



Presented on : 12-01-2021
Registered on : 12-01-2021
Decided on : 30-06-2022
Duration : 1 year 05 months 18 days

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC.,
SEDAM**

PRESENT: SRI. VIJAYKUMAR S. JATLA

B.Sc., LL.B.

Senior Civil Judge & JMFC., Sedam

DATED THIS THE 30th DAY OF JUNE-2022.

O.S.No.4/2021

Plaintiffs:

1. Soubhagyamma W/o Sabanna, Age: 45 years, Occ: Agriculture, R/o Benakanahalli, Tq: Sedam, Dist: Kalaburagi.
2. Ratnamma W/o Shamsundar, Age: 35 years, Occ: Agriculture, R/o Sedam, Dist: Kalaburagi.

(Advocate for plaintiff by Sri.P.K.)

Versus

Defendants:

1. Imanwell S/o Bhimanna, Age: 70 Years, Occ: Agriculture, R/o Benakanhalli, since deceased by his L.R.s. i.e., plaintiffs and defendant No.2 to 6 are already on record.



2. Neelamma W/o Imanwell, Age: 65 years,
Occ: Agriculture, R/o Benakanahalli,
Tq: Sedam, Dist: Kalaburagi.
3. Benjimin S/o Imanwell, Age: 26 years,
Occ: Agriculture, R/o Benakanahalli,
Tq: Sedam, Dist: Kalaburagi.
4. Nagesh S/o Imanwell, Age: 39 years,
Occ: Agriculture, R/o Benakanahalli,
Tq: Sedam, Dist: Kalaburagi.
5. Ravi S/o Imanwell, Age: 31 years,
Occ: Agriculture, R/o Benakanahalli,
Tq: Sedam, Dist: Kalaburagi.
6. Yesuraj S/o Imanwell, Age: 26 years,
Occ: Agriculture, R/o Benakanahalli,
Tq: Sedam, Dist: Kalaburagi.
7. M/s. Shree Cements Pvt. Ltd, through
its Vice President, Shree Cements Office,
at Benakanahalli, Tq: Sedam, Dist: Kalaburagi.

(Deft.1 to 6 by Sri.S.B. Advocate)
(Defendant No.by Sri.V.R.M. Advocate)

ORDERS ON I.A.NO.IV U/O.VII RULE 11(a) & (d) OF C.P.C.
FILED BY THE DEFENDANT No.7.

This interlocutory application is filed by the defendant No.7
U/O VII Rule 11(a) & (d) of C.P.C seeking for rejection of the
plaint.

2. Advocate for the defendant No.1 has contended that
the plaintiff No.1 and 2 filed suit for partition and separate



possession against the present appellant and 6 others. The plaintiffs have not produced genuine family tree with this plaint in this suit. So, necessary parties have not been made as a party in this suit. The plaintiffs have not come to the court with clean hands as under para No.4 of the plaint on the one side plaintiffs themselves admitted that they have got married and living in their husband house and on the other side it is true to say that they stated that they are in joint possession of suit property. The plaintiffs have also not disclosed what type of share they used to get from defendant No.1 after harvesting. The plaintiffs and defendant No.1 were having full knowledge of the sale transaction and there is a long gap of time for about 12 to 13 years after sale deed. Though the plaintiffs having full knowledge that defendant No.7 has purchased the above said suit land, the plaintiffs have never claimed partition. So, this suit is barred by limitation. This suit is filed only to harass the defendant No.7. The plaintiffs have not challenged the sale deed mentioned in para No.5 of the plaint, as they have to pay the court fee upon the market value of sale deed/suit properties, approximate value of which is Rs.10,00,000/- per acres. The plaintiffs have



not paid the necessary court fees on actual market price of the suit property and just paid Rs.200/- U/s.35(2) R/w Sec.7 of KCF and SV Act. The plaintiffs have full knowledge that the defendant No.1 has sold the above suit property to the defendant No.7 and they themselves stated that there is no other property in the hands of defendant No.1 to adjust. Therefore, they are having full knowledge of the sale deeds and hence the question of filing the suit for partition on the basis of false cause of action does not arise. Looking into the averment of the plaint and the fact that the plaintiffs have not made out the case against the defendant No.7, the above application U/O VII Rule 11 (a) and (d) R/w Sec.151 of CPC be allowed. Hence, sought for allowing I.A.No.IV filed by the defendant No.7.

