

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

REGULAR FIRST APPEAL NO.2577 OF 2024 (PAR)

BETWEEN:

1. SRI SHIVAKUMARASWAMY
AGED ABOUT 50 YEARS
S/O. LATE SHANKARAPPA
2. SRI JAGADISH
AGED ABOUT 48 YEARS
S/O. LATE SHANKARAPPA

APPELLANT NOS.1 AND 2 ARE
RESIDING AT NO.938, NEAR CHURCH
BEGUR VILLAGE, BEGUR HOBLI
BENGALURU - 560 068.

...APPELLANTS

(BY SRI S. SREEVATSA, SENIOR COUNSEL FOR
SRI JAYASHANKAR R., ADVOCATE)

AND:

SMT. SHOBHA
AGED ABOUT 52 YEARS
W/O. MARUTHI
C/O. AMBLE MARUTHI LAKSHMAN
NO.16, BANASHANKARI LAYOUT
KAKOLU ROAD, RAJANUKUNTE
BENGALURU-560 064.

...RESPONDENT

(BY SRI N. VAGEESH, ADVOCATE)

* * *

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF
CPC, PRAYING TO SET ASIDE THE ORDER PASSED BY THE II
ADDITIONAL SENIOR CIVIL JUDGE, BENGALURU RURAL DISTRICT,

Digitally
signed by
RAKSHA
Location: High
Court of
Karnataka

BENGALURU BY ITS ORDER DATED 19-10-2024 IN ORIGINAL SUIT NO.257 OF 2024 ON THE INTERLOCUTORY APPLICATION NO.3 FILED BY THE RESPONDENT/DEFENDANT FOR THE REJECTION OF PLAINT UNDER ORDER VII RULE 11(a)&(d) AND RESTORE THE PLAINT FOR FULL-FLEDGED TRIAL BY ALLOWING THE ABOVE APPEAL.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND RESERVED ON 24-06-2026, COMING ON FOR PRONOUNCEMENT, THIS DAY, THE **VENKATESH NAIK T. J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE VENKATESH NAIK T)

The appellants/plaintiffs have filed this appeal under Section 96 of the Code of Civil Procedure, 1908 (for short, "CPC"), challenging the judgment and decree dated 19.10.2024 passed by the II Additional Senior Civil Judge, Bengaluru Rural District at Bengaluru (for short, "trial Court"), rejecting the plaint under Order VII Rule 11(a) and (d) in O.S.No.257/2024 on Interlocutory Application No.III filed by the respondent/defendant for rejection of the plaint. The appellants have also sought restoration of the plaint for a full-fledged trial by allowing this appeal.

2. The brief facts of the case are as under:

The suit schedule properties belonged to the heirs of one Sri Gangappa Aradhya, who was the landlord of Beguru Village, Beguru Hobli, Bengaluru South Taluk. He was also an Archak of "Sri Marula Siddheshwara Deity" of the temple at Beguru Village. Upon inheritance, he jointly acquired several properties, including land bearing Sy.No.28 measuring 7 acres 14 guntas, inclusive of Kharab land, situated at Beguru Village. The properties formed part of an inam granted to the deity of Sri Marula Siddheshwara, and Sri Gangappa Aradhya, along with his family members, was in possession and enjoyment of the entire land. Later, Shankrappa, father of plaintiffs and defendant acquired the said land through a Release Deed. When things stood thus, the defendant/respondent herein filed O.S.No.440/2004 for partition in respect of the suit schedule properties, contending that the suit schedule properties are the joint family properties of the plaintiffs and the defendant.

3. The trial Court, after considering the material on record, by its judgment and decree dated 10.09.2007, holding that defendant/respondent is entitled of 1/4th share in Item Nos.1, 2 and Sl.No.(b) to (e) of Item No.3 of the plaint

schedule properties. Being aggrieved by the said judgment and decree, the appellants/plaintiffs preferred an appeal in R.A.No.157/2007, which came to be dismissed. Thereafter, the appellants/plaintiffs preferred R.S.A. No.977/2009 before this Court, and the same was also dismissed. Subsequently, the appellants/plaintiffs preferred a Special Leave Petition before the Hon'ble Apex Court, which too came to be dismissed.

4. During the pendency of the R.S.A., the appellants/plaintiffs filed an application under Order XLI Rule 27 of the CPC seeking to produce the alleged Will executed by Shankarappa, the father of the appellants and respondent herein, in favour of the appellants. However, this Court did not consider the said Will and disposed of the R.S.A. Under these circumstances, according to the respondent/defendant, the judgment and decree have attained finality in respect of the defendant's right and share in the suit schedule properties.

