

KABC010338752023



**IN THE COURT OF THE III ADDL. CITY CIVIL AND
SESSIONS JUDGE, (CCH-25) AT BENGALURU.**

DATED: THIS THE 15th DAY OF OCTOBER, 2025.

PRESENT : Smt. Nisharani A.C., B.A., LL.B.,
III Addl. City Civil and Sessions
Judge, Bengaluru.

O.S.NO.8290/2023

- PLAINTIFFS :**
- 1. Mr.Amar V M**
S/o Mr.Viswanathsa,
Aged about 46 years,
R/at Flat No.B108, Lillium Gardenia,
2nd Cross, BDS Layout, Hegdenagar,
Bengaluru - 560 077.
 - 2. Mrs.Suman B.K**
Aged about 45 years,
W/o Mr.Prakash R.M.
R/at Flat No.C218 Lillium Gardenia,
2nd Cross, BDS Layout, Hegdenagar,
Bengaluru - 560 077.
Rep. By her Power of Attorney
Holder, Mr.Prakash R.M.
 - 3. Mr.Vikram B K**
Aged about 43 years,
S/o Mr.Kalakappa Bhanapur,
R/at Flat No.C 219 Lillium Gardenia ,
2nd Cross, BDS Layout,
Hegdenagar, Bengaluru - 560 077.

Rep. By his Power of Attorney
Holder, Mr.Prakash R.M.

4. Mr.Lingaraj S Koshti

Aged about 41 years,
S/o Mr.S.L.Koshti,
R/at 'Maheshwaram', Plot No.9 & 10,
Nrupatunga Park Layout, Shakthi
Colony, Hubli – 580 032.

5. Mr.Vinay A.P.

S/o Parameshwaram A.N,
Aged about 39 years,
R/at Flat No.C108, Liliun Gardenia,
2nd Cross, BDS Layout,
Hegdenagar, Bengaluru – 560 077.
Rep. By his Power of Attorney
Holder, Mr.Parameshwaram A.N.

6. Ms.Jyoti Peddi

Aged about 42 years,
D/o Mr. Channappa Peddi,
R/at Flat No.C106, Liliun Gardenia,
2nd Cross, BDS Layout,
Hegdenagar, Bengaluru - 560 077.

7. Mr.Pavan Kumar Bhat

Aged about 39 years,
S/o Mr.Krishnamurthy Bhat,
R/at Flat No.A302, Liliun Gardenia,
2nd Cross, BDS Layout,
Hegdenagar, Bengaluru - 560 077.

8. Ms.Dhanya Swamy

Aged about 36 years,
D/o Mr.T.R.Swamy
R/at Flat No.C308, Liliun Gardenia,
2nd Cross, BDS Layout,
Hegdenagar, Bengaluru - 560 077.

9. Mr.Sumanth L Soratur

Aged about 40 years,
S/o Lokanagowda B Soratur,
R/at Flat No.A308, Liliun Gardenia,
2nd Cross, BDS Layout,
Hegdenagar, Bengaluru - 560 077.

10. Mr.A.Hari Prasad

Aged about 42 years,
S/o Mr.K.Ananda Jothy,
R/at Flat No.C007, Liliun Gardenia,
2nd Cross, BDS Layout,
Hegdenagar, Bengaluru - 560 077.

11. Mr.Hemant Kumar S

Aged about 42 years,
S/o Late Mr.Sudharshanam,
R/at Flat No.602, Shankar Vikas CHS
13th Road, Off Central Avenue Road,
Chembur, Mumbai – 400 071.
Rep. by his Power of attorney
Holder Mrs.Lalitha.

12. Mr. Somanath Shankar Sutar

S/o Shankar Gangappa Sutar,
Aged about 39 years,

13. Mrs. Ashwini Sutar

W/o Somanath Shankar Sutar,
Aged about 39 years.

Both are currently R/at 6306,
Windcrest Dr Apt 2223,
Plano, Texas, 75024, USA,
Being represented by the
General Power of Attorney Holder,
Mr. Praveen Adavesh Ghaniger.

14. Mr. Naveen Dsouza

S/o John Dsouza,
Aged about 45 years,

15. Mrs. Falicita Shaila Lobo

W/o Naven Dsouza,
Aged about 45 years,

Both are currently R/at 1073,
Margo Dr. Allen,
TX, 75013, USA,
Being represented by the
General Power of Attorney Holder,
Mr. Ivan Dsouza.

