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**IN THE COURT OF THE HONOURABLE CIVIL JUDGE & JMFC,  
AT YADGIR**

**PRESENT: SMT. ASRINA.,B.A, LLB.  
CIVIL JUDGE AND JMFC, YADGIR**

**DATED THIS 14<sup>TH</sup> DAY OF DECEMBER, 2023**

**O.S.No.277/2016**

**BETWEEN**

<b>PLAINTIFF</b>	<p>Smt. Anatamma W/o Antappa Mukadi, Aged: 50 Years, R/at: Konkal village, Tq: &amp; Dist: Yadgiri.</p> <p><b>(By Sri. M.M.K. Advocate)</b></p>
<b>DEFENDANTS</b>	<p>1. Smt.Sabamma S/o Antappa Mukadi, Aged: 45 Years, R/o: Konkal village, Presently R/o: Sadanapur, Mandal Damargidda, Dist: Mehaboobnagar.</p> <p>2. Shri.Sabanna (Since dead, represented by LR's) S/o Antappa Mukadi, Aged: 65 Years, R/o: Konkal village, Tq: &amp; Dist: Yadgiri.</p>

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	<p>2(a). Smt.Radhamma W/o Late Kashappa Mukadi, Aged: 30 Years,</p> <p>2(b). Anantamma D/o Late Kashappa Mukadi, Aged: 10 Years, (Minor)</p> <p>2(c). Karthik S/o Late Kashappa Mukadi, Aged: 6 Years, (Minor) Defendants Nos. 2(a) &amp; 2(b) are minors represented their natural mother namely the defendant No.2(a). Defendants No.2(a) to (c) are R/o: Konkal village, Tq: &amp; Dist: Yadgiri.</p> <p>3. Shri.Mahadevappa S/o Mogalappa Gadapa, Aged: 50 Years, R/o: Konkal village, Tq: &amp; Dist: Yadgir.</p> <p>4. Shri.Ashok (Since dead, represented by LR's) S/o Datthappa Konkal, Aged: 45 Years, R/o: Konkal village, Tq: &amp; Dist: Yadgiri.</p> <p>4(a). Smt.Gangamma W/o Late Ashok, Aged: 25 Years, R/o: Konkal village, Tq: &amp; Dist: Yadgiri.</p>
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	<p>4(b). Kumar Anil S/o Late Ashok, Aged: 02 Years, R/o: Konkal village, Tq: &amp; Dist: Yadgiri. (Minor) Defendant No.4(b) is minor represented his natural mother namely the defendant No.4(a).</p> <p style="text-align: center;"><b>(Defendant No.1 by: Shri. M.S.K, Advocate)</b> <b>(Defendant No.2(a to c) by: Shri. G.V.A, Adv)</b> <b>(Defendant No.3 place exparte)</b> <b>(Defendant No.4 (a &amp; b ) in person)</b></p>
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**IA NO.9****BETWEEN**

<b>APPLICANTS</b>	<p>2(a). Smt.Radhamma W/o Late Kashappa Mukadi, Aged: 30 Years,</p> <p>2(b). Anantamma D/o Late Kashappa Mukadi, Aged: 10 Years, (Minor)</p> <p>2(c). Karthik S/o Late Kashappa Mukadi, Aged: 6 Years, (Minor) Defendants Nos. 2(a) &amp; 2(b) are minors represented their natural mother namely the defendant No.2(a).</p>
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	Defendants No.2(a) to (c) are R/o: Konkhal village, Tq: & Dist: Yadgiri.  <b>(By Sri.G.V.A. Advocate)</b>
<b>OPPONENT</b>	Smt. Anantamma W/o Antappa Mukadi, Aged: 50 Years, R/o: Konkhal village, Tq: & Dist: Yadgiri.  <b>(By Sri. M.M.K. Advocate)</b>

Provision of law	Order 7 Rule 11(3) R/w Section 151 of CPC.
Relief sought in the application	For rejection of plaint.
Date of filing the application	13-01-2021
Date of filing the objection to the application	30-09-2021
Date of order	14-12-2023

**( SMT. ASRINA )**  
**CIVIL JUDGE & JMFC.,**  
**YADGIR**

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**ORDERS ON IA.NO.9 FILED BY THE DEFENDANT NO.2(a)**  
**UNDER ORDER 7 RULE 11(3) R/W SECTION 151 OF CPC**

1. Plaintiff has filed the present suit for the relief of partition and separate possession of her undivided share in the suit properties and for the relief of declaration as against the defendants.