5. Thereafter, the appellants/plaintiffs filed O.S.No.257/2024 by virtue of Will executed by Shankarappa. After institution of the suit, the respondent/defendant appeared through counsel and filed I.A.No.III under Order VII Rule 11(a) and (d) read with Section 151 of the CPC seeking rejection of

the plaint on the ground that the suit was not maintainable, as there was no cause of action and the suit was barred by limitation and the plaint was not maintainable as it sought to agitate old pleas and also in view of the Will executed by the defendant's father in their favour.

6. The appellants/plaintiffs filed the suit for declaration, that they are the absolute owners of the suit schedule property, having succeeded to the same by virtue of the Will executed by their father, Shankarappa, on 25.01.2010 in the presence of witnesses, and also seeking a declaration that the judgment and decree passed in O.S.No.440/2004, R.A.No.157/2007, and R.S.A.No.977/2009 are not binding on them by virtue of the said Will, along with a prayer to stay further proceedings in F.D.P.No.15/2023 pending before the trial Court. Accordingly, trial Court allowed I.A.No.III filed under Order VII Rule 11 (a) and (d) of CPC and rejected the plaint. Being aggrieved by the rejection of plaint, the appellants/plaintiffs have preferred the present appeal.

7. We have heard Sri S. Sreevatsa, learned Senior Counsel appearing for Sri Jayashankar R., learned counsel for

the appellants/plaintiffs, and Sri N. Vageesh, learned counsel for the respondent/defendant.

8. Learned Senior Counsel appearing for the appellants contended that the trial Court has committed a serious error in rejecting the plaint without adhering to the settled principles governing rejection of a plaint at the threshold. He further contended that the trial Court completely ignored the fact that a plain reading of the plaint discloses that the question of limitation is a mixed question of fact and law, and that the finding of the trial Court that there was no cause of action for the suit is wholly erroneous. It was further contended that the trial Court misdirected itself on the facts inasmuch as neither this Court, in the R.S.A., nor the Hon'ble Apex Court, in the S.L.P., adjudicated upon the execution, authenticity or genuineness of the Will or the rights flowing in favour of the appellants at any point of time, nor did they legally restrain the appellants from getting their rights adjudicated on the basis of the said Will. Hence, the reasons assigned by the trial Court that the judgment had attained finality in the earlier proceedings *vis-a-vis* the Will, is wholly perverse, illegal and contrary to law.

9. It is further contended that the trial Court has failed to notice the facts narrated in the plaint, more particularly the averments contained in paragraph Nos.9 to 12, which clearly disclose the execution of the Will by late. Shankarappa in favour of his two sons. It is further contended that the trial Court failed to consider the aspect that the period of limitation does not commence from the date of execution of the Will, but from the date on which the plaintiffs acquired knowledge of the Will. However, the trial Court has not properly appreciated the said aspect. Therefore, the impugned order is devoid of merit.

10. It is further contended that the trial Court erred in considering the contentions of the respondent based on the averments made in the written statement while deciding the application for rejection of the plaint. It ought to have confined its consideration only to the averments contained in the plaint, as the defence taken in the written statement is wholly irrelevant for deciding an application under Order VII Rule 11 of the CPC.

11. It is further contended that the appellants are in possession and enjoyment of the suit schedule properties and claim title thereto by virtue of the Will executed by their father.

The trial Court failed to consider this aspect while passing the impugned order.

12. It is further contended that, having observed that the question of limitation is a mixed question of fact and law, the trial Court ought not to have rejected the plaint at the threshold. Instead, the matter ought to have been tried on merits to enable full and effective adjudication of the dispute. It is further contended that the appellants have restricted their claim only to the share allotted to their father in the Original Suit, which was confirmed in the subsequent proceedings, and are not pressing any claim in respect of the shares allotted to the other parties. Hence, learned Senior counsel prays to allow the appeal.

13. *Per contra*, learned counsel for the respondent vehemently contended that the trial Court has rightly rejected the plaint. It was submitted that the respondent had earlier instituted a suit for partition in O.S. No.440/2004, which came to be decreed, whereby the trial Court allotted 1/4th share each to the respondent, her father (the testator herein), and her two brothers, who are the appellants herein.

14. It was further contended that thereafter, the appellants preferred an appeal in R.A. No.157/2007 before the First Appellate Court, which came to be partly allowed by judgment dated 16.04.2009. However, the appeal in respect of Item No.2, namely Sy.No.142, came to be dismissed. Thereafter, the appellants preferred Regular Second Appeal No.997/2009 before this Court, which also came to be dismissed. The Special Leave Petition Nos.23900-23901/2022 preferred before the Hon'ble Apex Court was also dismissed. Therefore, it was contended that the judgment and decree passed in the earlier proceedings have attained finality in respect of the suit schedule properties.

