

IN THE COURT OF PRL. CIVIL JUDGE AND J.M.F.C,
AT: BAILHONGAL

Present : Shri. Manu Sharma S.P.,
B.A. LAW. LL.M.
Prl. Civil Judge & JMFC,
Bailhongal.

DATED; THIS THE 03rd DAY OF February 2022

O.S.NO.163/2020

1. Sri. Rajasheka S/o Basavanneppa Ingalagi

...Plaintiff.

(By Shri.B.B. Venkannavar, Advocate)

V/s.

1. Sri.Girish S/o Sangayya Hiremath
and others.

....Defendants.

(D. No. 1 By Shri. B.B Dotarad., Advocate)

(D. No. 2 and 3 By Shri. A.G.Karabannavar, Advocate)

(D.No. 4 to 10 Exparety)

Applicant/Plaintiff:

1. Sri. Rajasheka S/o Basavanneppa Ingalagi

V/s.

Opponents/Defendants:

Sri.Girish S/o Sangayya Hiremath and others.

ORDER ON IA No.II

Defendant No. 1 has filed application under order VII Rule 11(a) to (d) R/w Sec. 151 of CPC seeking to reject the plaint stating that there is no cause of action, court fee paid is insufficient, suit is barred by law and plaintiff has suppressed martial facts.

2. Application is supported by affidavit of defendant No.1

Defendant No.1 has stated in affidavit that, plaintiff has filed the suit seeking relief of declaration and injunction. Defendant No. 1 has further stated that, plaintiff has no locus standi to challenge the sale deed executed by Shri Shivanad S/o Basavennappa Ingalagi in favour of defendant No.1. Defendant No.1 has further stated that plaintiff being not class-I legal heir of aforesaid Shri Shivanad S/o Basavennappa Ingalagi is not having any right to claim preferential right to purchase the suit property. Defendant No.1 has further stated that, suit property is absolute and self acquired property of Shri Shivanad S/o Basavennappa Ingalagi which had exclusively fallen into his share in the family partition effected between plaintiff and defendant No. 2 to 10. Defendant No.1 has further stated that, plaintiff has filed the suit by suppressing material facts. Defendant No.1 has further stated that, originally suit property belonged to Shri Basavennappa Ingalagi who is father of defendant No. 2 to 10 and thereafter partition took place between legal heirs

of Basavennappa Ingalagi and Prabhu Ingalgi in respect of joint family and ancestral properties in the year 1978 as per M.E.C.No. 10710 dated 12/06/1978 and in the said partition land bearing Sy. No. 505/1+2+3/2 came to be allotted to the share of legal heirs of Basavennappa Ingalagi and thereafter partition took place between legal heirs of Shri Basavennappa Ingalagi i.e., plaintiff and defendant No. 2 to 10 in respect of their joint family and ancestral properties. Defendant No.1 has further stated that, in the said partition suit property came to be allotted to the share of Shri Shivanad S/o Basavennappa Ingalagi and as such his name came to be entered in all the revenue records. Defendant No.1 has further stated that, as on the date of filing the suit plaintiff and defendant No. 2 to 10 do not constitute Hindu undivided joint family. Defendant No.1 has further stated that, plaintiff has falsely claimed that, there is no partition effected between plaintiff and defendant No.2 to 10 after death of Shri Basavennappa Ingalagi. Defendant No.1 has further stated that, thereafter Shri Shivanad S/o Basavennappa Ingalagi agreed to sell the suit property to defendant No.1 under agreement of sale for his family and legal necessity and also to discharge loan obligation and accordingly he sold the suit property to defendant No.1 as per registered sale deed dated 03/10/2011 and handed over the physical possession of the same and by virtue of the sale deed name of defendant No.1 came to be entered in the revenue records and since then defendant no.1 is in possession and enjoyment of suit property. Defendant No.1

has further stated that, defendant No. 5 to 10 have signed the said sale deed as witnesses and now they are colluded with plaintiff in filing the present false suit. Defendant No.1 has further stated that, the suit is barred by time and plaintiff cannot claim preemption after lapse of 10 years. Based on said contentions defendant No.1 has prayed for allowing the application by rejecting the plaint.