2. After the appearance of the defendant No.2, he was reported to be dead and his LR's were brought on record. After their appearance, the LR's of the defendant No.2 have filed the instant application praying to reject the plaint on the grounds that the plaintiff has no cause of action to file this suit and the plaintiff is not entitled to the reliefs sought in the suit.

3. In the affidavit accompanying the IA.No.9 it is averred that the plaintiff and the defendant No.1 are not the sisters of the defendant No.2 and that the plaintiff and the defendant No.1 are not related to the defendant No.2. It is averred that, as per the plaint averments the defendant No.2 is a son of late Antappa through his first wife. Therefore, it is averred that the defendant No.2 is a legitimate son born to Mr.Antappa through his first wife. It is averred that, as per the plaint averments the plaintiff and the defendant No.1 are the children of late Antappa through his second wife. Therefore, it is averred that the plaintiff and the defendant No.1 being the children allegedly born to Mr.Antappa through his second wife, the plaintiff and the defendant No.1 are

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the illegitimate children. Therefore, it is averred that the plaintiff and the defendant No.1 being the illegitimate children allegedly born to Mr.Antappa through his second marriage, in view of the bar imposed under section 16 (e) of the Hindu Marriage Act, they are not entitled to succeed and inherit the suit properties. It is averred that in view of the same the succession did not open in favour of the plaintiff and the defendant No.1 to claim share in the suit properties. Therefore, it is averred that the plaintiff has no cause of action to file the present suit and so also the relief sought by the plaintiff is barred by law of succession. It is further averred that in order to avoid un-necessary litigation and harassment to the applicants, it is just and necessary to reject the plaint by invoking the provisions of order 7 rule 11(e) of CPC. It is further averred that when the claim made by the plaintiff is not lawful, the plaintiff is not entitled to seek the remedy as prayed in this suit. Therefore the claim made by the plaintiff is rejectable and the suit requires to be dismissed in limini. Therefore, it is averred that instead of proceeding further with the above case, the applicants have prayed to reject the plaint. With the above contentions the defendants No.2 (a) to (c) have prayed to allow the application.

**4.** The plaintiff has opposed the application by filing her objection to IA.No.9. The plaintiff has resisted the application by contending that the application filed by the defendant No.2 (a) to (c) is not maintainable. The contents of the affidavit are false, irrelevant and

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baseless. It is stated that due to her ill-health, the mother of the defendant No.2 had died when the defendant No.2 was just 8 year old. Therefore in order to nurse and look after the defendant No.2, his father namely Mr.Antappa has taken second marriage with the mother of the plaintiff and the defendant No.1. It is stated that after the marriage, the plaintiff and defendant No.1 are born to Mr.Antappa through Smt.Sayamma. Therefore, it is stated that only after the death of his first wife, Mr.Antappa has taken second marriage with the mother of the plaintiff and defendant No.1 and therefore it is contended that the marriage of Mr.Antappa with the mother of the plaintiff and the defendant No.1 is legal and valid. Therefore, the plaintiff has contended that herself and the defendant No.1 are the legitimate children born to Mr.Antappa. But, in order to defeat the legitimate share of the plaintiff in the suit properties, the defendants No.2 (a) to (c) have filed the present false application by creating the false story. Therefore the plaintiff has stated that the present application is not maintainable and the same needs to be rejected. It is contended that the defendants No.2 (a) to (c) have filed the instant application to further drag on the above case. Hence with the above contentions the plaintiff has sought for dismissal of the application with costs.

