

KABG300000872019



**IN THE COURT OF THE SENIOR CIVIL JUDGE &
ADDL. MACT, BAILHONGAL**

Dated this the 4th Day of September 2023

PRESENT:

Smt. Usharani. R. B.A.L., LL.M.,
Senior Civil Judge and Addl. MACT.,
Bailhongal.

Original Suit No.12/ 2019

Smt. Dyamawwa @ Deepa W/o Mahantesh
Budashetti,
Age: 41 Years, Occ: Household and Agriculture,
R/o: Guruwarpeth, Kittur,
Tq: Bailhongal, Dist: Belagavi.

.... Plaintiff

(By Sri. B.F.P., Adv.)

- V/s -

1) Shri. Somalingappa S/o Gurulingappa Humbi,
So called A/s Basappa Humbi,
Age: 59 years, Occ: Agriculture,
R/o: Avaradi, Tq: Bailhongal,
Dist: Belagavi.

2) Smt. Gangawwa W/o Somalingappa Humbi,
Age: 52 years, Occ: Household,

R/o: Avaradi, Tq: Bailhongal,
Dist: Belagavi.

3) Sri. Mahantesh S/o Somalingappa Humbi,
Age: 32 years, Occ: Agriculture,
R/o: Avaradi, Tq: Bailhongal,
Dist: Belagavi.

4) Sri. Umesh S/o Somalingappa Humbi,
Age: 28 years, Occ: Agriculture,
R/o: Avaradi, Tq: Bailhongal,
Dist: Belagavi.

5) Kumari: Laxmi D/o Somalingappa Humbi,
Age: 26 years, Occ: Nil
R/o: Avaradi, Tq: Bailhongal,
Dist: Belagavi.

..... Defendants

(By Sri. M.N.K., Adv.)

PARTIES TO INTERLOCUTORY APPLICATION No.V

Applicant/ Defendant No.1:	1) Shri. Somalingappa S/o Gurulingappa Humbi, So called A/s Basappa Humbi, Age: 59 years, Occ: Agriculture, R/o: Avaradi, Tq: Bailhongal, Dist: Belagavi.
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// Vs. //

Opponent/ Plaintiff	Smt. Dyamawwa @ Deepa W/o Ma- hantesh Budashetti, Age: 41 Years, Occ: Household and Agri- culture,
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R/o: Guruwarpeth, Kittur,
Tq: Bailhongal, Dist: Belagavi.

ORDER ON IA No.V

Defendant No.V has filed IA No.V under Order 7 Rule 11 of CPC seeking rejecting the plaint for false cause of action and on the ground that the suit is barred by limitation.

2. In the accompanying affidavit defendant No.1 has sworn to the fact that the plaintiff has filed false suit for declaration that she is the absolute owner of the suit suit property and to declare adoption deed dated 23.02.94 is void ab-initio. The suit is not tenable and is barred by limitation. Plaintiff had also filed a partition suit in O.S. No.92/2016 before the Hon'ble Senior Civil Judge, Soundatti on 20.09.2016 and in the plaint it is pleaded that an adoption deed is concocted by the plaintiff. Therefore it is apparent that plaintiff was aware of the adoption deed of the year 1994 and it is already challenged in the earlier suit. Therefore suit for similar relief is hit by Order 2 Rule 2 of CPC.

3. It is further contended that the adoption took place in the year 1970 and it is registered on 25.09.1994. There was a litigation in respect of VPC No.20 of Awaradi village. During the pendency of the suit his father died and plaintiffs have been brought on record as LRs of his adoptive father. Thereafter the plaintiff and adoptive mother filed additional written statement and submitted that the deceased defendant No.1 has a son and he is not impleaded and suit is barred for non-joinder of parties. Therefore IA No.8 was filed and he was brought on record. The adoption deed was marked as Ex.P6. Therefore the plaintiff had full knowledge about the adoption deed and therefore the suit of the plaintiff is barred by limitation. Therefore the plaintiff cannot maintain the suit for declaration and cause of action pleaded is imaginary and not real. Therefore the plaint is to be rejected.