3. The advocate for the plaintiffs has filed objection to the said application by contending that the suit properties are the ancestral properties and plaintiffs are the legal heirs hence have their undivided share in the suit properties, hence the plaintiffs filed the suit for partition and separate possession. The plaintiffs are illiterate and does not have legal knowledge and as the two sisters who are proposed defendant No.8 and 9



have already have taken the share in the lifetime of the defendant No.1 had hence not disclosed their names but the plaintiffs have already filed application U/O 1 Rule 10(2) of CPC for impleading the necessary parties on the last date of hearing and is pending before the court as IA No.5. The marriage of the plaintiffs and living in the husbands house shall not deprive the share of the plaintiffs in the suit properties as they are joint family properties and plaintiffs are coparceners and have equal rights as that of other defendant No.2 to 6. In para No.5 of the plaint the plaintiffs have shown that the plaintiffs came to know that the defendant No.1 has sold the suit lands to the defendant No.7. The actual knowledge of sale came to the plaintiffs on 22.12.2020 when they obtained ROR of suit lands were taken by the plaintiffs from the revenue authorities, hence the question of limitation does not arise as the suit is well within the time from the knowledge. The suit of the plaintiffs is for partition and as all the properties are sold by the defendant No.1 without the knowledge of the plaintiffs, they are deprived of their right in the joint family properties. Hence, they are entitled for share. The suit is well within the time and the plaintiffs have made



out proper case against the defendants, hence order VII Rule 11(a) and (d) does not apply in the above case. Hence, sought for rejection of the IA No.IV filed U/O 7 Rule 11(a) and (d) R/w Sec.151 of CPC.

4. Heard the advocate for the plaintiffs and defendant No.7 on IA No.IV

5. On the basis of the above pleadings the following points that would arise for my consideration are:.

POINTS

1) Whether the defendant No.7 made out grounds to allow I.A.No.IV U/O VII Rule 11(a) and (d) of CPC?

2) What order or decree?

6. My findings on above points are as under :

Point No:1: In the Affirmative.

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

REASONS

7. Point No.1:- The case of the plaintiff and defendant No.7 is as discussed above. This is the suit for partition and



separate possession in respect of the suit properties. The plaintiffs in their plaint have pleaded that the defendant No.1 is the father of plaintiff No.1 and 2. the defendant No.2 is mother, defendant No.3 to 6 are brothers and defendant NO.7 is the purchaser of the suit properties. The plaintiffs and defendant No.3 and 4 were born to defendant No.1 through first wife Rojamma and after her death, the defendant No.1 married one Neelamma and defendant No.5 and 6 are her children. The plaintiffs are sharers in the suit properties. The plaintiffs are married and living in their husbands house. The plaintiffs are in joint possession of the suit properties. The defendant No.1 used to manage the suit properties and used to give share in the harvest. The plaintiffs came to know that the defendant No.1 has sold the suit lands to the defendant No.7. The actual knowledge of the sale came to the plaintiffs on 22.12.2020 when they obtained RORs of suit properties. The defendant No.1 has sold the suit lands to defendant No.7 through vide sale deed document No.489/2008-09 dated 28.5.2008, 1263/2009-10 dated 13.10.2009, 1266/2009-10 dated 13.10.2009 and 1550/2009-10 dated 23.12.2009



without any family necessity. The sale deeds are not binding on the rights of the plaintiffs share. Since the defendant No.1 has already sold suit lands to defendant No.7 and there is no any property in the hands of defendant No.1 to adjust, therefore, the plaintiffs have no other way except to file suit and demand their share in the suit properties. The plaintiffs have got 1/7th share each. Hence, sought for decreeing the suit of plaintiffs.

8. On the other hand the defendant No.1 has contested the suit by admitting the relationship of the plaintiffs and defendant No.1 to 6 and he has also admitted about the joint ownership and possession over the suit properties by defendants No.1 to 6 and plaintiffs. The defendant No.1 has denied that the actual knowledge of sale came to the plaintiffs on 22.12.2020 when they obtained RORs of suit properties. The plaintiffs having full knowledge of the sale of land by defendant No.1 to defendant No.7 and have given the consent to the sale when the defendant No.7 agreed to give job to any one of the dependents of each plaintiff, hence it is not correct to say that the sale deeds are not binding on the rights of the



