



RESPONDENTS NO.8 TO 8(C) ALL ARE
RESIDENT OF K.K.PETE
SIDLAGHATTA TOWN
CHIKKABALLAPURA DISTRICT - 562 105.

...RESPONDENTS
(BY SRI. SHARATH S. GOGI, ADVOCATE FOR R1 TO R3, R5 & R6;
V/O DATED 11.07.2019 R4 IS DEAD AND THERE ARE NO LRS OF
R4; NOTICE TO R7 - SERVED;
SRI N. MURALI, ADVOCATE FOR R8(A TO C);
R8(B) AND R8(C) ARE MINORS REPRESENTED BY R8(A))

THIS CIVIL REVISION PETITION IS FILED UNDER SECTION
115 OF CPC. AGAINST THE ORDER DATED 6.1.2018 PASSED ON IA
NO.16 IN OS NO.01/2010 ON THE FILE OF THE SENIOR CIVIL JUDE
AND JMFC, SIDLAGHATTA, DISMISSING THE IA NO.16 FILED
UNDER ORDER 7 RULE 11 R/W SECTION 151 OF CPC., FOR
REJECTION OF PLAINT

THIS PETITION, COMING ON FOR DICTATING ORDERS, THIS
DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition under Section 115 of Code of Civil Procedure is filed
challenging the order dated 06th January, 2018 passed on IA.16 in
Original Suit No.1 of 2010 by the Senior Civil Judge and JMFC,
Shidlaghatta, rejecting the application filed under Order VII Rule 11(a)
and (d) of the Code of Civil Procedure.

2. The respondents 1 to 6 herein have filed the suit in Original
Suit No.1 of 2010 seeking the following reliefs:

- (1) *To declare that the plaintiffs are the absolute owner in peaceful, lawful, physical possession and enjoyment of the suit schedule property having all right, title, interest and possession over the same;*
- (ii) *To declare that the registered sale deed dated. 10.9.2007 executed by the defendant No.1 in favour of defendant*



no.2 which is registered in the office of Sub-Register, Siddlaghatta vide Document No. 1566/2007-08 is binding on the plaintiffs as the same is collusive one and the defendant No 1 dose not derive any right, title, interest much less possession over the suit property and the same is not binding on the plaintiffs;

- (iii) To restrain the defendants from interfering with the plaintiffs peaceful, lawful physical possession and enjoyment of the suit schedule property either by himself or by his family members, G.P.A. holders, agents or any other person's claiming any right under or through him by granting permanent injunction;*
- (iv) To restrain the defendants from alienating the suit schedule property in favour of third parties either by himself or by his family members, G.P.A. holders, agents or any other person/s claiming any right under or through him by granting permanent injunction;*
- (v) To direct the defendants to pay cost of the suit;*
- (vi) To grant such other relief/s as this Hon'ble Court deeds fit the facts and circumstances of the case, in the interest of justice."*

3. The petitioners-defendants filed an application under Order VII Rule 11 Code of Civil Procedure to reject the plaint stating that the plaintiffs are claiming ownership on the basis of the adoption deed, which has already been negated by the jurisdictional Civil Court in Original Suit No.46 of 1993 and O.S.No.90/1960, and the same has attained finality. The plaintiffs filed objections to the said application. The Trial Court dismissed the application stating that the material available on record, prima facie, established that the plaintiffs' father was declared as adopted son of Chikkabasappa and Nanjamma in OS No.90/1960, and OS No.46/1993, the suit was dismissed holding that the plaintiffs' father was not the adopted son of Chikkabasappa and Nanjamma. Therefore,



there is a dispute with regard to the question of facts and law, and that can be decided only after trial.

4. Sri Gurudas Kannur, the learned Senior Counsel representing the Petitioners, argued that in RA No.116/1963, the First Appellate Court modified the decree passed in OS No.90/1960, holding that the father of the plaintiffs was not the adopted son of late Chikkabasappa. He further argues that in OS No.46/1993, filed by the deceased father of the plaintiffs, the Trial Court held that the deceased father of the plaintiffs failed to prove that he was the adopted son of Chikkabasappa as per the adoption deed dated 16.5.1946, executed by Smt. Nanjamma as per the desire of her husband. Therefore, the present suit filed to declare that they are the absolute owners of the suit schedule property, having inherited the suit property from Appajappa, who succeeded to the suit property as the adopted son of Chikkabasappa and Nanjamma, is manifestly vexatious and merit less without disclosing a clear right to sue, and therefore, the plaint deserves to be rejected.

5. In support, reliance is placed on the following decisions:

1. T.Arivandandam Vs. T.V.Satyapal and another reported in (1977) 4 SCC 467.

2. A.E.Rathina Naicker Vs. V.Thirumalai, reported in LAWS (MAD) 2017-3-77.

3. Asha Khanna And Others Vs. Pankaj Khanna & Others, reported in LAWS (DLH)-2015-1- 321.

4. Yajaman Gowraiah, since deceased by his LRs Vs. N.V.Shivaram, since deceased by LRs & others, reported in ILR 2009 KAR 2105.