**5.** In spite of giving sufficient opportunities, no arguments was canvassed from both the side. Perused the records. After going through the application along with affidavit, objection statement

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and the relevant documents placed on record, the following points arises for my consideration:

**Point No.1:** Whether the plaint is liable to be rejected for want of cause of action and on the ground that the plaintiff is not entitled to the reliefs sought in the suit?

**Point No.2:** What order?

**6. My answers to the above points are as hereunder:**

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

**Point No.2:** As per the final orders for the following:

**REASONS**

**7. POINT NO.1:** Plaintiff has filed the present suit for the relief of partition and separate possession of her undivided share in the suit properties and for the relief of declaration as against the defendants.

**8.** The defendants No.2 (a) to (c) have sought for the rejection of plaint mainly on the ground that the plaintiff being the daughter allegedly born to Mr.Antappa through his second wife, the plaintiff will become the illegitimate daughter and in view of the rider imposed under section 16 (3) of Hindu Marriage Act, the plaintiff cannot inherit the property of Mr.Antappa and as such no succession and inheritance opened in favour of the plaintiff. Therefore, since the succession did not open in favour of the

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plaintiff, the defendants No.2 (a) to (c) have contended that no cause of action arose in favour of the plaintiff to file the present suit. Further, the defendants No.2 (a) to (c) have sought for the rejection of plaint on one more ground that the plaintiff being the daughter allegedly born to Mr.Antappa through his second wife, the plaintiff is illegitimate daughter of Mr.Antappa and the plaintiff being the illegitimate daughter, she is debarred from seeking the share in the suit properties and therefore the plaintiff is not entitled for any reliefs as claimed in this suit. Therefore, on the aforesaid grounds the defendants No.2 (a) to (c) have sought for rejection of plaint.

**9.** The averments made in the plaint discloses that the plaintiff has filed the present suit by claiming that the suit properties are the properties of father of the plaintiff and defendants No.1 and 2 namely Mr.Antappa Mukadi who died intestate leaving behind the plaintiff and the defendants No.1 and 2 as his sole surviving legal heirs. Since the husband of the plaintiff has died, in order to eak livelihood, she requested the defendant No.2 to effect the partition in the suit properties and to allot her undivided 1/3<sup>rd</sup> share in the suit properties. The plaint averments at para No.11 further discloses that on 26.06.2016 the plaintiff has finally requested the defendant No.2 to partition the suit properties and to allot her legitimate 1/3<sup>rd</sup> share in the suit properties, for which the defendant No.2 has refused. Therefore, the plaint averments

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discloses that the said refusal on the part of the defendant No.2 to give the legitimate share of the plaintiff in the suit properties has given rise to cause of action to the plaintiff to seek the relief of partition of her legitimate share in the suit properties. Further, the averments made at para No.12 of the plaint discloses that after the denial to give the share of the plaintiff, in order to file the suit, she has collected necessary documents in respect of the suit properties and at that point of time she came to know about the alienation of the item No.1 of the suit property, which has given rise to cause of action to the plaintiff to seek the relief of declaration in respect of the two sale deeds executed in favour of the defendants No.3 and 4. These averments are found in the plaint. Therefore, the averments made in the plaint clearly discloses the accrual of cause of action to file the present suit.

**10.** It is a settled preposition of law that in order to decide the application for rejection of plaint the court has to only look into the plaint averments and the averments made by the defendants in their written statement and the averments made by the defendants in the application for rejection of plaint is wholly irrelevant. This view of this court receives support from the decision of the Hon'ble Apex Court reported in **(2004) 3 SCC 137 in the case of Sopan Sukhdeo Sable Vs. Charity Commissioner and another decision reported in (2016)14 SCC 275 in the case of R.K.Roja Vs. U.S.Rayudu and another.** As held above,

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the averments made in the plaint clearly discloses arising of cause of action to file the present suit. The contention taken by the defendants in their written statement and in the I.A.No.9 cannot be considered. The plaint discloses the accrual of cause of action to file the present suit.