15. It is further contended that, in the meanwhile, the appellants/plaintiffs have set up a plea that their father, Shankarappa, executed a Will dated 25.01.2010, whereby he bequeathed his interest in the suit schedule properties in favour of the appellants. According to the respondent, such a plea is impermissible, as the rights and shares of the parties had already attained finality in the earlier proceedings. It is contended that, in order to avoid the share allotted to the respondent, the appellants/plaintiffs have instituted the present suit seeking a declaration that they are the absolute owners of

the suit schedule properties by virtue of the Will executed by their father, Shankarappa, on 25.01.2010 in the presence of attesting witnesses. They have also sought a declaration that the judgment and decree passed in O.S.No.440/2004, R.A.No.157/2007, and R.S.A.No.977/2009 are not binding on them by virtue of the said Will, besides seeking a stay of further proceedings in F.D.P. No.15/2023 pending before the learned Principal Senior Civil Judge, Bengaluru Rural.

16. It is further contended that the appellants have claimed that their father, Shankarappa, was the absolute owner of the suit schedule properties and that, by virtue of his ownership, he executed a Will in favour of the plaintiffs. However, according to the respondent, she had earlier instituted a suit for partition and separate possession in O.S. No.440/2004 against the appellants/plaintiffs and their father, Shankarappa, which came to be decreed, whereby a 1/4th share was allotted to the respondent.

17. It is further contended that the plaintiffs' claim of ownership by virtue of the Will executed by Shankarappa is wholly untenable. According to the respondent, the plaintiffs cannot seek to assert their rights over the suit schedule

properties on the basis of the said Will, as the rights of the parties in respect of the very same properties have already been conclusively determined by the judgments and decrees passed by the trial Court, the First Appellate Court, this Court, and the Hon'ble Apex Court. Therefore, it is contended that no fresh cause of action survives for the plaintiffs to maintain the present suit. Hence, learned counsel prays to dismiss the appeal.

18. In view of the rival submissions made by the learned counsel for the parties, the following point arises for consideration:

1. Whether the rejection of the plaint by the trial Court under Order VII Rule 11(a) and (d) of the Code of Civil Procedure is in accordance with law and calls for any interference by this Court?

19. A perusal of the plaint clearly demonstrates that the present appellants/plaintiffs have instituted the suit seeking a declaration that the judgment and decree passed in O.S. No.440/2004, R.A. No.157/2007, R.S.A. No.977/2009, and S.L.P. Nos.23900-23901/2022 are not binding on them, and further seeking a declaration that they are the absolute owners

of the suit schedule properties by virtue of the Will dated 25.01.2010 alleged to have been executed by their father in their favour.

20. The plaint further discloses that the appellants and respondent's father, Shankarappa, died on 09.03.2014, and their mother also died on 09.03.2019. The present suit came to be instituted in the year 2024 on the strength of the said Will, contending that their father had bequeathed the entire suit schedule properties in favour of the plaintiffs. However, the properties covered under the said Will also formed the subject matter of the earlier suit in O.S. No.440/2004 instituted by their sister, Smt. Shobha (the respondent herein), and the judgment and decree passed therein attained finality upon dismissal of the Special Leave Petition by the Hon'ble Apex Court.

21. It is the case of the appellants that the judgment and decree passed by the trial Court, the First Appellate Court, this Court in the Regular Second Appeal, and the Hon'ble Apex Court are not binding on them. In the said circumstances, the respondent/defendant filed I.A. No.III under Order VII Rule 11(a) and (d) of the CPC seeking rejection of the plaint on the

grounds that it discloses no cause of action and that the suit is barred by limitation.

22. During the course of submissions, learned counsel for the appellants/plaintiffs vehemently contended that the testator, namely their father, had bequeathed only the share that had fallen to his allotment in O.S. No.440/2004 in favour of the appellants. It was therefore submitted that the appellants have restricted their claim only to the share of their father. In that view of the matter, it is necessary to examine whether partial rejection of the plaint and partial continuation of the suit are permissible under Order VII Rule 11 of the CPC.

23. The first question relates to the true and correct application of the principles governing rejection of a plaint under Order VII Rule 11 of the CPC to the facts of the present case. The second question relates to the legality and permissibility of partial rejection of a plaint.