4. Plaintiff has filed objections to IA No.V on the ground that the application is not tenable under Order 7 Rule 11 of CPC, only the plaint pleadings is to be read and referred as a whole and not the written statement or objections raised. There is no reason to reject the plaint. The intention of the defendant is only to procrastinate the case. The

case is posted for defendant's evidence and to drag on the matter this IA has been filed. Suit is not hit under Order 2 Rule 2 of CPC. Only the averments made in the plaint are germane to cull out the cause of action to file the suit under Article 58 of Limitation Act. Plaintiff has recently come to know about the illegal entries in the name of defendant in the revenue records and therefore there is cause of action. Suit is within the time from the date when right to sue first accrued. The court has also framed issues regarding question of limitation and it is a mixed question of fact and law and plaint cannot be rejected at the threshold. Therefore the suit is to be decided as per Section 9 of CPC.

5. Heard arguments both sides. Perused documents on record.

6. The point that arises for consideration is :

1) Whether the IA No.V deserves to be allowed?

7. My findings on the above point is in the negative for the following

REASONS

8. **Point No.1:-** This is a suit filed by the plaintiff seeking the relief of declaration about adoption deed dated 23-02-1994 as null and void and to declare plaintiff as absolute owner of the suit properties. The plaintiff has shown cause of action in the plaint as January 2019 when the defendants got entered their names in the revenue records and refused to enter the name of the plaintiff.

9. On perusal of the plaint it is apparent that plaintiff has filed the present suit seeking relief of declaration that she is the absolute owner in possession of the suit A and B Schedule properties, for declaration of adoption deed dated 23.02.1994 is null and void and illegal and does not bind upon the right, title of the plaintiff and for consequential permanent injunction.

10. On perusal of the plaint it is apparent that there is a pleading that the adoption deed was concocted. It is specific case of the plaintiff that the suit properties are self acquired properties of father of the plaintiff Sri Basappa Shivappa Humbi who died on 25.09.1994 leaving behind the plaintiff and his widow Irawwa who are the only Class-I legal heirs.

11. According to the plaintiff the adoption deed dated 23.02.1994 is concocted and mutation entries are effected which are not valid. The properties are illegally transferred under mutation extracts and no title is conveyed to defendant No.1. Father of the plaintiff has not adopted the defendant No.1 and therefore the adoption deed is null and void. Further it is averred that the plaintiff was a minor at the time of creation of adoption deed and cause of action arose in January 2019 when the defendant illegally got entered, their names in the revenue records and panchayat records and tried to alienate the properties.

12. On perusal of the plaint, it is apparent that the suit for declaration of title and that adoption deed is null and void and consequential relief of injunction.

13. The learned counsel for the plaintiff has filed a copy of the order passed by the Assistant Commissioner, Bailhongal in RA No.24/2019 dated 06.08.2021, wherein it shows that the present plaintiff had filed appeal under Section 136 (2) of the Karnataka Land Reforms Act, 1964 challenging the

mutation entries and appeal came to be dismissed on the ground that right shall be agitated before the Civil Court.

14. According to the defendants the suit is barred by limitation. Plaintiff had filed a partition suit in O.S. No.92/2016 before the Hon'ble Senior Civil Judge, Soundatti on 20.09.2016 and in the plaint it is pleaded that an adoption deed is concocted by the plaintiff. Therefore plaintiff was aware of the adoption deed of the year 1994 and it was already challenged in the earlier suit. Therefore suit for similar relief is hit by Order 2 Rule 2 of CPC. It is further contended that the adoption took place in the year 1970 and it is registered on 25.09.1994. There was a litigation in respect of VPC No.20 of Awaradi village. During the pendency of the suit his father died and plaintiffs have been brought on record as LRs of his adoptive father. Thereafter the plaintiff and adoptive mother filed additional written statement and submitted that the deceased defendant No.1 has a son and he is not impleaded and suit is barred for non-joinder of parties. Therefore IA No.8 was filed and he was brought on record. The adoption deed was marked as Ex.P6. Therefore the plaintiff had full knowledge about the

adoption deed and therefore the suit of the plaintiff is barred by limitation. Therefore the plaintiff cannot maintain the suit for declaration and cause of action pleaded is imaginary and not real. Therefore the plaint is to be rejected.

