

ORDER ON I.A No.9:

This is an application filed under Order VII Rule 11(a) r/w Section 151 of CPC by the learned counsel for defendant No.18, either to reject the plaint as it does not disclose cause of action or dismiss the suit as mischievous in nature stating that, plaintiffs have filed the above numbered suit for the relief of declaration to declare the sale deeds dated 13/11/2018 executed defendant No.19 to 22 in favour of defendant No.18 firm and sale deed dated 22/11/2018 executed by defendant No.26 in favour of defendant No.18 firm as null and void and not binding on the members of the plaintiffs association and also sought the relief of permanent injunction in respect of the suit schedule properties. Further it is arrayed in the accompanying affidavit that, suit item No.1 and 2 are belonged to defendant No.26 and defendant No.19 to 25 respectively and a developer by name K.N. Rao allegedly obtained a power of attorney from defendant No.19 to 25 and others to form a residential layout named as Royal Enclave, but it is learnt that execution of power of attorney was disputed by defendant No.19 to 25 and several suits are filed by defendant No.19 against the said Mr. K.N. Rao. Further the plaint does not disclose the right, title and interest of the plaintiff over the suit schedule properties or it is filed in the representative character. Further the plaint does not disclose whether the layout formed is approved by the planning authority or with the suit schedule 1 and 2 were earmarked for the purposes of civic amenities. The plaintiff has not sought for any declaration of its title or right in respect of the suit schedule properties, as such the plaintiffs cannot seek cancellation of sale deeds without first establishing the right in respect of the

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suit schedule properties. The plaintiff had also filed a similar suit in O.S. No.7372/2015 in respect of site No.159 and 163 lying adjacent to suit item No.2 on the premise that property in the said suit was also held in common by the residents of the layout, accordingly, after considering the threshold question of law regarding maintainability of the suit rejected the plaint and dismissed the suit as mischievous in terms of the order dated 03/11/2018 and the said order is not challenged by the plaintiffs, as such the orders binds the plaintiffs as well as defendant No.19 to 25 and rule of Res-judicata is applicable. On these grounds prayed for dismissal of the suit.

2. Per contra, it is contended in the objections filed by the learned counsel for plaintiffs that, the application filed by the defendant No.18 is not maintainable either in law or on facts and liable to be dismissed with exemplary costs. The plaintiffs association has filed the suit in representative capacity with leave of the court for a declaration that the sale deed dated 13/11/2018 and 22/11/2018 as referred by the defendant are null and void and not binding upon the members of the plaintiffs association and also sought the relief of permanent injunction. Further with regard to the allegations made in para 4 to 6 with regard to cause of action is concerned a plain reading of plaint demonstrates that a suit has a very clear cause of action as such there is no basis provided by the defendant No.18 for such an allegation. Further defendant admits that earlier suit was in respect of some other property and parties in the earlier suit are also not one and the same. Further, similar application filed by defendant No.18 under Order VII Rule 11(b) of CPC was summarily rejected by this court, but again defendant No.18 has

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filed this frivolous application contending vague and baseless application merely to delay the progress of the suit. On these grounds prayed for dismissal of the application with costs.

3. Records reveal that, inspite of giving sufficient opportunities to file written arguments or to address oral arguments on I.A. No.9, the learned counsel for defendant No.18 did not turn up, accordingly taken as nil. The learned counsel for the plaintiff has filed written arguments. Perused the material on record.

4. The point that arises for my consideration is:

Whether I.A. No.9 filed by the counsel for defendant No.18 to reject the plaint deserves to be allowed ?

5. My answer to the above point is in the Negative for the following:

REASONS

6. **Point No.1:** It is worth to note that admittedly plaintiffs have filed the above numbered suit against the defendants for the relief of declaration to declare that alleged sale deeds dated 13/11/2018 and 22/11/2018 executed by defendant No.19 to 22 and 26 in favour of defendant No.18 are null and void and not binding on the members of plaintiffs association and also sought the relief of permanent injunction.

