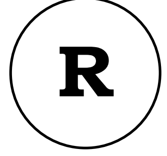
Reserved on : 05.11.2025
Pronounced on : 15.12.2025



IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

DATED THIS THE 15TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CIVIL REVISION PETITION No.100026 OF 2025

BETWEEN:

1. SRI. KASHIMASAB,
   S/O YAKUBASAB TERDAL,
   AGED ABOUT 51 YEARS,
   OCC.: AGRICULTURE,
   R/O. BELAGALI, TALUK MUDHOL,
   DISTRICT BAGALKOT – 587 113.

2. SRI. AKABARASAB,
   S/O YAKUBASAB TERDAL,
   AGED ABOUT 49 YEARS,
   OCC : AGRICULTURE,
   R/O. BELAGALI, TALUK MUDHOL,
   DISTRICT BAGALKOT – 587 113.

…PETITIONERS

(BY SRI. PAVAN B. DODDATTI, ADVOCATE)

AND:

1. SRI. SAIDUSAB,
   S/O MAQABOOLSAB TERDAL,
   AGED ABOUT 48 YEARS,

OCC.: AGRICULTURE,
R/O. BELAGALI, TALUK MUDHOL,
DISTRICT BAGALKOT – 587 113.

2. SIDDAPPA,
S/O HANAMANT BALAVANAKI,
AGED ABOUT 34 YEARS,
OCC: AGRICULTURE,
R/O. BELAGALI, TALUK MUDHOL,
DISTRICT BAGALKOT – 587 113.

...RESPONDENTS

(BY SRI. GIRISH A. YADAWAD, ADVOCATE FOR R1;
SRI. SOURABH HEGDE, ADVOCATE FOR R2)

THIS CIVIL REVISION PETITION IS FILED UNDER SECTION 115 OF CIVIL PROCEDURE CODE 1908, PRAYING TO SET ASIDE THE ORDER OF THE COURT OF THE ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, MUDHOL AT MUDHOL, PASSED IN OS NO. 36/2022 IN IA NO. V DATED 23-09-2024 VIDE ANNEXURE-A, BY ALLOWING THE APPLICATION AND THIS HON'BLE COURT MAY KINDLY BE PLEASED TO DISMISS THE SUIT OF THE PLAINTIFF HOLDING THAT THERE IS NO CAUSE OF ACTION AND IS BARRED BY LIMITATION, BY ALLOWING THIS CIVIL REVISION PETITION WITH COSTS AND PASS SUCH OTHER ORDERS AS THIS HON'BLE COURT DEEMS FIT TO PASS IN THE CIRCUMSTANCES OF THE CASE, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS CIVIL REVISION PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 05.11.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

Petitioners are before this Court calling in question an order dated 23.09.2024 which rejects the application filed by the petitioners under Order VII Rule 11(a) and (d) read with Section 151 of the Code of Civil Procedure, seeking rejection of the plaint.

2. Heard Sri.Pavan B. Doddatti, learned counsel appearing for the petitioners, Sri.Girish A. Yadawad, learned counsel appearing for respondent No.1, Sri.Sourabh Hegde, learned counsel appearing for respondent No.2.

3. Facts in brief, germane, are as follows:

3.1. Before embarking upon the consideration of the issue on its merit, I deem it appropriate to notice the relationship between the protagonists of the *lis*. The petitioner No.1-Sri.Kashimasab is defendant No.1. The petitioner No.2-

Sri.Akabarasab is defendant No.2. Respondent Nos.1 and 2 are plaintiff and defendant No.3, respectively. The relationship between the parties is as follows. One Sri.Rajesab had two sons, Sri.Allisab and Sri.Mohammadsab. One Sri.Yakubasab is the son of Sri.Allisab. Petitioners-defendant Nos.1 and 2 are sons of Sri.Yakubasab. Sri.Mohammadsab had a son by name Sri.Maibubasab. Respondent No.1-plaintiff is the son of Sri. Maibubasab.