24. Before considering the legality of the approach adopted by the trial Court, it is necessary to consider Order VII Rule 11 CPC and the precedents on the subject. The relevant principles have been succinctly explained in a recent decision of the Hon'ble Apex Court in ***Dahiben v. Aravindbhai Kalyanji***

Bhanusali reported in **(2020) 7 SCC 366**, which reads as follows:

"23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykumverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)

"12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the

*court readily exercises the power to reject a
plaint, if it does not disclose any cause of action."*

*23.5. The power conferred on the court to
terminate a civil action is, however, a drastic one, and the
conditions enumerated in Order 7 Rule 11 are required to
be strictly adhered to.*

*23.6. Under Order 7 Rule 11, a duty is cast on the
court to determine whether the plaint discloses a cause of
action by scrutinising the averments in the plaint, read in
conjunction with the documents relied upon, or whether
the suit is barred by any law.*

*23.9. In exercise of power under this provision, the
court would determine if the assertions made in the plaint
are contrary to statutory law, or judicial dicta, for deciding
whether a case for rejecting the plaint at the threshold is
made out.*

*23.10. At this stage, the pleas taken by the
defendant in the written statement and application for
rejection of the plaint on the merits, would be irrelevant,
and cannot be adverted to, or taken into consideration.*

*23.11. The test for exercising the power under
Order 7 Rule 11 is that if the averments made in the
plaint are taken in entirety, in conjunction with the
documents relied upon, would the same result in a decree
being passed. This test was laid down in Liverpool &
London S.P. & I Assn. Ltd. v. M.V. Sea Success I, which
reads as :*

*"139. Whether a plaint discloses a cause
of action or not is essentially a question of fact.
But whether it does or does not must be found
out from reading the plaint itself. For the said
purpose, the averments made in the plaint in
their entirety must be held to be correct. The test*

is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

23.12. In *Hardesh Ores (P) Ltd. v. Hede & Co.* the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint *prima facie* show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. *D. Ramachandran v. R.V. Janakiraman* .

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of *Saleem Bhai v. State of Maharashtra*. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in *Azhar Hussain* case.

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint."

25. A perusal of the above proposition of law and the ratio laid down in ***Dahiben's*** case makes it clear that the true test is to read the plaint meaningfully and as a whole, taking the averments therein to be true. Upon such a reading, if the plaint discloses a cause of action, the application under Order VII Rule 11 of the CPC must fail. Conversely, if the plaint does not disclose a cause of action, it is liable to be rejected.

26. The plaintiffs have averred that their father, Shankarappa, executed a Will dated 25.01.2010 in their favour, declaring the same to be his last Will and testament. Under the said Will, he is stated to have bequeathed the suit schedule property bearing Sy.No.28 measuring 1 acre 33 guntas situated at Beguru Village, his 1/4th share in agricultural land bearing Sy.No.142 measuring 1 acre 22 guntas situated at Beguru Village, and the site and building bearing Kaneshumari No.194, measuring approximately 4,000 sq.ft., situated at Beguru Village, in favour of his two sons, namely, the appellants herein.

27. It is not in dispute that Item Nos.1, 2 and 3 covered under the said Will were also the subject matter of O.S. No.440/2004, and the judgment and decree passed therein

attained finality upon dismissal of the Special Leave Petition by the Hon'ble Apex Court. It is on the strength of the said Will that the plaintiffs have instituted the present suit seeking a declaration that they are the owners of the suit schedule properties. In response thereto, the respondent filed I.A. No.III under Order VII Rule 11(a) and (d) of the CPC seeking rejection of the plaint.

28. In the plaint as well as in the appeal, the plaintiffs have contended that the properties described in the suit schedule belonged to the sons of Gangappa Aradhya, who was the Archaka of the 'Sri Marula Siddheshwara Deity' temple at Beguru Village. Hence based on the Will, the plaintiffs have sought a declaration that they are the absolute owners of the suit schedule properties. Instead of seeking partition of the suit schedule properties, the plaintiffs have sought a declaration of their title as absolute owners by virtue of the said Will.

29. It is evident from the plaint that the plaintiffs have specifically pleaded that, although the earlier litigation had attained finality, they are now claiming rights under a Will alleged to have been executed by their father, Shankarappa,

who was defendant No.1 in the earlier suit. If the averments in the plaint are taken to be true, the Will, if proved, would confer the testator's share upon the appellants, thereby excluding the respondent, who is the daughter of the testator, from claiming any right in that share. Whether Shankarappa actually executed the Will and validly bequeathed his share to the appellants is a matter to be decided after a full-fledged trial on the basis of the evidence adduced by the parties.