15. The learned counsel for the defendant has produced the copy of plaint filed in OS No.92/2016 filed before the Hon'ble Senior Civil Judge, Soundatti which goes to show that the present plaintiff Dyamawwa has filed the suit for partition in respect of A and B Schedule properties.

16. Apparently, the suit property in O.S. No.92/2016 were different properties. The properties mentioned in the present suit are different. In O.S. No.92/2016 RS No.369, 441, 442, 490, 89/1 landed properties situated at Hosur and Yardal are shown as A Schedule and house properties are Hosur properties in RS No.57, 404A, 403, 401A. The suit properties in OS No.92/2016 and the present suit are different properties.

17. In OS No.92/2016 the present plaintiff has no doubt pleaded that the adoption deed is concocted by defendant claiming that he is adopted

son and he has sold one of the suit property in RS No.89/1.

18. In para No.7 of the plaint there is clear pleading that the adoption deed is created and mutation entries are effected. It is also pleaded that the plaintiff was a minor at the time of adoption. It is argued that OS No.96/2016 is still pending consideration.

19. The learned counsel for the defendant has relied on ruling reported in **ILR 2006 Kar. 1740** in the case of **Veerabhadrayya R. Hiremath and others Vs. Irayya A.G. Basayya Hiremath**, wherein it was observed that, “ Section 16 of Hindu Adoptions and Maintenance Act, 1956 – Adoption – Plea of Fraud- who can challenge – Held – In the normal circumstances, adoption can be challenged either by the natural parents of the boy or by the adoptive parents or by the child who has been given in adoption. But, plaintiff is stranger to the defendant. If really a fraud had been played nothing prevented the parties from filing a suit for cancellation of the adoption. It is not open to the plaintiff to challenge the adoption, 6 years after the

death of defendants adoptive father. Therefore, there is no cause of action to file the suit.”

20. Per contra, the learned counsel for plaintiff has relied upon the rulings as follows;

(i) In the Judgment Civil Appeal No.5641/ 2021 in the case of Salim D. Agboatwala and others Vs. Shamalji Oddhavji Thakkar and others, wherein it was observed that, “As observed by this court in P.V. Guru Raj Reddy Vs. P. Neeradha Reddy and others, the rejection of plaint under Order VII Rule 11 is a drastic power conferred on the Court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation. When a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order VII Rule 11.

Again as pointed out by a three member bench of this Court in Chhhotanben Vs. Kiritbhai Jalrushnabhai Thakkar, the plea regarding the date on which the plaintiffs gained knowledge of the

essential facts, is crucial for deciding the question whether the suit is barred by limitation or not. It becomes a triable issue and hence the suit cannot be thrown out at the threshold.

(ii) In Judgment RFA No.1767 / 2014 (PAR) in the case of Smt. Prameela N., W/o Krishna Reddy Vs. Sri. L. Mahadevaiah S/o Late Lingaiah, wherein it was held that, “ In 2015 (3) KCCR 2754 (DB), wherein it was held that, when in the plaint the plaintiff specifically avers that the suit is filed within the time of limitation and hence the suit is in time, the Court cannot embark upon an enquiry on an application filed by the defendant under Order 7 Rule 11 (d) to find out whether the statement is correct or not and then decide the said issue. The plaint to be rejected on the ground of bar of limitation under Section 3 what has to be seen is only the plaint averments. If the plaint averments do not disclose that the suit is barred by limitation, then the question of rejecting the plaint under Order 7, Rule 11 (d) would not arise. When the defendant raises the plea of bar of limitation, the Court is bound to frame an issue regarding limitation. As the issue regarding limitation cannot be tried as a preliminary issue, the said issue has to be decided after recording of

evidence upon all the issues framed in the suit including the issue regarding limitation. It is only thereafter the Court could decide the question whether the suit is barred by the law of limitation. Therefore, the question of the Court going into the question of bar of limitation on an application filed under Order 7, Rule 11 (d) CPC would not arise. Rejection of the plaint on the ground that the suit is barred by limitation is exfacie illegal and cannot be sustained. In that view of the matter, the order passed by the trial court cannot be sustained.”