(By Sri.Srinivas V.,Advocate)

V/S

- DEFENDANTS :**
- 1. M/s Dammanagi Developers Pvt. Ltd,**
A Company incorporated under
Companies Act, 1965/2013 Having its
registered office at No.29/4,
5th Floor, Trade Center, Above
Sugama Travels, Race Course
Road, Bengaluru – 560 001.
Rep. by its CMD
Mr. Babu A Dhammanagi
 - 2. Lilium Gardenia Apartment Owners
Association,**
Having its office at Lilium
Gardenia, 2nd cross, BDS Layout,
Dr Shivaram Karanth Nagar Post,
R.K. Hegde Nagar,
Bengaluru – 560 077.
Rep. by its President
Mr.Mahantesh Narwade.

3. Mr. Mahantesh Narwade

President,
Lilium Gardenia Apartment,
Owners' Association,
Having its office at Lilium Gardenia,
2nd Cross, BDS Layout,
Dr. Shivaram Karanth Nagar Post,
R.K.Hegde Nagar,
Bengaluru – 560 077.

4. Mr.Abhishek Hiremath

Secretary,
Lilium Gardenia Apartment,
Owners' Association,
Having its office at Lilium Gardenia,
2nd Cross, BDS Layout,
Dr. Shivaram Karanth Nagar Post,
R.K.Hegde Nagar,
Bengaluru – 560 077.

5. Mr.Vithyabathi R

Treasurer,
Lilium Gardenia Apartment,
Owners' Association,
Having its office at Lilium Gardenia,
2nd Cross, BDS Layout,
Dr. Shivaram Karanth Nagar Post,
R.K.Hegde Nagar,
Bengaluru – 560 077.

(D.1 by Sri.DMN., Advocate
D2 to 5 by Sri.T.S., Advocate)

**ORDERS ON I.A.NO.15 FILED BY THE DEFENDANTS NO.2
to 5 UNDER ORDER 7 RULE 11(a) and (d) R/W SEC.151 OF
C.P.C.**

I.A.No.15 filed by the defendants No.2 to 5 under
Order 7 Rule 11(a) and (d) r/w Sec.151 of C.P.C. to reject

the plaint for the reason that the plaintiffs have not made out any cause of action and the suit is barred by law in the interest of justice and equity.

2. In support of the application, the defendant No.2 has sworn to an accompanying affidavit stating that the plaintiffs are trying to build the case on false cause of action. As claimed cause of action arose on 29.08.2023 when the deed of declaration was registered. For registering the said document there is no need to have occupancy certificate and there is no evidence as to targeting the plaintiffs which will not be beneficial to association. As per law laid down the residents have to pay maintenance charges first and seek any relief they want. Instead to avoid payment of maintenance charges the suit has been filed. Till now despite an order of this court plaintiffs have not paid the full maintenance charges. So there is no cause of action to file the present suit. As held in the case of Om Prakash Srivastava V/s. Union of

India and Anr. (2006 6 SCC 207), [1], The Supreme Court noted, in the following words, tried to clarify the expression: "Cause of action" means, in the restricted sense, the circumstances which constitute a infringement of the right or the immediate cause for the reaction. In the wider sense it implies the conditions required for the enforcement of the action, including the violation of the right and the violation combined with the power itself. Compendiously, as noted above, the expression means any fact that the plaintiff would need to assert, if the Courts are violated, to maintain right to the Court's judgment. Every circumstance that is required to be established, as distinguished from every piece of evidence that is necessary, to prove that every fact is part of "cause of action."

2(a). Secondly, the suit is not maintainable and same is barred by law: In fact the defendant No.2 association is duly represented by defendant No.3 to 5

was registered in compliance of the directions passed in Writ Petition No.1685/2022 (GM-KSR) and connected matters dated 21.11.2022, wherein the Hon'ble High court of Karnataka has directed to register the Welfare Association under the Apartment Ownership Act 1972. To comply the High Court order registering the deed of declaration is mandatory, as such, the deed of declaration is a document must be registered to take care of the apartment owners. The said order has attained finality, since neither the plaintiff nor the similarly placed objectors have not filed any appeal challenging the said order. Further the Hon'ble High Court of Karnataka has clearly held that in one of recent judgments in W.P.No.25528/2023 (CS-RES) dated 23.02.2024, the owners of the apartment have to register the association under the Apartment Ownership Act 1972 only and not under the Karnataka Co-Operative Societies Act or under the Karnataka Ownership Flats (Regulation of the