3.2. A registered sale deed comes to be executed by the petitioners-defendant Nos.1 and 2 in favour of defendant No.3. On 19.01.2022, the respondent No.1-plaintiff declares his right to pre-empt the sale. This leads the protagonists to the competent Civil Court in O.S.No.36/2022 seeking a relief of declaration and injunction. The petitioners-defendant Nos.1 and 2 filed their Written Statement contending that they are the owners of the schedule property and had sold a part of the land to respondent No.2-defendant No.3 and other parties. However, the respondent No.1-plaintiff has only impleaded defendant No.3 into the suit. The defendant Nos.1 and 2 then filed an application under Order VII

Rule 11(a) and (d) read with Section 151 of CPC seeking rejection of the plaint in O.S.No.36/2022 urging several contentions. The concerned Court in terms of the impugned order dated 23.09.2024 rejects the application holding it to be a matter of trial. The petitioners-defendant Nos.1 and 2 claiming to be aggrieved by the said order of the concerned court, are at the doors of this Court seeking a prayer that an application filed by them under Order VII Rule 11(a) and (d) read with Section 151 of CPC, must be allowed and the plaint must be rejected.

4. Learned counsel appearing for the petitioners-defendant Nos.1 and 2 would vehemently contend that the concerned Court could not have rejected the application on the ground that cause of action is a bundle of facts and would require a full-fledged trial. The Court ought to have considered that the suit is barred by law since right to pre-emption by vicinage has been declared unconstitutional by the Apex Court in **A.RAZZAQUE SAJANSAHEB BAGWAN vs. IBRAHIM HAJI MOHAMMED. HUSAIN**[1], wherein at para 3, it holds as follows:

[1] (1998) 8 SCC 83

> **"3.** The contention of the learned counsel for the appellants is that the only ground on which the plaintiff's suit has been decreed is that he being a "Shafi-i-jar" was entitled to claim the right of pre-emption. He submitted that **this Court in *Bhau Ram* v. *Baij Nath Singh* [AIR 1962 SC 1476 : 1962 Supp (3) SCR 724] and in *Sant Ram* v. *Labh Singh* [AIR 1965 SC 314 : (1964) 7 SCR 756] has held that the law of pre-emption based on vicinage is void. Unfortunately, attention of the High Court was not drawn to these two decisions of this Court and, therefore, the High Court did not consider this aspect. As the very basis of the claim has been held to be unconstitutional by this Court, the suit filed by the plaintiff ought to have been dismissed. We, therefore, allow this appeal, set aside the judgment and order passed by the High Court and dismiss the suit filed by the respondent.** It will be open to the respondent to withdraw the amount deposited by him in the trial court. There shall be no order as to costs."
>
> (Emphasis supplied)

It is his submission that the petitioners-defendant Nos.1 and 2 and the respondent No.1-plaintiff do not constitute a joint family. Therefore, they do not inherit an undivided share in the property. It is his submission that the right to pre-emption or pre-emption can be claimed only if there are three demands made immediately after the sale is completed. In the case at hand, the sale was completed on 12.01.2022, right of pre-emption was only on 19.01.2022. Thus, the plaintiff did risk loosing his right to pre-emption since the claim was made by him belatedly. The concerned court ought to have rejected the claim of right of pre-emption on the said ground.

5. *Per contra*, learned counsel appearing for the plaintiff would vehemently contend that under Mohammedan Law, three categories of people may seek pre-emption (1) co-sharers (shafi-i-sharik), (2) a person participating in the appendages and immunities such as right of way or discharging of water (shafi-i-khalit) and an adjacent land owner (shafi-i-jar). It is his submission that even if it is held that respondent No.1-plaintiff is not a co-sharer, it is an admitted fact that the property was divided from a common ancestor. Therefore, he gets his right. It is his submission that plaintiff is also an adjacent land owner and would therefore come under the category of adjacent land owner (shafi-i-jar). He would seek dismissal of the petition.

6. I have given my anxious consideration to the submissions made by the respective learned counsels and have perused the material on record. In furtherance whereof, the only issue that falls for consideration is:

"Whether the application filed by these petitioners must be allowed resulting in rejection of the plaint or

dismissed resulting in a trial being conducted on the issues?"