plaintiffs share. It is undisputed the fact that the defendant No.1 sold all the suit lands to defendant No.7 but it is denied that the plaintiffs got 1/7th share each in the suit properties as it is sold with the understanding that one job will be given to each of the plaintiffs. It is denied that the cause of action arose to the plaintiffs on 22.12.2020 when they came to know about the sale of suit lands by defendant No.1, they have the well knowledge of the sale of suit lands since beginning. The defendant No.1 gave two job cards to the plaintiffs and plaintiffs applied for appointment in the Shree Cement Company which is defendant No.7. The defendant No.7 sought illegally the succession Certificate from the plaintiffs. Therefore, the plaintiffs have filed this suit. If the defendant No.7 Shree Cement Factory is not ready to appoint any defendants or plaintiffs in its company then they are liable to give the plaintiffs and defendants their share in the suit properties. Hence, sought for dismissal of the suit of plaintiff and direct the defendant No.7 to appoint the dependents of plaintiffs in their Cement Factory as per the understanding. The defendant No.2 to 6 have filed memo by adopting the



written statement of defendant No.1.

9. Order VII Rule 11 of CPC reads as hereunder:

Rejection of plaint: *The plaint shall be rejected in the following cases:-*

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the Court, fails to do so.

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, failed to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate.

(f) where the plaintiff fails comply with the provisions of Rule 9.

10. On perusal of the plaint averments, the plaintiff seeking the partition in respect of suit schedule properties, wherein the suit properties have been sold by defendant No.1 in favour of defendant NO.7 through registered sale deeds as per admission made by the plaintiff in the plaint. The sale deeds are dated 25.8.2008, 13.10.2009 and 23.12.2009. The plaintiff contended that they came to know about the above



said sale deeds on 22.12.2020. Further the plaintiffs contended that they got married and living in their husbands house. The defendant No.1 who is the father of plaintiffs admitted that the plaintiffs are his daughters. The sale deeds of the year 2008-09 and the plaintiffs filed the suit in the year 2021 almost after 12-13 years of the execution of the sale deeds. The plaintiffs in the plaint contended that they have not given their share but the sale deeds which clearly establishes that with the consent of the all the family members the sale deeds are executed in favour of the defendant No.7 and the plaintiffs are having full knowledge about the sale deeds. The plaint averments discloses that the cause of action is illusory one and filed after lapse of 12 to 13 years. The plaintiffs even not challenged the sale deeds executed by the defendant No.1 in favour of defendant No.7. This shows that the plaintiffs on the imaginary cause of action filed this suit after lapse of 12-13 years of the execution of sale deeds by defendant No.1 in favour of defendant No.7. The plaint averments substantiates the fact that the plaintiffs created the imaginary cause of action in order to file the suit.



There is no iota of substance to show the real cause of action. Hence, it can be inferred that the plaint is not disclosing the real cause of action for instituting the suit. The alleged sale deeds are registered in the year 2008-09 and the plaintiffs filed the suit in the year 2021 after lapse of 12-13 years. As *per Article 109 of Limitation Act "the time begins to run from when the alienee possession of the property, the period of limitation is 12 years"*. From the averments of the plaint itself it reveals that the suit is not filed within limitation as prescribed under Article 109 of Limitation Act. The plaintiffs failed to discharge the onus of proof that the suit is filed within the period of limitation. Under these circumstances, the suit is barred by law of limitation. Hence the plaint is liable to be rejected U/O VII Rule 11(d) of CPC. The plaint is not disclosing the cause of action hence the plaint is liable to be rejected U/O VII Rule 11(a) of CPC. On the face of the plaint cause of action is not revealing and suit is barred by law of limitation. The suit appears from the statement in the plaint barred by law of limitation and having no cause of action. Under these circumstances, the plaint is liable to be rejected.



The defendant No.7 made out the valid and justifiable grounds to allow IA No.IV U/O VII Rule 11(a) & (d) R/w Sec.151 of CPC. In the light of the above reasons, I answer **point No.1 in the Affirmative.**

11. Point No.2:- As I have answered point No.1 in the Affirmative, hence I proceed to pass the following:

O R D E R

I.A.No.IV U/O VII Rule 11(a) and (d)
R/w Sec.151 of CPC filed by the
defendant No.7 is hereby allowed by
rejecting the plaint.

(Dictated to the Stenographer directly on computer, corrected, signed and then pronounced by me, in the open Court on this the **30th day of June-2022**)

(VIJAY KUMAR.S.JATLA)
Senior Civil Judge,
Sedam.