

KABG040010942021



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC,
AT : BELAGAVI.**

PRESENT : Smt. Preeti L. Malavalli, B.B.A.,LL.B (Hons.)
Prl. Civil Judge & JMFC.,
Belagavi.

DATED THIS THE 9TH DAY OF JUNE-2025

ORIGINAL SUIT NO.648/2021

PLAINTIFFS :

1)	Smt. Zeenat Kousar Wd/o. Javed Ahmed Muradabadi, Age : 50 years, Occ : Service, R/o : H. No.711, Sector No.5, Srinagar, Belagavi.
2)	Shri. Asif Ahmed S/o. Javed Ahmed Muradabadi, Age : 24 years, Occ : Nil, R/o : H. No.711, Sector No.5, Srinagar, Belagavi.
3)	Smt. Sharika D/o. Javed Ahmed Muradabadi, A/m Sharika W/o. Wasim Mujawar, Age : 22 years, Occ : Housewife, R/o : H. No.711, Sector No.5, Srinagar, Belagavi.

Vs.

DEFENDANTS :

1)	Special Acquisition Officer, Rehabilitation of Hidkal Dam, Office at Suvarna Vidhan Soudha, Halaga Village, Dist : Belagavi.
2)	Shri. Chandragouda Maralingat Patil, Age : 50 years, Occ : Agriculture, R/o : 3 rd Road, Shivaji Nagar, Belagavi.
3)	Shri. Basavaraj V. Patil, Age : 50 years, Occ : Business, R/o : 3 rd Road, Shivaji Nagar, Belagavi.
4)	Shri. Shivamurthi S/o. Rayappa Kamate, Age : years, Occ : Advocate, R/o : M. M. Extension, Vantamuri, Belagavi.
5)	Smt. Bharti W/o. Shivamurthi Kamate, Age : years, Occ : Housewife, R/o : M. M. Extension, Vantamuri, Belagavi.

PARTIES TO I.A.NO.V

Applicants/Defendants No.4 & 5 :

1)	Special Acquisition Officer, Rehabilitation of Hidkal Dam and others.
	(Defendant No.1 by learned D.G.P., Defendant No.2 Ex-parte, Defendant No.3 by Shri. M. S. Masaguppi, Adv. Defendants No.4 & 5 by Shri. M. R. Yarazarvi, Adv.)

Vs.

Opponents/Plaintiffs :

1)	Smt. Zeenat Kousar Wd/o. Javed Ahmed Muradabadi and two others.
	(By Shri. S. G. Kakatkar, Adv.)

1.	Provision under which application is filed	U/O.VII Rule 11(a) & (d) of C.P.C.
2.	Relief sought for	Rejection of plaint
3.	The date on which the application is filed	14.11.2022
4.	Number of application	V
5.	The date on which the objections are filed by different opponent	17.04.2023
6.	The date on which the orders were passed on the said application.	09.06.2025

**ORDERS ON I.A.NO.V FILED BY DEFENDANTS NO.4 & 5
U/O.VII RULE 11(a) & (d) OF CODE OF
CIVIL PROCEDURE**

The defendants No.4 and 5 have filed the present application seeking rejection of plaint U/O. VII Rule 11(a) and (d) of C.P.C. on the ground that the present suit is barred by law of

limitation. In the affidavit annexed to the application, it is stated that the plaintiffs have approached the Court for the first time in the year 2021 by seeking relief of declaration against defendants No.1 to 5 to the effect that defendant No.2 has created a false document styled as 'sale deed' in favour of defendant No.3 on 21.04.2007 and it is null and void and not binding on the plaintiffs and further that the alleged document executed by defendants No.3 and 4 in favour of defendant No.5 is null and void and not binding on the plaintiffs and further that the plaintiffs are absolute owners of suit property. It is further stated that according to plaintiffs, the suit property was granted and allotted to the husband of plaintiff No.1 when the land belonging to the husband of plaintiff No.1 by name Javed at Savadatti, Belagavi was acquired by defendant No.1 in the year 1982, but the name of Javed or the present plaintiffs is not mutated in the City Survey records and also that the assignment of plot by defendant No.1 was never canceled subsequently. That the defendants No.2 to 4 by colluding with each other have created a false and fabricated sale deed in favour of defendant No.3 and the same is not binding on the plaintiffs. It is further stated by the defendants No.4 and 5 that the cause of action stated in Para No.9 of plaint that it first arose when the defendants No.2 to 4 by colluding with each other created false and fabricated sale deed dated 21.04.2007 and further when the City Survey Office did not accept the petition

