to ensure uniformity and certainty in judgments irrespective of the Judge as law makers have their hands on the pulse of the people, they understand the hopes and aspirations of the people in the society and have

accordingly made laws, and therefore the duty and responsibility of the judges in the Courts is only deliver judgments in consonance with the laws; decide cases by applying relevant laws to the fact situation and come out with the resultant conclusion, in fact judges have no choice about it and judgements automatically fall in line the moment facts are clear and the law applicable to the case is also definite. It cannot keep varying with judges, depending on the individual judges perception and personal emotions! But irrespective of the judge, the result inevitably has to be the same and uniform.

E. LIMITATION ACT, 1963-Article 65-A *suit for declaration of title and consequential relief of recovery of possession is covered by Article 65 and 12 years is the period of imitation.*

F. PRACTICE AND PROCEDURE - *Pleading-Pleading is not a perfect art or of precision in our country for presentation of factual versions of the case, but is more of a probable version of facts as is understood by the parties approaching the Court-Precision in language that too in a foreign language is the last thing one can expect from members of the Bar practicing in mofussil Courts, when it is not forthcoming even in lawyers practicing in metropolitan cities. To search for a precise plea and*

then to dismiss the suit as one without a cause of action i the most negative thing to do.

7. On the other hand, in support of the contention of the plaintiff, the plaintiffs have relied upon the decisions reported in;

2022 Live LAW (SC) 703. In between H.S.Deekshit and Another V/s M/o MET Ropoli Overseas Ltd., and Others.

AIR 2017 SC 2491.

14. Coming to the second question raised on behalf of the appellants as to the suit being barred by Order II Rule 2 of the CPC, suffice it to say that the earlier suit based on different thing barred by a declaration for one-half of the share in certain other properties was filed by Anandibai in the year 1963. At that time the property in question was not included in the suit. It had been found by courts below, the suit of 1963 was based on different cause of action on the basis of deed of 1957 where in the instant case, cause of action is different. It is on the basis of death of absolute owner Shakuntalabai in the year 1962, Anandibai became owner and plaintiffs had in turn absolute owner Anandibai. Thus the cause of action of the suit in the present case for partition is different from dispute as to mutation had been subsequently decided. Thus, the suit for partition is different and

be said to be barred by Order II Rule 2 CPC. The defendants were trying to sell the property in t year 1979 as such the plaintiffs in the suit prayed for partition and separate posse property in the could not have claimed interest in the land in the life-time of Anandibai and the cause of action in the previous suit for declaration of title filed by Anandibai was materially different

2024 SCCR 40. In case of Kum.Geetha D/o Late Krishna and Others V/s Nanjundaswamy and Others. Wherein the Hon'ble supreme Court has held that;

Civil Procedure Code, 1908-Order 7, Rule 11-Rejection of plaint-Plaint cannot be rejected in part-True test is first to read plaint meaningfully and as a whole, taking it to be true Upon such reading, if plaint discloses a cause of action, then application under Order 7, Rule 11 of CPC must fail Where it does not disclose cause of action, plaint shall be rejected-If allegations in plaint prima-facie show a cause of action, Court cannot embark upon enquiry whether allegations are true in fact - High Court committed error in rejecting plaint in part with respect to Schedule-A property and permitting Plaintiffs to prosecute case only with respect to Schedule-B property Judgment and order of High Court set aside.

2025 (1) KCCR SN 35 SC. In case of Cuddalore Powergen Corporation Ltd., V/s M/s Chemplast Cuddalore Vinayls Limited and Another. Wherein the Hon'ble Supreme Court has held that;

B. WORD AND PHRASES – *Cause of action – How to understand – Referred with reference to earlier case law and standard dictionaries.*

The phrase "cause of action" has not been legislatively defined in any enactment. However, the meaning of the expression has been the subject of judicial consideration in various decisions. The Privy Council agreed that "cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. Furthermore, it was stated that the cause of action has no relation whatsoever to the defence that may be set up by the defendant, nor does it depend upon the character of the relief which is prayed for by the plaintiff but refers to the facts upon which the plaintiff asks the Court to arrive at a conclusion in his favour. The phrase "cause of action" for the purposes of Order II, Rule 2 would mean the cause of action which gives an occasion for and forms the foundation of the suit. If that cause enables a person to ask for a

larger and wider relief than that to which he limits his claim, he cannot be permitted to recover the balance reliefs through independent proceedings afterwards, especially when the leave of the Court has not been obtained