**11.** One more ground taken by the defendants No.2 (a) to (c) is that the plaintiff being the daughter allegedly born to Mr.Antappa through his second wife, the plaintiff will become the illegitimate daughter and in view of the rider imposed under section 16 (3) of Hindu Marriage Act, the plaintiff being the illegitimate daughter, she is debarred from seeking the share in the suit properties and therefore the plaintiff is not entitled for any reliefs claimed in this suit. On the other hand the plaintiff has contended that it is only after the death of his first wife, Mr.Antappa has contracted second marriage with her mother and as such, the plaintiff has contended that the marriage of Mr.Antappa with her mother is a valid marriage. So also the plaintiff has contended that she being the daughter born to Mr.Antappa through his valid marriage, she is a legitimate daughter of Mr.Antappa and therefore, she is not debarred from claiming share in the properties of Mr.Antappa. It is pertinent to note here that, the trial in this case is not yet commenced. The plaint averments discloses that the suit properties are the properties of Mr.Antappa. Whether Mr.Antappa had married the mother of the plaintiff namely Smt.Sayamma

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during the life time of his first wife or not and whether the marriage of Mr.Antappa with mother of the plaintiff is a valid marriage or not and whether the plaintiff is a legitimate daughter of Mr.Antappa or not, the same can be ascertained only after holding the full dressed trial. Without the evidence, at this premature stage it will be highly un-just to come to the conclusion that the claim of the plaintiff is barred under section 16 (3) of the Hindu Marriage Act.

**12.** As stated above, the defendants No.2 (a) to (c) have prayed to reject the plaint on the ground that the plaintiff is not entitled to the reliefs sought in the suit. In a judgment dated 9/11/2022 in **SLP (C) 19018/2022 in the case of Gurdev Singh vs Harvinder Singh reported in 2022 LiveLaw (SC) 963,** the Honourable Apex court has held as follows:

*The application preferred by the petitioner to reject the plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (CPC) has been dismissed by the Trial Court which has been confirmed by the High Court. **It is the case on behalf of the petitioner that the plaintiff is not entitled to any relief in the suit. The aforesaid cannot be a***

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*ground to reject the plaint at the threshold in exercise of powers under Order 7, Rule 11 of the CPC.* The learned Trial court has rightly rejected the application under Order 7, Rule 11 of the CPC, which is rightly not interfered with by the High Court.

**13.** In the aforecited dictum, the Honourable Apex court has clearly held that a plaint cannot be rejected under Order VII Rule 11 CPC merely on the ground that 'the plaintiff is not entitled to any relief in the suit'. Therefore, such being the case, the ground urged by the defendants No.2 (a) to (c) that since the plaintiff is not entitled for any reliefs claimed in this suit the plaint needs to be rejected does not hold any water in the eye of law.

**14.** Further, to decide as to whether the plaintiff is entitled for any reliefs claimed in this suit or not, the same requires trial. Only after the full fledged trial it can be ascertained whether the suit is to be decreed or dismissed. Therefore it would be unjust to reject the plaint at the threshold. Therefore, the instant application being devoid of merits, the same needs to be rejected. Accordingly, for what has been discussed above **I answer point No.1 in the Negative.**

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**15. POINT NO.2:** In view of my foregoing discussions on point No.1, I proceed to pass the following:

**ORDER**

IA.No.9 filed by the defendants No.2 (a) to (c) under order 7 rule 11 (3) R/w Section 151 of CPC is hereby dismissed.

Considering the facts and circumstances of the case there is no order as to costs.

(Dictated to the Stenographer directly on computer, typed by him, and the transcript revised and corrected by me and then pronounced in the open court on this **14<sup>th</sup> day of December 2023**)

**(SMT.ASRINA)  
CIVIL JUDGE & JMFC,  
YADGIR**