7. The entire fulcrum of the *lis* revolves around the right to claim pre-emption under Mohammedan Law. The respondent No.1-plaintiff projects that Sri.Mohammadsab is the propositus but a perusal at the family tree would show the defendant Nos.1 and 2 are not from the branch of Sri.Mohammadsab and family. Defendant Nos.1 and 2 are from the branch of Sri.Allisab's family, whereas the plaintiff is from the branch of Sri.Mohammadsab. The family tree is extracted in the plaint. The petitioners-defendant Nos.1 and 2 through their application claimed that the schedule property is a self-acquired property of Sri.Allisab, but cannot be claimed as the self-acquired property of Sri.Mohammadsab who is said to be the propositus. **The claim is over a right of pre-emption. It therefore, becomes necessary to consider who can claim the right of pre-emption: (1) co-sharer (shafi-i-sharik), (2) participation in common appendages and immunities (shafi-i-Khalit) and (3) adjacent land owner (shafi-i-jar)**.

8. The first category who can claim pre-emption as observed hereinabove are the co-sharers. Whether the subject property is the self-acquired property of Sri.Mohammadsab or Sri.Allisab, is undoubtedly a matter of trial. Therefore, the rejection of a plaint on the score of an application being filed under Order VII Rule 11 read with Section 151 of CPC, is not tenable. The second category of right for claiming pre-emption is participation in common appendages and immunities. It is trite that every common right and every easementary right does not make a person participation in common appendages and immunities (shafi-i-khalit). A customary right of pre-emption is a legacy of the Mohammedan Law and text on this law confines the right of pre-emption in the case of shafi-i-khalit, to a partner in the right of way or discharge of water. Only persons who are benefited by a common channel may claim right of pre-emption as '**shafi-i-khalit**'. The Allahabad High Court considers this issue of who can claim right of pre-emption as shafi-i-khalit in

JAGDISH SHARAN vs. BRIJ RAJ KISHORE[2], wherein at paras 15 to 21, it holds as follows:

> **"15. Every common right and every easementary right does not make a person a Shafi-i-Khalit. The customary right of pre-emption is a legacy of the Mohammadan Law and the texts on this law confine the right or pre-emption in the case of Shafi-i-Khalit to a partner in the right of a way or of water.**
>
> 16. Ballia's Digest of Mohammadan Law while quoting 'Hidayah' at page 476 writes:
>
> "Khulset means, literally, 'mixed with".
>
> 17. It further says:
>
> "Through rights of water and way are given as examples of Shafi-i-Khalit it does not appear that a Khulset in any other right than these has the right of pre-emption."
>
> 18. While illustrating the right of pre-emption in the case of partner in the right of water it mentions that:
>
> "as to a small channel from which several lands or several vineyards are watered, and some of the lands or some of the vinewards watered by it are sold:—all the partners are pre-emptors, without any distinction between those who are and those who are not adjoining. But if the channel is large, the right of pre-emption belongs to the adjoining neighbour."
>
> **19. The nature of a partnership in water contemplated by the law-givers there appears to be that of persons who are benefited by the private common channel. Right of water contemplated is right to the use of water. Neither the texts, nor the decided cases lay down that easements of all kinds conferred right of pre-emption in the nature of Khalit.**
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> 20. In *Sayed Haji Imambaksh Shah* v. *Mir Muhammadali Khan Haji Ali Murad Khan* [223 Indian Cases 634 equal to

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[2] 1972 SCC OnLine All 60

> A.I.R. 1946 Sind 55.] it was laid down that where the owners of the land have the right to draw water from a Government watercourse they cannot claim the right of preemption as Shafi-i-Khalit. This does not make them co-sharers in appendages or give them easementary rights over the neighbour's land.
>
> 21. Similarly the Rajasthan High court in *Ladu Ram* v. *Kalyan Sahai* [A.I.R. 1963 Rajasthan 195.] has held that the right of pre-emption as Shafi-i-Khalit cannot be claimed on the basis of a right of light and air and that right does not extend to easements other than the right of way and water."
>
> (Emphasis supplied)

If the findings of the Allahabad High Court are considered *qua* the facts in the case at hand, a hand sketch map is appended to the plaint. There is a common pathway and a common canal that is common to both petitioners-defendant Nos.1 and 2's land and the plaintiff's land and the sketch provided by defendants along with their Written Statement is at a little variance as the defendants also state of a presence of a common road to be the public road. Therefore, this comes within the realm of disputed questions of fact. In that light, the issue would require leading of evidence and its appreciation at the appropriate stage before the trial Court.