6. The learned counsel for the plaintiffs submits, on the contrary, that in OS No.46/1993 and OS No.19/1960, as well as in the



present suit, the properties and the parties are different, and the causes of action to file the suits are also different. Therefore, the principles of res judicata will not apply. He further argues that in the present suit, the plaintiffs have also sought the consequential relief of permanent injunction. Even assuming the suit for declaration is not maintainable in view of the finding recorded in the earlier suits, the plaintiffs can still maintain the suit for permanent injunction based on possession. Therefore, the plaint cannot be partially rejected, and the principles of res judicata cannot be applied to reject it.

7. In support, he places reliance on the following decisions:

1. Vaish Aggarwal Panchayat vs. Inder Kumar and Others, (2020) 12 SCC 809.
2. Srihari Hanumandas Totala vs. Hemant Vithal Kamat and Others, (2021) 9 SCC 99.
3. Swadesh Kumar Agarwal vs. Dinesh Kumar Agarwal and Others (2022) 10 SCC 235.

8. Considered the submissions made by the learned counsel for the parties.

9. In the plaint, the plaintiffs have explicitly claimed that the suit schedule property was originally owned by Chikkabasappa and his wife, Nanjamma, who had no biological children. They purportedly adopted Appajappa during their lifetime, and after their demise, Appajappa allegedly inherited and enjoyed possession of the suit properties. The plaintiffs also mentioned Appajappa's unsuccessful attempt in OS No.46/1993 to establish his status as the adopted son due to the absence of the adoption deed, despite asserting the existence of a registered document supporting his adoption. Subsequently, the



plaintiffs, initially asserting Appajappa's adoption, later sought to amend their claim, proposing the consideration of the said document as a Will, and later as a Gift Deed. The Trial Court allowed this amendment through an Order dated 24.9.2017, which was subsequently challenged and stayed by this Court in W.P.No.50433/2019, pending further consideration.

10. Order 7 Rule 11(a) enables the rejection of a plaint if it fails to disclose a cause of action, which constitutes the basis for seeking legal remedy. The plaintiffs' assertions indicate Chikkabasappa and Nanjamma's ownership of the suit property, passing it to Appajappa upon their demise, and subsequently to the plaintiffs as his legal heirs. They contend that OS No.46/1993's dismissal due to the absence of the adoption deed is irrelevant, citing the existence of a registered document supporting Appajappa's adoption. However, the plaintiffs conveniently omitted to mention Appajappa's prior suit, OS No.90/1960, against Kondappa, seeking ownership declaration over the suit property. The Trial Court recognized him as the adopted son, but the First Appellate Court in R.A. No.116/1963 overturned this decision, denying Appajappa's adoption and merely confirming his possession, upheld by this Court in RSA No.39/1966.

11. The Apex Court in *Eldeco Housing and Industries Limited - vs- Ashok Vidyarthi and Others*, the evaluation of a plaint under Order 7 Rule 11 entails considering its averments and attached documents without considering the defendants' pleas or merits of rejection applications. The plaint's content must stand alone without alteration. Furthermore, the doctrine of *res judicata* cannot be used to reject a plaint, as its determination necessitates an examination of pleadings, issues, and decisions in prior suits. Therefore, the current plaint's rejection cannot be based on *res judicata* principles.



12. The Hon'ble Supreme Court in the case of T. Aravindam supra at para 5 has held as follows:

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi".

13. Order 6 Rule 2(1) CPC clearly stipulates that the pleading should contain the material facts. The Apex Court in the case of Sopan Sukhdeo Sable Vs. Assistant Charity Commissioner, (2004 (3) SCC 137: AIR 2004 SC 1801 as held that:

"omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. Order 7, Rule 11 of the Code of Civil Procedure lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The real object of Order 7, Rule 11 of the Code of Civil Procedure is to keep out of Courts irresponsible lawsuits and in case Court is prima facie persuaded of the view that the suit is an abuse of the process of the Court, in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7, Rule 11 of the Code of Civil Procedure can be exercised."



14. The plaintiffs have deliberately omitted to disclose a crucial fact: that Appajappa, during his lifetime, faced adverse findings from the first appellate court in R.A.No.116/1963 which declared him as not the adopted son. This fact is significant because the plaintiffs are basing their claim to the suit property on Appajappa's supposed status as the adopted son of Chikkabasappa and Nanjappa. Despite Appajappa facing adverse decrees twice, affirming he was not the adopted son, the plaintiffs persist in their claim through him. Since their claim hinges on the adoption, and since the adoption remains unproven, there exists no valid cause of action to initiate the suit. Therefore, allowing the suit to proceed would amount to an abuse of the court's process.

15. The suit property consists of vacant land, and it is well-established that possession follows title. Given the absence of a cause of action for maintaining a suit for declaration, it can be inferred that the defendants, being the petitioners herein, are in possession of the suit property as its rightful owners, having acquired it through a registered sale deed. The plaintiffs' argument that a suit for permanent injunction remains maintainable even if the suit for declaration is not viable holds no merit and lacks substance.

16. In light of the foregoing discussion, considering that the plaintiffs have failed to establish their right to sue, there exists no valid cause of action for filing the suit. Consequently, the plaint falls within the purview of Order 7 Rule 11(a) of the CPC and deserves to be rejected. Accordingly I pass the following:

ORDER

- i) Civil Revision Petition is allowed .



ii) The impugned order dated 6.1.2018 passed by the Senior Civil Judge and JMFC, Siddlaghatta, in OS No.1/2010 on I.A.No.16 is hereby set aside and the application is allowed. Consequently, the plaint stands rejected.

**Sd/-
JUDGE**

BKM