C. CIVIL PROCEDURE CODE, 1908-Order 8, Rule 11(d)-Rejection of plaint - Averments in plaint and not otherwise-Discussed.

Order VII, Rule 11(d) reads as "where the suit appears from the statement in the plaint to be barred by any law". In light of the aforesaid, it follows that before rejecting the plaint under Order VII, Rule 11(d), the Courts must ensure that the plaint is read as a whole and its entire averments are looked into. A few lines or passages must not be read in isolation and it is imperative that the pleadings are read as a whole for ascertaining the true import of the averments therein. In performing such a holistic reading, it must be deduced whether the causes of action in both the suits are identical in substance in order to sustain a successful plea under Order II, Rule 2. It would be a reductive approach to only cull out the cause of action paragraphs from the respective plaints and decide that they disclose the same cause of action on mere comparative overview.

2021 (4) Civil LJ 563 SC. In case of **Srihari Hanumandas Totala V/s Hemant Vithal Kamat and Others.** Wherein the Hon'ble Supreme Court has held that;

Code of Civil Procedure, 1908, Order VII, Rule 11(d) and Section 11 - Application for rejection of plaint under Order VII, Rule 11(d) - Guidelines for its disposal - It is settled law that for decision of that application - Only averments made in plaint will have to be taken into consideration - Not averments of written statement or any other material-Grounds for rejection of plaint are mentioned in Rule 11-Plea or averment in plaint which needs evidence for decision- Cannot be taken into consideration-In this case, plea that suit is barred by res-judicata was taken in application under Order VII, Rule 11(d)-This issue needs decision on basis of copies of pleadings, decision of former suit, findings recorded in that former suit and decision by which finality is attached to that issue-As such, plea of res-judicata can-not be ground for decision of application under Order VII, Rule 11 (d) - Courts below did not commit any illegality in rejecting that application.

2025 (1) KCCR 67. In case of Smt.Nanjamma and Others V/s Narayanswamy and Others. Wherein the Hon'ble High Court of Karnataka has held that;

CIVIL PROCEDURE CODE, 1908-Order 7, Rule 11- Rejection of plaint on the plea of limitation-The Court held that further, question of limitation cannot be a ground for rejection of the plaint as it is a mixed question of law and facts.

8. That, both parties have produced the documents i.e. the plaintiff and defendants have produced the judgment and decree in R.A.No.206/2021 dated 21.03.2025. The plaintiffs have produced the plaint copy of O.S.No.662/2019 and its order sheet. The plaintiffs also produced the copy of judgment and decree in O.S.No.33/2015. The I.A. copy of I.A.No.II in R.A. No.206/2019 and order on I.A.No.II dated 10.08.2023 and order sheet of E.P.No.24/2020. The application given to the Tahasildar, B.Bagewadi by the defendant to mutate her name in the revenue record of the suit property and the objections submitted by the plaintiff to the said mutation proceedings and the order passed by the Tahasildar, B.Bagewadi and the A.C. Vijayapura.

9. That, on perusal of the judgment and decree in O.S.No.33/2015, wherein the suit of the plaintiff i.e. Basagondappa was declared as owner of the suit property and

defendants are directed to handover the possession of the suit property.

10. That, on perusal of the plaint copy of O.S. No.662/2019, wherein the present plaintiff No.2 and 3 have filed suit for declaration with respect to VPC No.171 of Narasalagi village as they are absolute owner of the said property. On perusal of the order on I.A.No.II the defendant was permitted to come on record as legal representatives of deceased Basagondappa as per WILL and on perusal of the judgment and decree in R.A.No.206/2019, the said appeal was dismissed by the Hon'ble Appellate Court filed by the present plaintiff No.2 and 3. But, in para No.30 to 34 of the said judgment, the Hon'ble appellate Court has observed that,

"The order on I.A.No.II is summary in nature against the said order no appeal is provided the granting of an opportunity to lead some sort of evidence in support of the claim of being legal heir of deceased party would not in any manner change the nature of the proceedings. Therefore, I am of the view that, it cannot be stated the WILL is conclusively proved. In my view, considering the facts and circumstances of the case the genuineness of the WILL has to be proved in a separate proceedings.--