of plaintiff No.1 to record her name in the RTC Extract maintained by Tahasildar and further when defendants No.4 and 5 did not heed the request of plaintiffs and started illegal construction over suit property. It is further stated that in the year 2007 itself, the plaintiff had knowledge about the sale deed executed by defendant No.2 in favour of defendant No.3 and they have slept over the matter until construction was made by defendant No.4 in the plot purchased from its legitimate owner. That as such the plaintiff do not have any manner of right, title or interest over the suit property. The defendant No.4 has further stated that when the allegations made in the plaint prima facie show that the suit is barred by any law or do not disclose any cause of action then the power U/O.VII Rule 11(d) of C.P.C. can be exercised and such suit should be nipped in the bud. On these grounds, the defendants No.4 and 5 have prayed to reject the plaint.

2. On the other hand, the plaintiffs have filed detailed objections to the said application and denied the entire contents of the affidavit annexed to the application and further stated that law of limitation is bundle of facts and circumstances and it cannot be treated as preliminary issue and that the plaintiffs have clearly stated that in the lock-down period the defendants No.4 and 5 started to put up construction over the suit property and though the plaintiffs approached them and requested not to put up such construction, they did not heed the request of the

plaintiffs and continued the construction work. They have further stated that the suit is not barred by law of limitation because though it has been pleaded in the plaint that false documents were created in the year 2007, the cause of action lastly arose when the plaintiffs made request to defendants not to make any illegal construction over suit property and as such it requires trial to come to a conclusion regarding the question of limitation. On these grounds, the plaintiffs have prayed to dismiss the present application with costs.

3. Heard the counsel for defendants No.4 and 5 and counsel for plaintiffs. Perused the application, objection, plaint and documents on record.

4. The following points arise for my consideration :

- i) Whether the application deserves to be allowed ?
- ii) What order ?

5. My answer to above points are as under :

Point No.1 : In the Negative.

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

REASONS

6. **Point No.1 :** The gist of the application filed by the defendants No.4 and 5 is that the suit of plaintiffs is not

maintainable since it does not disclose cause of action and the suit is barred by law of limitation. It is well settled principle of law that while considering the application for rejection of plaint, the Court should see only the averments of plaint and for that purpose there cannot be any addition or subtraction. In the present case, the plain reading of plaint reveals that the plaintiffs are claiming to be the owners of suit property and according to them, the suit property was allotted to the husband of plaintiff No.1 on 30.09.1982 and the Tahasildar, Belagavi certified the name of husband of plaintiff No.1 under mutation No.10805 dated 06.10.1982 and since then the plaintiffs have been in possession of suit property. It is further pleaded in the plaint that the City Survey records did not show the name of husband of plaintiff No.1 though the said allotment made in his favour was never canceled by defendant No.1 authority. According to plaintiffs, the defendants No.2 to 4 have colluded with each other and have created false and fabricated documents styled as 'sale deeds' dated 21.04.2007 and 10.10.2019 in favour of defendant No.3 and defendants No.4 and 5. The plain reading of the plaint further reveals that in the year 2017 the plaintiffs approached the City Corporation and City Survey Office, but the revenue authorities refused to record the names of plaintiffs in the record of rights and thereafter the plaintiffs issued public notice cautioning the public not to deal with the suit property in any manner and thereafter

defendant No.4 took unadvantage of the fact that his name was appearing in the City Survey Office and started to put up permanent structure over suit property and then the plaintiffs approached defendant No.4 not to indulge in illegal activities. Hence, at this stage the plaint reveals that only after the year 2018 the plaintiffs came to know that the defendants No.4 and 5 were putting up construction over suit property by making encroachment thereon. As such, the question of title to the suit property needs to be ascertained by this Court and the plaint shows sufficient cause of action to file the present suit.