7. Records reveal that, the defendant No.1 to 17, 18, 19 to 24 and 26 though appeared through their respective counsels. The defendant No.25 remained ex-parte. Further it is evident from the perusal of order sheet dated 16/08/2019 that I.A. No.II and IV filed under Order 39 Rule 1 and 2 CPC filed by the plaintiff came to be allowed after contest and defendants were being restrained from interfering with plaintiff's possession over the schedule property and shall not alienate the same till disposal of the suit by rejecting

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I.A. No.V and VII filed by the defendant No.7, 13 and 18. The defendants did not file written statement within the stipulated time, accordingly their written statement taken as nil vide order dated 14/10/2019 itself.

8. It is also worth to note that, as rightly urged by the learned counsel for plaintiff similar application filed by the counsel for defendant No.18 under Order VII Rule 11(b) of CPC to reject the plaint for want of under valuation and payment of court fee came to be dismissed on payment of cost of Rs.500/- vide considered order dated 16/08/2019 itself.

9. Further when the case was posted for plaintiff's evidence the defendant No.18 gave NOC vakalath to Sri. AS advocate who appeared on 26/11/2019 also filed I.A. No.VIII under Order 39 Rule 4 CPC to modify interim order dated 16/08/2019 referred supra and it came to be rejected as not maintainable. At this stage, again the learned counsel who filed NOC vakalath has come up with present application to reject the plaint for want of cause of action for the reasons assigned in para 1 supra, which has been seriously disputed by the plaintiff's counsel stating that, in order to delay the proceedings only defendant has been filing applications.

10. As could be seen from perusal of order sheet dated 19/12/2018 that the plaintiff has been permitted to represent the association and to sue the defendants on behalf of all the members of plaintiff's association as per the orders passed on I.A. No.I under Order I Rule 8 r/w Section 151 of CPC on the date of first hearing itself, as such contention of defendant No.18 on this aspect cannot be sustained.

11. With regard to orders passed in similar suit in O.S. No.7372/2015 is concern the plaintiff was neither party to the suit nor it relates to the subject matter of

the present suit or it is relevant to the real questions in controversy between the parties in the case on hand, as such contention of counsel for defendant No.18 on this aspect also cannot be accepted.

12. With regard to cause of action is concern it is stated in the accompanying affidavit filed with I.A. No.9 that plaintiff has not sought the relief of declaration in respect of suit schedule properties and plaintiff does not show averment regarding right, title or interest of the plaintiff over the schedule properties is concern, admittedly the plaintiff has filed the suit for the relief of declaration to declare the alleged sale deeds as null and void and not binding on the members of the plaintiff's association and also sought the relief of permanent injunction. Further, in para 30 of the plaint states that cause of action for the suit arose on 07/12/2018 on receipt of the letter dated 05/12/2018 from defendant No.1 to 18 itself.

13. This being the fact, whether the plaintiffs based on mail and letter correspondences referred in the plaint have right, title or interest over the schedule property or not and whether the relief claimed by the plaintiffs for cancellation of sale deeds is in time or not, all these aspects are nothing but mixed question of law and facts which requires regular trial.

14. Therefore, having regard to the facts and circumstances of the case, I am of the opinion that the plaint discloses the cause of action along with many factual questions and material facts which are required to be proved during the course of trial only. For these reasons contention of the defendant No.18 to reject the plaint at this stage cannot be accepted. Consequently IA No.9 is liable to be dismissed without cost. Hence, I answer the point raised for consideration is in the Negative and proceed to pass the following:

:ORDER:

I.A. No.9 filed under Order VII Rule 11 (a) of Code of Civil Procedure by the counsel for defendant No.18 is hereby dismissed.

No order as to cost.

For plaintiff's evidence.

(C.D.KAROSHI)
V ADDL.CITY CIVIL JUDGE
BENGALURU

At this stage, office endorsement reveals that learned counsel for defendant No.18 has filed an application under Section 151 of CPC seeking permission to file written statement by recalling order dated 22/03/2019 along with written statement of one set and another application under Section 148 of CPC to enlarge time for payment of cost imposed on 16/08/2019.

For service of copy of applications and objections by the plaintiff if any call on 19/02/2021.

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