33. Hence, by taking up the above application, while hearing the merit of the case, in my view the above documents are not helpful in deciding the merits of the case. Because of the case of plaintiff or defendants is not based on WILL. There is no pleading with regard to WILL. There is no issue framed with regard to the alleged WILL. In fact, as per order on I.A.No.II respondent No.1(a) was permitted to come on record as legal representatives of deceased Basagondappa it was not order of the Court permitting the respondent No.1 (a) to submit representation to Tahasildar for entering her name in the record of R.S. No.237 measuring 10 acres 26 gutnas as a legaty under the WILL. In fact, this Court has clearly observed that, genuineness of the WILL has to be established in separate probate proceedings,. This Court has simplicitor permitted respondent No.1(a) Gouramma to represent estate of Basagondappa on the basis of the alleged WILL dated 07.11.2019. By the order on I.A.No. II it has not permitted the respondent No.(a) to enter her name in the record of right of the suit. Hence, the acts of respondent No.1(a) entering her name in the record of the suit property is not in accordance with law”.

11. That from the above observation of the Hon’ble Appellate Court, it is clear that, the present defendant was only permitted to come on record as legal representative of

deceased Basagondappa and represent his estate. But, not given any finding on the alleged WILL. The said WILL has to be proved in separate proceedings. But, the defendant on the basis of the order on I.A.No.II has got mutated her name in the revenue record of the suit property, which is not permissible. As observed by the Hon'ble Appellate Court. That, though in O.S.No.33/2015 the deceased Basagondappa was declared as absolute owner, but after his death, the interest is created in favour of the legal heirs. But, as per the contention of the defendant during the lifetime of Basagondappa he has executed the WILL. The said WILL has to be established under separate proceedings if the defendants establishes the WILL then, the plaintiffs are out of the court. But, if the defendants failed to do so, definitely, the legal heirs will got right to succeed the suit property. Therefore, when the defendant has got mutated her name on the basis of the alleged WILL and as per the interim order in R.A.No.206/2019, then, the cause of action arise to the plaintiff in the present suit. The suit bearing O.S.No. 662/2019 is concerned, which was filed by the present plaintiff No.2 and 3 against the Basagondappa and present plaintiff No.1 with respect to VPC No.171 only for

declaration. Therefore, the contention of the defendant's counsel that the suit of the plaintiffs is hit by Order II Rule 2 of CPC does not survive. Because, in O.S.No.33/2015 the said property is not included. In the said suit the deceased Basagondappa was declared as owner of the suit property alone, but not with respect to the VPC No.171. Therefore, even the principles of res-judicate is also not applicable to the present set of facts. The present suit is filed after the death of Basagondappa and when the defendant has got mutated her name in the revenue record of the suit property on the basis of interim order in RA and without legal testing of the alleged WILL deed. Therefore, it cannot be stated that, the cause of action to the plaintiff is not arise at all. It is well settled law that, the cause of action cannot be picked up from any one line or specific clause of the plaint. But, the entire pleadings of the plaint has to be taken into consideration and the cause of action is nothing but bundle of facts. Therefore, the entire plaint has to be taken into consideration. On perusal of the entire plaint of the plaintiffs, the plaintiffs have stated that, after death of Basagondappa and when the defendant has got mutated her name in the revenue record of the suit property

then, the cause of action arise to the plaintiff. Moreover, in this case the possession of the suit property is with the plaintiff No.2 and 3 only. In this regard, the execution petition is also pending for possession of the suit property. These are all the facts which gives cause for the plaintiff to file the present suit. Therefor, in view of the above facts and circumstances of the case and in view of the decisions cited by the counsel for the plaintiffs reported in **2022 Live Law (SC) 703**, the decision relied upon the defendant counsel reported in **2022 (1) KCCR 2013** was reversed by the Hon'ble Apex Court.

That in view of the finding given in R.A 206/2019 by the Hon'ble appellate Court and for the above reasons discussion the with due respect to the decision relied upon by the defendant, the said decisions are not squarely applicable to the present set of facts and circumstances of the case in hand. That, in view of the decision relied upon by the counsel for the plaintiffs and the discussion made above, my findings to **Point No.1 is in the Negative.**

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

ORDER

*I.A.No.IV filed U/o VII Rule 11 (a) and (d)
of CPC, filed by the defendant is hereby
rejected.*

No order as to costs.

Call on for further Hg. On I.A. No. I

(Typed my dictation through online by the Stenographer, script corrected, signed by me and then pronounced in the Open Court on this the 13th day of June - 2025)

(ISHWAR S.M.)

Addl. Senior Civil Judge
& J.M.F.C.,B.Bagewadi