3. Plaintiff has filed objection to the application contending that, regarding court fee necessary issue will have to be framed and evidence is to be recorded and same cannot be considered at this stage. Plaintiff has further contended that, in order to decide, whether suit is barred by law issue is required to be framed touching upon the said point. Plaintiff has further stated that, in the present suit court has not framed any issue as such application filed by defendant No. 1 is to be treated as premature one. Plaintiff has further stated that, cause of action is shown in the plaint itself and correctness of cause of action is to be decided after recording evidence. Plaintiff has further stated that, defendant No.1 has sold the suit property to some 3rd party although plaintiff had expressed his willingness to purchase the property. Based on the said contentions plaintiff prayed for rejection of the application.

4. Based on application, counter and materials placed on record, the following points arise for my consideration:-

1] Whether defendant No.1 has made out grounds for rejection of plaint?

2] What Order?

5. Heard arguments and perused records of the case.

6. My findings on the above points are as hereunder:-

Point No.1:- In the Negative

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

REASONS

7. **Point No.1:-** Defendant No. 1 has filed application under order VII Rule 11(a) to (d) R/w Sec. 151 of CPC seeking to reject the plaint stating that there is no cause of action, court fee paid is insufficient, suit is barred by law and plaintiff has suppressed material facts. For better appreciation of the application it is profitable to refer to order 7 rule 11 of CPC

“ 11. 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 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 to be barred by any law;

(e) Where it is not filed in duplicate;]

(f) Where the plaintiff fails to 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 for 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.] “

8. The defendant No.1 has contended plaintiff does not disclose cause of action. But it is to be noted that, plaintiff has stated cause of action in para No.6 of the plaint. Further in para no. 4 of the plaint plaintiff has assailed sale deed dated 03/10/2011. It is settled law of the land that, the entire plaint has to be read as a whole to decide as to whether plaint discloses cause of action or not. Therefore, combined reading of para No. 4 and 9 of the plaint clearly discloses cause of action. It is to be noted that, while considering application for rejection of plaint the court has to consider only whether plaint discloses cause of action or not and court shall not consider the correctness of cause of action when deciding present application. The correctness of the cause of action is a matter to be considered at the time of evidence. Even as per aforesaid provision plaint is to be rejected if it does not disclose cause of action. But as already discussed cause of action is disclosed in para No. 4 and 9 of the plaint. Hence defendant No.1 has not made out ground for rejection of plaint on the ground of non disclosure of cause of action.

9. Another limb of contention of defendant No. 1 is that court fee paid is insufficient. As per above said provision question of rejecting the plaint on the ground of insufficiency of court fee arises only when plaintiff fails to pay the deficit court fee after being directed by the court to correct the valuation. It is clear from the said provision that defendant No.1 cannot directly invoke order 7 rule 11b for rejection of

plaint without extending opportunity to plaintiff to correct the valuation. Therefore, the said contention of defendant No.1 is premature one and hence contention of defendant No.1 claiming rejection of plaint on the ground deficit court fee also cannot be accepted.

10. Another limb of contention of defendant No.1 is that plaintiff has suppressed material facts without disclosing previous partition effected between plaintiff and defendant No. 2 to 10. The defendant No.1 has contended that, plaintiff is not member of Hindu Undivided Joint Family as on the date of filing the suit. The defendant No.1 has contended that, in a family partition suit property has fallen to share of Shivanand Ingalagi and aforesaid Shivanand Ingalagi sold the suit property to defendant No. 1 for his family and legal necessity and also for the purpose of clearing loan and defendant No. 1 is purchaser of the suit property for valuable sale consideration as such said sale is valid. It is important to note that, whether previous partition was effected in the family or not and whether such partition is valid or not and whether sale deed executed by Shivanada Ingalagi in favour of defendant No.1 is valid or not etc., are matters to be decided after recording evidence. Unless said aspects are decided at the relevant stage it cannot be inferred that plaintiff has suppressed material facts. Moreover, suppression material facts is not the reason for rejection of plaint as provided under 7 rule 11 of CPC. Therefore, the said contention of the defendant No.1 that plaint is to be

rejected for suppression of material facts cannot be accepted.