(iii) In the Judgment Civil Appeal No.1848 of 2022 in the case of Sri Biswanath Banik and another Vs. Smt. Sulanga Bose and others, wherein it was held that, in the case of Ram prakash Gupta Vs. Rajiv Kumar Gupta and others in (2007) 10 SC 59, wherein it was held that, in paragraph 21 it is observed that, As observed earlier, before passing an order in an application filed for rejection of the plaint under Order 7 Rule 11(d), it is but proper to verify the entire plaint averments. The above mentioned materials clearly show that the decree passed in Suit No.183 of 1974 came to the knowledge of the plaintiff in the year 1986, when suit NO.424 of 1989 titled Assema Architech V. Ram Prakash was filed in

which a copy of the earlier decree was placed on record and thereafter he took steps at the earliest and filed the suit for declaration and in the alternative for possession. It is not in dispute that as per Article 59 of the Limitation Act, 1963, a suit ought to have been filed within a period of three years from the date of the knowledge. The knowledge mentioned in the plaint cannot be termed as inadequate and incomplete as observed by the High Court. While deciding the application under Order 7 Rule 11, few lines or passage should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import. We are of the view that both the trial court as well as the High Court failed to advert to the relevant averments as stated in the plaint”.

(iv) In the Judgment Civil Appeal No.4080 of 2014 in the case of Kuldeep Singh Pathania Vs. Bikram Singh Jaryal, wherein it was observed that, “In Mayar (H.K.) Ltd., and others Vs. Owners and parties, Vessel M.V. Fortune Express and others, this court has dealt with a similar issue, paragraph-12 reads as follows;

“12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the

allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which required determination by the Court, the mere fact that in the opinion of the judge the plaintiff may not succeed cannot be a ground for rejection of the plaint....”

21. The rulings relied by both sides are aptly applicable to the present case.

22. It is a settled principle of law that while considering a case U/o.7 Rule 11 of CPC., the Court has to look into mere averments of the plaint and not beyond the plaint.

23. It is necessary to peruse the Order 7 Rule 11 regarding the rejection of plaint. As per Order 7 Rule 11 of CPC., it reads -

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, 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 comply with the provisions of Rule 9.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

24. Order 7 Rule 11 deals with rejection of plaint in a series of circumstances and clauses with regard to rejection of the plaint where it does not disclose the cause of action and clause with regard to the suit barred by any law. Thus, Order 7 Rule-11 provides that, plaint shall be rejected wherein the suit appears from the statement in the plaint to be barred by any law.

25. According to defendant the cause of action is imaginary. Since plaintiff had challenged adoption deed dated 23.02.94 as void ab-initio the suit is not tenable and is barred by limitation since Plaintiff had also filed a partition suit in O.S. No.92/2016 before the Hon'ble Senior Civil Judge, Soundatti on 20.09.2016 in which the same adoption deed was challenged.

26. It is beneficial to rely on the following rulings:

(i) **AIR 2006 Supreme court 1828** in the case of **Mayar (H.K) Ltd. And Ors V/s Owners and parties Vessels M.V. Fortune Express and Ors.** wherein it is observed that, "(A) Civil Procedure (5 of 1908). O.7,R.11-plaint- cannot be rejected on basis of allegations made by defendant in his written statement-plaint disclosing cause of action - Require determination by court - Mere fact that in opinion of Judge, plaintiff may not succeed, cannot be ground to reject plaint. Further it is observed that, Order 7 Rule. 11 Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be

correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but where the pleadings relied on are in regard to misrepresentation, fraud, willful default, undue influence or of the same nature.