9. The third ground on which pre-emption can be claimed is by an adjacent land owner. The respondent No.1 claims that he is

the adjacent land owner even if he is not the member of the family nor has participated in the common appendages and immunities. In terms of the plaint averment, the plaintiff's land is said to be adjacent to the land of the petitioners-defendant Nos.1 and 2. The claim for pre-emption by the respondents is on this score. The Apex Court in the case of **A.RAZZAQUE SAJANSAHEB BAGWAN** *supra* has held that right of pre-emption by vicinage on one being adjacent land owner, is unconstitutional. In the light of the Apex Court holding that right of pre-emption on vicinage who is adjacent land owner being unconstitutional, this Court need not delve deep into the said issue. What remains is right of pre-emption to be claimed on the aforesaid two grounds. This undoubtedly would be a matter of trial.

10. It becomes apposite to refer to the judgments of the Apex Court with regard to entertainment of an application under Order VII Rule 11 of CPC in the teeth of disputed questions of fact.

10.1. The Apex Court in **RBANMS EDUCATIONAL INSTITUTION vs. B. GUNASHEKAR[3],** at para 15, holds as follows:

> **"15. Order VII Rule 11(a) CPC mandates rejection of the plaint where it does not disclose a cause of action. In *Om Prakash Srivastava* v. *Union of India*, this Court pointed out that cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support their right to judgment. It consists of bundle of facts which narrate the circumstances and the reasons for filing such suit. It is the foundation on which the entire suit would rest. Therefore, it goes without saying that merely including a paragraph on cause of action is not sufficient but rather, on a meaningful reading of the plaint and the documents, it must disclose a cause of action. The plaint should contain such cause of action that discloses all the necessary facts required in law to sustain the suit and not mere statements of fact which fail to disclose a legal right of the plaintiff to sue and breach or violation by the defendant(s). It is pertinent to note here that even if a right is found, unless there is a violation or breach of that right by the defendant, the cause of action should be deemed to be unreal…"**

(Emphasis supplied)

10.2. The Apex Court in the case of **P. KUMARAKURUBARAN vs. P. NARAYANAN[4],** at para 12.1**,** holds as follows:

> **"12.1. However, we are of the considered view that the issue as to whether the appellant had prior notice or reason to be aware of the transaction at an earlier point**

[3] 2025 SCC OnLine SC 793
[4] 2025 SCC OnLine SC 975

of time, or whether the plea regarding the date of knowledge is credible, are matters that necessarily require appreciation of evidence. At this preliminary stage, the averments made in the plaint must be taken at their face value and assumed to be true. Once the date of knowledge is specifically pleaded and forms the basis of the cause of action, the issue of limitation cannot be decided summarily. It becomes a mixed question of law and fact, which cannot be adjudicated at the threshold stage under Order VII Rule 11 CPC. Therefore, rejection of the plaint on the ground of limitation without permitting the parties to lead evidence, is legally unsustainable."

(Emphasis supplied)

10.3. The Apex Court in the case of **URBAN INFRASTRUCTURE REAL ESTATE FUND v. NEELKANTH REALTY PRIVATE LIMITED**[5]**,** at paras 87 and 89, holds as follows:

"87. Upon such a situation arising, i.e., **when a mixed question of fact and law arises in deciding an application under Order VII Rule 11(d), what must be the approach adopted by the court? The suit must be allowed to proceed and the application under Order VII Rule 11(d) must be rejected for the reason that the issue needs a more elaborate consideration by the court and that the court is not convinced that the matter be kicked out at the threshold.** The same is borne out of the decision of this Court in *Pawan Kumar* v. *Babulal*, (2019) 4 SCC 367 which observed as follows:—

> *"13. In the present case, the controversy has arisen in an application under Order 7 Rule 11 CPC. Whether the matter comes within the purview of Section*