promotion of construction, sale management and Transfer) Act 1972 & Rules 1975, as the plaintiffs are trying to seek relief in their prayer (C) & (d). In view of the resistance and non co-operation the registration of Deed of Declaration was got delayed and an order of extension was further obtained from the Hon'ble High Court of Karnataka. With great effort the registration of Deed of Declaration registration process was completed on 29.08.2023 and presently association is functional. Therefore, the above suit is liable to be dismissed.

3. The learned counsel for the plaintiffs has filed objections to the application stating that the application filed by the defendants No.2 to 5 for rejection of plaint along with an affidavit on various purported ground is nonest and not maintainable. The application is filed with malafide intention of causing delay in the suit and to harass the plaintiffs. The application is false, frivolous,

devoid of merits and deserves to be dismissed with costs. All averments and contentions in the application filed by defendants No.2 to 5 under Order VII Rule 11 of CPC are frivolous, baseless, false. Further, the plaintiffs deny all the statements, allegations and contentions in the application, seeking rejection of plaint on purported grounds that the instant suit is barred by law and that it does not disclose a cause of action. Nothing shall be deemed to be admitted for want of specific traversal. The present application is completely devoid of merits. The Application does not set out as to how the plaint averments do not disclose a cause of action against the defendants. On a holistic reading of the plaint it is clear that there exist cause of action and that the suit is maintainable under law. The present application itself demonstrates that defendant No.2 to 5 have colluded with defendant No.1 in unlawfully obtaining the registration of the association. Further, the correctness or otherwise of defendants' contentions in the application under reply can

only be determined after trial of this suit. The power conferred on the court to terminate civil action is a drastic one and the conditions enumerated under Order VII Rule 11 of CPC are required to be strictly adhered to. The duty is cast upon the Court to determine only by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon. The plaintiff has pleaded all material facts pertaining to the instant suit which are necessary to prove in order to entitle the plaintiff for the relief claimed in the instant suit.

3(a). The instant suit is filed by plaintiffs seeking declarative relief that the deed of declaration as non est in the eye of law and consequently formation 'M/s Lilium Gardenia Apartment Owners Association' is illegal and void. Further plaintiffs have sought declaratory relief that the said illegally formed Association does not have any legal locus standi to demand maintenance charges or any other monetary charges from Plaintiffs by virtue of

Association lacking legal sanctity to manage the apartment complex. The plaintiffs have preferred the suit being aggrieved by the actions of the builder of the apartment complex who has not only miserably failed in providing basic amenities but has also flagrantly violated pollution laws by setting up unscientific Sewage Treatment Plant and Diesel Generator leading to health hazards to the residents. Further, M/s Dammanagi Developers, the developer has failed to obtain Consent For Operation in relation to STP. As of date the Developer's occupancy certificate has also been canceled by BBMP which clearly reflects the repeated violations on the part of builder. Upon raising the issues with the concerned authorities the builder was held liable to and penalties were imposed for the violations of pollution laws. It is only to flea away from making good the penalty imposed by Karnataka State Pollution control board the builder in connivance with the defendants herein has formed a sham association. The

plaintiffs are challenging the validity of the Deed of Association which forms the basis of the Association. It is submitted that the Deed of Declaration was never executed by several owners. However, M/s Dammanagi Developers i.e., builder willfully suppressed several material facts and proceeded to register the Deed of Declaration before the sub registrar. It is based on such unlawful Deed of Declaration the association was formed. The defendant No.2 is not a legally formed association under the provisions of Karnataka Apartment Ownership Act and Rules. The defendant No.2 has been in contravention of several mandatory provisions of Karnataka Apartment Ownership Act. The plaintiffs have requested the developer to obtain necessary approvals such as CFO and OC from relevant authority before demanding plaintiffs to sign the DOD. However, defendant No.1 and the members of the defendant No.2 association have held grudge against the plaintiffs who demanded

