

IN THE COURT OF SENIOR CIVIL JUDGE & JMFC, INDI**Present: Sri.KOTEPPA KAMBLE****B.Com., LL.B.,
Sr.Civil Judge & JMFC,
Indi.****Dated this 10th day of June, 2026****O.S.No.50/2019****Plaintiff:**

1. Yallawwa W/o Prakash Hugar

// Vs//

Defendants:

1. Mahadev M. Hirekurubar and others.

ORDERS ON I.A.No.II**APPLICANT/****Defendant No.4:**

1. Prakash S/o Beerappa Hugar,
Age: 40 years, Occ: Agriculture,
R/o Anjutagi village, Tq: Indi,
Dist: Vijayapur.
(By Sri.M.M.K., Advocate)

//Versus//

OPPONENT/**Plaintiff:**

1. Yallavva W/o Prakash Hugar,
Age: 35 years, Occ: Household work,
R/o Anjutagi village, Tq: Indi,
Dist: Vijayapur.
(By Sri.J.B.B., Advocate)

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**ORDER ON IA No.II FILED UNDER ORDER 7
RULE 11 (A) OF CPC.**

1. This application is filed by the defendant No.4 when the matter was set down for filing the written statement. The defendant No.4 filed his affidavit annexed with IA, deposing that, the plaintiffs have filed the present suit for the relief of partition and separate possession in respect of suit property. The suit property is already sold out to defendant No.1 in the year 2010 itself. At the relevant point of time, the plaintiff No.2 was not born. Hence, the question of alienating behind his back does not arise. Further, the wife cannot claim partition against her husband. As such, there is no cause of action to file the present suit. Therefore, the suit is not maintainable. Hence, prays for dismissal of IA.

2. Despite sufficient time is being given to the plaintiffs, they have not filed their objections to IA.

3. Heard both sides and perused the records.

4. The following points that would arise for my

consideration is-

1. Whether the defendant No.4 make out a case that there is no cause of action to file the present suit and liable to be reject the plaint?
2. What order?

5. My answer to the above points is as under:

Point No.1: In the Negative.

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

REASONS

6. **Point No.1:** The plaintiffs have filed the present suit for the relief of partition and separate possession in respect of land bearing Sy.No.37*/1, measuring 3 acre 8 guntas, situated at Anjutigi village. It is the case of plaintiffs that, the suit property is ancestral property of plaintiffs and defendants. They are the members of joint Hindu family. The plaintiffs are having half share in the share of defendant No.4. The defendants behind the back and without the knowledge of the plaintiffs, got executed alleged sale deed in the name of defendant No.1 without

there being any consideration colluding with each other. Therefore, the plaintiffs requested the defendants to allot their share, but they have not given any heed to their requests. Therefore, they are constrained to file the present suit. Wherein, the defendants entered their appearance. The defendant No.4 has filed the instant application for rejection of plaint on the ground that the suit of the plaintiffs is not disclosing cause of action. The cause of action is a functional bundle of facts or circumstances that gives a plaintiffs the legal right to sue the defendants. It comprises two essential elements, legal right and its valuation which together entitled to the plaintiffs could seek remedy. It is the settled law that, in a suit for partition, the cause of action is rigorous cause of action. In the case at hand, the plaintiffs seeks that, they are the members of the joint Hindu family and the suit property is their ancestral property. They are having legitimate share in the suit property. The defendants have refused to allot their share, which constitutes a cause of

action, than the plaintiffs are constrained to file the present suit. A plain reading of the plaint averments as a whole, which discloses the cause of action to file the present suit, therefore, the suit is rightly maintainable. The defendant No.4 contended that in the year 2010 itself, the property is alienated in favor of defendant No.1 and on the relevant point of time, the plaintiff No.2 was not born. Therefore, he is not entitled to claim any share in the suit property which is not available for partition. Further, he contended that the plaintiff No.1 being the wife, she cannot seek partition during the lifetime of her husband. The plaintiff No.1 being the mother of plaintiff No.2, next friend filed the suit seeking the relief of partition. As pleaded by the plaintiffs in their plaint, the suit property is the ancestral property. At the time of considering the application under Order 7 Rule 11 of CPC, the plaint alone shall be taken into consideration in order to ascertain whether there is a cause of action to file the suit? It is also settled law that, the objections raised

by the defendants and contentions taken in their written statements as well as in the application cannot be taken into consideration for determining the *lis*, that whether there is a cause of action or not? Therefore, considering the plaint averments, it discloses that the cause of action to file the present suit. Therefore, this court is of the considered opinion that the defendant No.4 has fails to make out a case that there is no cause of action to file the present suit. **Hence, Point No.1 is answered in the Negative.**

7. Point No.2: In view of my answer to point No.1, I proceed to pass following;

ORDER

I.A.No.II filed by defendant No.4
under Order VII Rule 11(a) of the Code of
Civil Procedure is hereby dismissed with no
order as to costs.

(Dictated to the stenographer, transcribed by him and corrected, signed and pronounced by me in the open court on 9th day of June 2026)

(KOTEPPA KAMBLE)
Senior Civil Judge and JMFC
Indi.