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[5] 2025 SCC OnLine SC 2380

> *4(3) of the Act is an aspect which must be gone into on the strength of the evidence on record. Going by the averments in the plaint, the question whether the plea raised by the appellant is barred under Section 4 of the Act or not could not have been the subject-matter of assessment at the stage when application under Order 7 Rule 11 CPC was taken up for consideration. The matter required fuller and final consideration after the evidence was led by the parties. It cannot be said that the plea of the appellant as raised on the face of it, was barred under the Act. The approach must be to proceed on a demurrer and see whether accepting the averments in the plaint the suit is barred by any law or not. We may quote the following observations of this Court in* Popat and Kotecha Property *v.* SBI Staff Assn. [Popat and Kotecha Property *v.* SBI Staff Assn., *(2005) 7 SCC 510] : (SCC p. 515, para 10)*
>
> > *"10. Clause (d) of Order 7 Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force."*
>
> *14. We, therefore, allow this appeal, set aside the view taken by the courts below and dismiss the application preferred by the second defendant under Order 7 Rule 11 CPC. Since the suit has been pending since 2006, we direct the trial court to expedite the matter and dispose of the pending suit as early as possible and preferably within six months from today. Needless to say that the merits of the matter will be gone into independently by the trial court.*"
>
> (Emphasis supplied)

89. Therefore, it is inherent in the nature of a decision as regards the rejection of a plaint that, if the court deems it fit to not reject the plaint at the threshold upon an examination of the averments in the plaint, the ground that the suit is still barred by any law can be taken by the defendant in the course of the suit

> **proceedings, after leading evidence. This is because the defendant is not given an opportunity to place his defence as regards the issue that the suit is barred by any law, on record, during the Order VII Rule 11(d) stage. Even if he does, the court would not look into the defendant's written statements or any evidence which he may want to adduce.** Therefore, a decision which goes against him, without giving him an opportunity to properly defend it, must not be to his detriment. Since a plea of demurrer is akin to an application made under Order VII Rule 11(d), the same principles must apply."
>
> (Emphasis supplied)

10.4. The Apex Court in the case of **KARAM SINGH v. AMARJIT SINGH[6],** at para 15, holds as follows:

> **"15.** Before we assess the correctness of the impugned orders, we must remind ourselves of the basic principles governing rejection of a plaint under Order 7 Rule 11[7] of CPC. Here, the defendants seek rejection of plaint under clause (d) of Rule 11 (i.e., suit barred by law). **Clause (d) makes it clear that while considering rejection of the plaint thereunder only the averments made in the plaint and nothing else is to be considered to find out whether the suit is barred by law. At this stage, the defense is not to be considered. Thus, whether the suit is barred by any law or not is to be determined on the basis of averments made in the plaint.**"
>
> (Emphasis supplied)

11. On a coalesce of the judgments rendered by the Apex Court, what would unmistakably emerge is that the cause of action

[6] 2025 SCC OnLine SC 2240

is always a bundle of facts which would require evidence in the least. Closure or termination of a suit by rejection of a plaint must be sparingly done. Once the date of knowledge is specifically pleaded and forms the basis of cause of action, the issue of limitation cannot be summarily decided. It becomes a question of law and fact which cannot be adjudicated at the threshold stage. When mixed question of fact and law arises in deciding the application, it must be put to trial and while considering the application seeking rejection of the plaint, it is only the plaint averments that is required to be seen and not the defence set-up by the defendants through their Written Statement or otherwise. If the facts obtaining in the case at hand are considered on the bedrock of the principles laid down by the Apex Court *qua* consideration of an application under Order VII Rule 11 of CPC, what would unmistakably emerge is rejection of the present petition and permitting trial in the case at hand, as the issue of pre-emption is on two grounds, one by co-sharers or their participation in the appendages and immunities, which are matters of trial that cannot be rejected at the threshold while answering the application under Order VII Rule 11 of CPC.

12. On all the aforesaid grounds, the Civil Revision Petition lacking in merit, stands **rejected**.

Sd/-
(M.NAGAPRASANNA)
JUDGE

CBC
CT:MJ