obtaining of approvals before providing their consent for formation of Association under the KAOA Act and have been causing immense hardship and thereby using the same as arm twist mechanism to force plaintiffs to pay the exorbitant maintenance and unreasonable sinking funds. Further, defendants have devised mischievous strategies to force plaintiffs into payments of the exorbitant amounts demanded by defendants. The defendant No.2 association has been constantly harassing plaintiffs in one or other pretext and has gone to an extent of disconnecting water and other basic amenities. In the light of defendant No.2, which is an unlawfully formed association, conducting itself in a manner which is severely affecting the rights of plaintiff, plaintiff has a valid cause of action to approach this Court. The defendants have attempted to misrepresent the order in W.P.No.1685/2022 dated 21.11.2022. The limited question which was dealt with Hon'ble High Court of Karnataka, Bengaluru, in the said

case was that whether an apartment association registered under the Karnataka Societies Registration Act, 1960 can seek maintenance from the hands of residents of the apartment. Further, the Hon'ble High Court of Karnataka, Bengaluru, directed the association which was formed under the Karnataka Societies Registration Act, 1960 to register under KAOA within 2 months from the date of order. Although Defendant was required to be registered under the provisions of KAOA such registration was required to be in accordance with the mandate laid down in the provisions KAOA of and not in contravention of the same. However, the registration of Defendant No.2 association has been made in contravention of several provision of KAOA which is clearly pointed out in the plaint. In the light of the above mentioned paragraphs, it is submitted that the averments in the application are denied in toto. Further it is submitted that the plaint has clearly discloses cause of action and is not barred by law. Hence,

Application is liable to be dismissed. The defendants No.2 to 5 will not suffer any substantial prejudice or harm or injury if the application is not allowed. In fact it is the plaintiffs who will suffer grave prejudice, harm and injury if the application is allowed. Hence, the application is liable to be rejected.

4. On basis of the rival contentions raised by both the parties the following points raise for my consideration -

1. Whether the application filed by the defendants No.2 to 5 deserves to be allowed?
2. What order ?

5. Heard arguments of both the side and perused the materials on record.

6. My answer to the above points are as under:

- Point No.1 :- In the **Negative**,
Point No.2 :- As per final order,
for the following;

REASONS

7. **POINT NO.1:-** This application filed by the defendants No.2 to 5 under Order 7 Rule 11(a) and (d) of CPC for rejection of plaint saying that it is not disclosing cause of action and barred by limitation.

8. In the annexed affidavit the defendant No.2 President of Lilium Gardenia residents welfare association on behalf of defendants No.3 to 5. The plaintiffs have filed this suit on false cause of action arose on 29.08.2023. Despite the order of this Court the plaintiffs have not paid full maintenance, as per the order of Hon'ble High Court of Karnataka, Bengaluru in W.P.No.1685/2022 the association was registered under Karnataka Apartment Ownership Act. Therefore, this association is legal and they are entitled for collecting the maintenance. Therefore, this suit is bared by limitation and on false cause off action this suit was filed, therefore, to reject the plaint.

9. On the other hand, the plaintiffs have filed their objections stating that this I.A. is not maintainable. The plaint is very much disclosing the cause of action and the same is well within the time as the limitation being mixed question of law and facts. Therefore, the suit cannot be rejected.

10. On perusal, as it is the settled law and Hon'ble Apex Court in many of the Judgments observed that while considering I.A. under Order 7 Rule 11 of CPC, only the plaint and the documents filed by the plaintiffs are to be looked into, therefore in the plaint cause of action is disclosing in para No.33. Then limitation is a question of law and fact and cause of action is a bundle of facts which requires trial. The plaintiffs alleged that the occupancy certificate is fabricated and despite of revocation from BBMP, occupancy certificate is fabricated by defendants but the defendants claim that it is valid, in further the association is as per law and the occupancy certificates

are legal which requires full-fledged trial for adjudication of the matter. Therefore, at this stage this plaint cannot be rejected at the thresh hold. Therefore, I answer **Point No.1 in the Negative.**

11. **POINT NO.2.** For the foregoing reasons, I proceed to pass the following:-

ORDER

I.A.No.15 filed by the defendants
No.2 to 5 under Order 7 Rule 11(a)
and (d) of CPC, is hereby rejected.

(Dictated to the Steno Gr.III, transcript thereof, typed by her , after correction pronounced by me in open Court on this day 15th day of October, 2025).

(NISHARANI A.C)
III ADDL. CITY CIVIL AND
SESSIONS JUDGE, BENGALURU.