(ii) **AIR 1996 Supreme Court 2140** in the case of **State of Orissa V/s Klockner and company and others, with Orissa mining Corporation, V/s Klockneer and Co. and others, with M/s Klockner and company V/s Orissa Mining Corporation Ltd. And others**, wherein it is observed that, “(A) foreign awards (Recognition and Enforcement) act (45 of 1961), S.3 – invoking of S. Tribunal falling within scope of arbitration agreement-party invoking arbitration agreement, except filing application for rejection of plaint in suit filed by opposite party not taking any step, in legal proceedings – application for rejection of plaint cannot be constructed as any step in legal proceedings – it is no bar to invoking of S.3 AIR 1985 SC 1156, following

B Civil P.C. (5 of 1908), O.7,R.11(a) rejection of plaint-validity – case of the applicant is that plaintiff has no cause of action applicant specifically not

pleading that plaintiff does not disclose any cause of action – Court not maintaining distinction between plea that there was no cause of action for suit and plead that plaintiff does not disclose cause of action rejecting plaintiff – Rejection is not proper.

It is further observed that, from the discussion in the order it appears that the learned trial judge has not maintained the distinction between the plea that there was no cause of action for the suit and the plea that the plaintiff does not disclose a cause of action. No specific reason or ground is stated in the order in support of the finding that the plaintiff is to be rejected under O.7.R.11(a), from the averments in the plaintiff. It is clear that the plaintiff has pleaded a cause of action for filing the suit seeking the reliefs stated in it. That is not to say that the plaintiff has cause of action to file the suit for the relief sought that question is to be determined on the basis of materials (other than the plaintiff) which may be produced by the parties at appropriate stage in the suit.

27. The rulings are aptly applicable to the case on hand.

28. As per plaintiff averments there is cause of action to file the suit. Suit is filed for declaration and

rectification of revenue records and it is a settled principle of law that, while considering an application U/o.7 Rule 11 of CPC., mere averments of the plaintiff has to be looked into and not the defense put-forth by the defendants in the written statement.

29. In the judgment reported in **ILR 2008 KAR 3993 i.e. Hanumappa and Others vs Chikkannaiah and Others** wherein while discussing Order 7 Rule 11 it was held that, *for the purpose of deciding the application under Order VII Rule 11 (a) and (d), averments in the plaint are material- And the plea taken if any, by the defendants in the written statement would be wholly irrelevant at that stage of the proceedings-To reject the plaint on the ground that it does not disclose a 'Cause of Action'. The trial Court should look at the plaint and nothing else-FURTHER HELD, It is now settled position of law that, clever drafting creating illusions of cause of action, are not permitted in law and a clear right to use, should be shown in the plaint.*

30. The defendant has contended that there is no cause of action to file the suit and the plaint discloses cause of action. Since the suit is filed for declaration of title there is cause of action. The

question of earlier partition suit and knowledge of the plaintiff about the adoption deed and bar of limitation are aspects that has to be marshalled at the time of evidence. The contentions raised by the defendant no 1 is a matter to be proved in trial. On mere pleadings in the plaint there is no bar under Order VII Rule 11 of CPC. At this stage since the suit is filed for declaration of title and that adoption deed is not binding on the plaintiff, there is no ground to invoke Order VII Rule 11 of CPC. The averments of the plaint at this stage does not disclose any material so as to reject the plaint U/o.7 Rule 11 of CPC. The defense in the written statement can be looked into only after trial. Thus, I answer point for consideration in the negative and, I proceed to pass the following:

ORDER

The Interlocutory Application
No. V filed by the defendant no 1
Under Order 7 Rule 11 of CPC., is
hereby dismissed without costs.

(Dictated to the stenographer, computerized by him and corrected by me, signed and pronounced by me in the Open court on this the 4th day of September 2023)

(Smt Usharani R),
Senior Civil Judge
Bailhongal.

