

KAVP210017472022



**IN THE COURT OF THE ADDL.CIVIL JUDGE & JMFC,
BASAVANA-BAGEWADI.**

**PRESENT: Smt. SAUMYA HOOLI
B.A.,LL.B.
Addl. Civil Judge & JMFC,
BASAVANA-BAGEWADI**

O.S.No.202/2022

DATED THIS THE 19th DAY OF APRIL-2024

PLAINTIFF:

Mahadevi herself calling as wife of
Rudrayya Hiremath

//Versus//

DEFENDANTS:

Shankunta R.C. and others.

PARTIES ON I.A.NO.IV

APPLICANT/DEFENDANT No.1;

Shankunta R.C. and others.

(By Sri M.H.Nadaf Advocate)

//Versus//

OPPONENT/PLAINTIFF:

Mahadevi herself calling as wife of
Rudrayya Hiremath

**[D-1By Sri K.M.Chikkmath, Advocate]
[D-2 and 3 placed exparte]**

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ORDER ON I.A.NO.IV

Stage: IA No.IV is filed U/O: 7 Rule 11 r/w 151 of CPC. The instant application is filed seeking rejection of plaint. The instant suit is filed for the relief of Declaration and permanent Injunction. The I.A.No.IV is filed on 15.11.2022. The number of applications in this suit is 4. The plaintiff has filed objections to IA No.IV. The date on which the orders on IA No.IV passed is 19.04.2024. The current stage is for “Compliance U/Sec. 89 of CPC”.

The applicant/defendant No.1 has filed the present application under Order VII Rule 11 of C.P.C., seeking rejection of the plaint on the ground that, there is no cause of action, barred by limitation and that the Court has no jurisdiction to try this suit.

2. In the affidavit annexed to I.A.No.IV, defendant No.1 contended that, defendant No.1 is the legally wedded wife of Late. Rudrayya C. Hiremath who married her on 20-04-1970 at Kalaguraki village, as per Hindu customs. The Late. Rudrayya was a Government Servant and that defendant No.1 resided with her husband till his death dated: 13.03.2022. Further defendant No.1 contended that, the deceased Rudrayya has entered the name of defendant No.1

as nominee in his service register and as per the same, the defendant No.1 is entitled to pensionary benefits of deceased Rudrayya. Further contended that, the plaintiff had instituted Cril.Misc.No.1/1980 against Rudrayya, wherein compromise was entered into and thus, the limitation to file the suit began from the year 1980. But, the plaintiff has instituted the instant suit in the year 2022, though she had knowledge since 1980 and thus the suit is barred by law of limitation and also the actual cause of action arose in the year 1980. Further contended that, plaintiff has not challenged the service record of deceased Rudrayya and also that, plaintiff has not produced any legal heir certificate or succession certificate before this Court as a result of which the suit is not maintainable. Further contended that, the suit is not properly valued and Court fee paid on the plaint is insufficient. Thus, prayed to allow IA No.IV.

3. On the other hand, plaintiff has filed objections to IA No.IV, wherein plaintiff denied the contentions of the defendant No.1. Further averred that, the application filed by the defendant No.1 is vague. Further averred that, the plaintiff is the legally wedded wife of deceased Rudrayya and

their marriage was solemnized on 23-05-1973. Further averred that, the plaintiff had filed cases against deceased Rudrayya for maintenance as deceased Rudrayya had deserted her. Further averred that, it is the plaintiff who performed funeral of deceased Rudrayya on 13-03-2022 at Kalguraki village. Such being the facts, the instant application is not maintainable and thus prayed to dismiss IA No.IV.

4. Heard and perused the entire records of the suit.
5. Upon hearing arguments and on perusal of materials placed on record, the following Points that arise for consideration:

POINTS

1. Whether the plaint is liable to be rejected on the grounds mentioned from clause (a) to (f) U/O: 7 Rule 11 of CPC ?
 2. What Order?
6. My findings 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. POINT NO.1:- In brief, it is the contention of the defendant No.1 that, this Court has no jurisdiction to try the suit, barred by limitation and that, the plaint does not disclose any cause of action.

8. It is well settled principle of law that, in order to discuss the application U/o: 7 Rule 11 of CPC, only the plaint averments are to be looked into. In the instant case, the plaintiff has instituted the suit seeking relief of declaration and permanent injunction. On perusing the plaint averments, it is forthcoming that, the instant dispute is with respect to the question as to who is the legally wedded wife of deceased Rudrayya. As per the contentions of defendant No.1, the plaintiff without obtaining succession certificate or legal heir certificate, cannot institute this suit before this Hon'ble Court. When Section 9 of Civil Procedure Code is looked into, the said provision is vast and when the main relief is with respect to declaration as to who is legally wedded wife, then this Court is not barred from deciding as to who is the legally wedded wife of the deceased Rudrayya. Moreover,

defendant No.1 has not mentioned as to under which law, this Court is barred from deciding as to who is legally wedded wife. As far as the legal heir certificate or succession certificate from the competent authority is concerned, it is to be noted that, other than the Civil Court no authority has a right to determine the rights and liabilities of parties in the instant suit. When the succession certificate is to be obtained from the Court, the Court granting succession certificate does not decide the dispute as to who is the legally wedded wife. In order to completely adjudicate, as to who is the legally wedded wife, the full-fledged trial is required and it is only the Civil Court which can decide the said question as per law.

9. Further, mere entry of name of defendant No.1 in the service records of deceased Rudrayya, does not establish that, defendant No.1 is the legally wedded wife of the deceased. It is to be noted that, the main relief sought in the instant suit is for declaration with respect to legally wedded wife of deceased. The same needs to be adjudicated during the course of trial and the same needs to be proved with

evidence. Further, it cannot be said that, the cause of action to file the instant suit arose in the year 1980 because as per the averments of the plaintiff in the plaint, it is forthcoming that, the plaintiff had entered into compromise with deceased Rudrayya and was residing with him till his death. Thus, as per the pleadings in the plaint, it is obvious that, the cause of action has arisen after the death of deceased Rudrayya. Thus, it cannot be said that, there is no cause of action. Further, as far as the question of limitation is concerned, on perusal of the plaint it is forthcoming that, the cause of action arose to the plaintiff upon the death of deceased Rudrayya and that, the deceased died on 13.03.2022. The instant suit is filed in the year 2022 itself, thus at this stage, it cannot be said that, the suit is barred by limitation. However, the question of limitation can also be determined in the course of trial.

10. Further, as far as the question of Court fee is concerned, on perusal of the plaint it is forthcoming that, plaintiff has not mentioned as to under which provision the suit is valued and the Court fee is paid. However, the said

question requires hearing by both side and that, it is well settled position of law that, if the suit is under valued or over valued, the plaint cannot be rejected at threshold. Moreover, it is only after providing an opportunity to the plaintiff to pay the sufficient Court fee, and that if the Court fee is not paid within the prescribed time, the plaint can be rejected. Thus, for the aforesaid reasons this Court answered **point No.1** in the **negative**.

11. POINT NO.2:- In view of the above findings on Point No.1, this Court proceeds to pass the following:

ORDER

I.A.No.IV filed by the defendant No.1 under
Order VII Rule 11 r/w Sec. 151 of C.P.C. is
hereby rejected.

No order as to costs.

(Dictated to the Stenographer on Computer directly, typed by her, Order corrected and signed by me, then pronounced by me in the Open Court on this the **19th day of April-2024**.)

Place:B.Bagewadi
Date:19-04-2024

(Smt.SAUMYA HOOLI)
Addl., Civil Judge & JMFC.,
Basavana Bagewadi.