7. It is pertinent to note that cause of action is a legal claim that an individual brings against another person and it is bundle of facts that give rise to a claim enforceable in the Court of law. In the present case also, the plaint reveals the cause of action for filing this suit as aforesaid. Further, it is the contention of the defendants that the suit is barred by law of limitation. According to defendants No.4 and 5, the alleged sale deeds which the plaintiffs claim to be not binding on them, are of the years 2007 and 2019 and the suit is filed in the year 2021 and as such the suit is not filed within the limitation period. However, it is pertinent to note that the question of limitation is a mixed question of law and fact in cases of the present nature. No doubt Article 58 and 59 of Limitation Act prescribes the period of limitation to obtain the relief of declaration or to file suit to set aside an instrument, as three

years. Article 58 states that the said period of limitation begins when the right to sue first accrues and Article 59 states that the said period of limitation accrues when the facts entitling the plaintiff to have the instrument canceled or set aside first becomes known to him. It is well settled that the question of limitation is mixed question of law and fact and it differs from case to case based on the facts and circumstances of the case. In the present case though the plaintiffs have sought to declare the sale deeds of the year 2007 and 2019 said to have been executed by defendants as not binding on them and to declare that they are absolute owners of the suit property, it requires evidence to come to a conclusion as to when the plaintiffs came to know about the alleged execution of sale deeds by the defendants. When such is the case, the plaint cannot be rejected on the ground of limitation when it is a mixed question of law and fact. This is because the issue of limitation cannot be decided without recording evidence, which requires a full trial.

8. The learned counsel for defendants No.4 and 5 has relied upon the decision of Hon'ble Apex Court in **Raghwendra Sharan Singh Vs. Ram Prasanna Singh (dead) by L.Rs., reported in AIR 2019 SC 1430**, wherein it is held that *the suit would be clearly barred by limitation under Article 59 of Limitation Act when a document is challenged after more than 20 years*. He has also relied on the decision of Hon'ble High Court of Karnataka in **D. L.**

Kannan (dead) Vs. Ambarish Reddy and others, reported in 2023 (4) KCCR 3063 (DB) to contend that *the plaintiffs were aware of the fact that construction was undertaken by defendants in suit property and as such the plaintiffs were not in possession and further that the suit filed after lapse of more than 10 years is clearly beyond period of limitation under Article 58 of Limitation Act.* He has also relied on the decision of Hon'ble High Court of Karnataka in **M. S. Jagadeesh and others Vs. B. J. Jayasanthosh and another, reported in HCR 2024 Kant. 972,** wherein it is held that *if plaint does not disclose cause of action, nip at the bud is the rule.* He has also relied on the decision of the Hon'ble Apex Court in **Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) dead through legal representatives and others, reported in 2020 SCC 366,** wherein it is held that *the Court has to find whether plaint discloses real cause of action or illusory cause of action created by clever drafting and it has to exercise its drastic power under Rule 11 of Order VII to reject the plaint.* He has further relied on the decision of the Hon'ble High Court of Karnataka in **M/s. Metropoi Overseas Limited Vs. Sri. H. S. Deekshit and others, reported in 2022 (1) KCCR 13** wherein it is held that *limitation is mixed question of law and fact, but if meaningful reading of the plaint discloses that suit is ex facie barred by limitation, then the Court has to reject the plaint.*

The said decisions do not come to the aid of defendants since the plaint prima facie discloses the cause of action to file the suit and the rights of parties over the suit property needs to be decided in this suit and the question whether the suit is barred by limitation as contended by defendants No.4 and 5, can be ascertained only upon a full fledged trial after receiving evidence in that regard. Hence, the plaint cannot be rejected at the threshold without holding trial on the question of limitation. Accordingly, it cannot be said that the plaint deserves to be rejected for not disclosing cause of action or for being barred by law of limitation. Therefore, I answer **Point No.1 in the Negative.**

9. Point No.2 : For the above discussed reasons, I proceed to pass the following :

ORDER

***The application i.e., I.A.No.V filed
by defendants No.4 and 5 U/O.VII Rule
11(a) and (d) of C.P.C. is hereby rejected.
No order as to cost.***

(Dictated to the stenographer directly on computer, revised by me & after corrections pronounced in the open Court on this the 9th day June-2025.)

**(Smt. Preeti L. Malavalli)
Prl. Civil Judge & JMFC,
Belagavi.**