

**IN THE COURT OF THE PRL CIVIL JUDGE & JMFC.,
ATHANI**

PRESENT

**Sri. Onkaramurthy H.,
B.Com., LL.B.,
I Addl. Civil Judge & JMFC., Athani.
C/C.Prl. Civil Judge & JMFC., Athani.**

Dated this 12th day of February 2025.

O.S. No. 133/2024

1. Smt.Sujata D/o. Madhukar
Badigear, Age: 49 years, Occ:
Housewife, R/o. Desarhatti, Tq:
Athani, Dist Belagavi.

...Plaintiff

V/s.

1. Sri. Hanamant Ramu Badigear,
Age: 51 years, Occ: Carpenter
R/o: Desarhatti, Tq : Athani, Dist
Belagavi and another.

...Defendants

I.A. No.II

1. Sri. Hanamant Ramu Badigear,
Age: 51 years, Occ: Carpenter
R/o: Desarhatti, Tq : Athani, Dist
Belagavi.

..Applicant / Defendant. No.1

(D-1 Represented by Sri.K.H.Awati, Advocate)

Vs

1. Smt.Sujata D/o. Madhukar
Badigear, Age: 49 years, Occ:
Housewife, R/o. Desarhatti, Tq:
Athani, Dist Belagavi.

.....Opponent /plaintiff

(Represented by Sri. M.L.Pujari, Advocate)

ORDER ON I.A.II

The defendant No.1 has filed the application U/o. VII Rule 11(a) to (d) R/w Sec.151 of CPC seeking an order to reject the plaint on the ground that, the suit of the plaintiff is barred by law of limitation.

2. In the affidavit annexed to the application it is stating that the present suit is filed by the plaintiff seeking for the relief of declaration and injunction. Plaintiff is not paid proper court fee and she submit the written application before the Executive officer of the Taluk Panchayat dated: 24-05-2014 and 26-06-2014 in respect of suit schedule properties. And same are pending for consideration. At this stage, she filed the present suit after 10

years of submit said applications. Therefore suit of the plaintiff is barred by law of limitation. Further submitting that, the plaintiff should issue 60 days prior notice to the defendant No.2 U/Sec.289 of Panchayat Raj Act. Neither the plaintiff did not issue any such notice and nor file any application U/s.80 (2) of CPC for dispense of issue notice. And there is petition before Taluk Panchayat in respect of suit property and this court is not having jurisdiction to try this case. Hence he pray for rejection of plaint.

3. The plaintiff filed objections to above said application wherein she has contending that, the above said application is not maintainable under law and facts. Further contending that, issuance of notice U/Sec.289 of Panchayat Raj Act is required when the suit filed against the Panchayat Development Officer, but in the present case there is no any relief against the defendant No.2. And the plaintiff is seeking declaration and injunction against the defendant No.1 and the defendant No.2 is only the formal party in the present suit. Therefore, it is not

required to issue 60 days prior notice. Hence she pray for rejection of the said application.

4. I have perused the plaint averments and documents produced by the plaintiff along with the plaint.

5. On the basis of the contents of plaint and contentions raised by the defendants, the following points arise for determination:

POINTS

1) Whether the suit is barred by law of limitation?

2) What order?

6. My answer to the above aforesaid points are as follows:

Point No.1 In the Negative,

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

REASONS

7. **Point No.1:** The defendant has filed above said application under order VII rule 11 (a) to (d) R/w Sec.151 of CPC

seeking for rejection of plaint on the ground that, the suit of the plaintiff is barred by law. The applicant submitting that, plaintiff is filed a present suit for the relief of declaration and perpetual injunction, but she was filed an application before the Taluk Panchayat dated: 24-05-2014 and 26-06-2014, same are pending for decide. But the plaintiff is filed the present suit after 10 years of submitting the above said application without issue 60 days prior notice to defendant No.2. The plaintiff filed objections wherein she denied the entire averments of the affidavit annexed to the above said application and pray for reject the same.

8. Before I go to discuss the merits of the application, I would like to rely the relevant provision of law. Under order **VII Rule 11 of CPC** held that, 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 under value 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 papers 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, fails 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 to comply Sub Rule 2 of Rule 9.

9. The object of order VII Rule 11 is that, if the suit is no cause of action is disclosed or suit is barred by any law can be rejected, where the litigation was utterly vexatious and abuse of process of court. If any one of the condition mentioned under the rule were found to exist thus saving the defendants onerous and hazardous task of contesting a non maintainable suit during the course of protracted litigation and where the suit was instituted without proper authority.

10. In exercise of power under this provision the court would determine if the assertion made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case was rejecting the plaint at the threshold is made out and it lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The provision states that, the plaint shall be rejected if any of the ground specified in Clause (a) to (e) are made out. If the court finds that the plaint does not disclosed the cause of action or suit is barred by any law, the court has no option but to reject the plaint.

11. In the present application or suit the defendant mere submitting that suit of the plaintiff is barred by law. On the ground that the plaintiff was submitting the petition or application dated:24-05-2014 and 26-06-2014 before the Taluk Panchayat, same are pending for decide. But, he did not submit any documents to shows that, such application was submitted

by the plaintiff and the said petition is pending before Taluk Panchayat. However, it is not ground to rejection of plaint under above said provision. Further the applicant submitting that, the present suit filed without issuance of 60 days prior notice to the defendant No.2. The records shows that the plaintiff seeking relief against the defendant No.1 and the defendant No.2 is only formal party. Moreover, one more application is filed by the plaintiff to pray permission to strike out the defendant No.2. Therefore, the ground which urged by the applicant is not comes under order VII Rule 11 of CPC and the contention which taken by the defendant No.1 cannot be consider at this stage, it may come to conclusion after the trial. Hence in the opinion of this Hon'ble of this court that the applicant is not made out any grounds to allow in the said I.A. Hence I answer the Point No.1 in the Negative.

12. **Point No.2:** In the light of the discussion made above, I proceed to pass the following;

ORDER

The application filed by the
defendant No.1 U/o. VII Rule 11(a) to (d)
R/w Sec.151 of CPC is hereby rejected.

No order as to costs.

(Dictated to the stenographer directly on computer, typed by her,
corrected by me and then pronounced in the Open Court on this **12th day of
February, 2025**).

(Sri. Onkaramurthy H.)

I Addl. Civil Judge & JMFC., Athani.
C/C.Prl. Civil Judge & JMFC., Athani.