30. At this stage, we are not concerned with the correctness or genuineness of the Will, except to note that the properties covered under the Will were the subject matter of the earlier proceedings, which have attained finality. Therefore, the plaintiffs will have to establish their claim by leading appropriate evidence. However, while considering an application under Order VII Rule 11 of the CPC, the Court is only required to examine whether the plaint discloses a cause of action and nothing more.

31. We do not deem it necessary to elaborate on all other arguments, as we are inclined to accept the contention of the respondent that the power under Order VII Rule 11 of the CPC cannot be exercised to reject the plaint only in respect of a

part of the subject matter covered under the Will. In other words, the plaint has to be rejected as a whole or not at all while exercising powers under Order VII Rule 11 of the CPC.

32. During the course of arguments, learned counsel for the appellants/plaintiffs vehemently contended that, although the plaintiffs had sought a declaration in the plaint that the judgments and decrees passed by the trial Court, the First Appellate Court, this Court in the Regular Second Appeal, and the Hon'ble Apex Court are not binding on them, they are restricting their claim in the present appeal only to the share of their father under the Will.

33. However, we find that the decision of the Hon'ble Apex Court in ***Sejal Glass Ltd. v. Navilan Merchants (P) Ltd.***, reported in **(2018) 11 SCC 780** is directly on the point. In the said case, the defendants filed an application under Order VII Rule 11(d) of the CPC contending that the plaint disclosed no cause of action. The Civil Court held that the plaint could be bifurcated, as it did not disclose any cause of action against defendant Nos.2 to 4, who were the Directors of the company. The question that arose before the Hon'ble Apex

Court was whether such a course was permissible while exercising powers under Order VII Rule 11(d) of the CPC.

34. The Hon'ble Apex Court answered the said question in the negative by referring to several earlier decisions, consistently holding that a plaint can either be rejected as a whole or accepted. It was further held that it is not permissible to reject the plaint only in respect of a particular claim or against some of the defendants and permit the suit to continue against the others. The Hon'ble Apex Court further observed that if the plaint survives against certain defendants or in respect of certain properties, Order VII Rule 11(d) of the CPC would have no application, and the suit as a whole must proceed to trial.

35. Undoubtedly, a plaint can be rejected in exercise of the powers under Order VII Rule 11(d) of the CPC if it is barred by law, including on account of the earlier litigation having attained finality. In the present case, merely because the father of the appellants is alleged to have executed a Will in their favour in respect of his share of the property, the plaint cannot be partially rejected while permitting the remaining part of the suit to proceed. Such a course is impermissible in view of the

ratio laid down by the Hon'ble Apex Court in ***Madhav Prasad Aggarwal v. Axis Bank Ltd.***, reported in (2019) 7 SCC 158, ***Wahidaben's supra***, and ***Geetha v. Nanjunda Swamy***, reported in **(2024) 14 SCC 390**.

36. In other words, the plaint, as presented, must either proceed as a whole or be rejected as a whole, but not in part. In the present case, the plaintiffs have sought a declaration in respect of all the suit schedule properties, even though the rights of the parties in respect of those properties have already attained finality up to the Hon'ble Apex Court. Therefore, partial rejection of the plaint is not permissible, and the plaint is liable to be considered as a whole. The trial Court, having considered the averments made in the plaint and the earlier judgments, has rightly rejected the plaint in its entirety, and the said order does not call for any interference by this Court.

37. The question that requires to be decided is whether the plaint is to be rejected or is trial liable to proceed with the plaint averments as such?

37.1. We find that the partibility of the properties and the shares in the same have already been decided in the earlier

proceedings. Therefore, what can remain for adjudication is only the question as to the succession to the properties of the father. That question can only be in terms of what is already decided in the earlier suit for partition. Therefore, the only question which arises is how the share of the father in the properties has already found by the hierarchy of Courts in the earlier round of litigation is to devolve. It is not disputed before us that Final Decree Proceedings in the earlier suit are pending.

37.2. In the said circumstances, the question of devolution of the right and interest of the father in the suit schedule properties as found partible in the earlier round of litigation, can very well be agitated in the Final Decree Proceedings, which are admittedly pending.

37.3. In the circumstances, we are of the opinion that the remedy available to the appellants is not to file a comprehensive suit for partition raising contentions on matters which already stand settled, but to raise the issue of succession to the father's share in the Final Decree Proceedings.

37.4. We are therefore of the opinion that the order of the trial Court rejecting the plaint as not disclosing the cause of

action does not require interference. The appeal therefore fails and the same is ***dismissed***.

The parties to bear their own costs.

All pending interlocutory applications shall stand disposed of.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**

AM