11. The defendant No.1 has also contended that, suit is barred by limitation. It is his contention that sale deed is registered on 03/10/2011 in favour of defendant No. 1 and said sale deed being challenged in the year 2020 and as such suit is barred by limitation. It is to be noted that, in para No. 4 of the plaint plaintiff has narrated that when he received notice from ADLR Bailhongal he came to know that revenue records are mutated based on sale deed on 03/10/2011 and said sale deed is created document. Needless to state that, point of limitation is both mixed question of law and fact. Whether plaintiff came to know about sale deed and revenue records of the suit property recently is to be adjudicated in evidence. Therefore the said question is matter of fact and as such at this stage it is not possible to hold that suit barred by law of limitation.

12. Learned counsel for defendant No.1 said decision reported in AIR 1981 Rajasthan 16 wherein it was held that preferential right in agricultural land is not available U/Sec. 22 of Hindu Secession Act. But Honorable Supreme Court of India in Baburam V. Santokh Singh (deceased) through LRs, Civil Appeal No. 2553/2019 decided on 7-03-2019 has held that, section 22 of Hindu Succession Act is applicable even if property in question is an agricultural land. Further, it is to be noted that, in the present suit plaintiff has sought declaration

to declare sale deed as not binding on him and preferential right to purchase suit property is claimed only as consequential relief to the main relief which is dependent upon and incidental to the main relief. As already discussed validity of the sale deed is a matter of trial and it can not be decided while deciding application for rejection of plaint. Learned counsel for defendant No.1 cited two decisions reported in AIR 2000 Gauhati 117 and AIR 1988 Orissa 285 wherein it was held that right of preemption cannot be claimed when property has been already partitioned. Here it is important to note that, as already discussed whether suit property is already partitioned or not is a matter to be decided in evidence and same cannot be treated as ground for rejection of plaint. Hence, said decisions are also not applicable to the case on hand. The learned counsel for defendant No.1 cited another decision reported in 1996(6)KAR LJ 139 wherein it was held that, preemption is lost once the transaction is completed and available only at the stage of proposal. As already discussed in the present case preemption is claimed as consequential relief. Validity of sale deed being the main relief and same is matter to be decided in evidence. Here question of availability of preemption depends on the validity of the sale deed which is to be decided in evidence. It is because if after trial sale deed is declared as invalid or not binding on the plaintiff right of preemption may re-accrue to the plaintiff. Hence, sale transaction is to be subjected to scrutiny with respect to its validity and therefore, it is necessary to adjudicate both

claims made by the plaintiff by recording evidence. The said decision can be pressed into service only when sale transaction is proved to be valid and not until then. Under such circumstances none of the reliefs claimed by the plaintiff cannot be held to be barred by law at this stage. In this view of the matter said decision cannot help defendant No.1 in support of his application seeking rejection of plaint.

13. Learned counsel for defendant No.1 cited another decision reported in 2002 volume 10 supreme court cases 501. In that case court had held that plaint itself showed that execution of sale deed was within the knowledge of plaintiff and rejection of plaint was justified. But in the present case plaint itself does not indicate that plaintiff was aware of the sale deed in question and on the other hand plaintiff has clearly pleaded that, recently he came to know about sale deed and creation of revenue records. In that case plaintiff himself had admitted in the plaint that he had knowledge about sale deed which is not so in the present case. So facts of that case are totally different and hence not applicable to the case on hand.

14. Learned counsel for defendant No.1 cited another decision reported in AIR 2012 Supreme Court 3912 wherein it was held that if plaint does not disclose cause of action plaint can be rejected. It is to be noted that, as already discussed in the present case plaint discloses cause of

action. It is already made clear that, correctness of cause of action and disclosure of cause of action are two distinct concepts and as per order 7 rule 11 plaintiff shall disclose cause of action and its correctness is not the criteria to decide this application. Hence, said decision is also not applicable to the case on hand. Learned counsel for defendant No.1 cited another decision reported in 2019 volume 2 civil court case 417(SC) wherein it was held that if suit is barred by limitation plaintiff can be rejected. In the present case knowledge of the plaintiff regarding execution of sale deed is determining factor to decide as to whether suit is barred by law of limitation. The knowledge of the plaintiff being one question of fact can be gathered only after recording evidence. Therefore, facts of that case and facts of this case are totally different and hence said decision is not applicable to the present case. Learned counsel for defendant No.1 cited another decision reported in 2019 volume 2 KCCR 1034 wherein it was held that while deciding application U.order 7 rule 11 of CPC averments made in the plaintiff shall alone to be considered and plaintiff can not claim injunction against defendant who is absolute owner of the property. It is to be noted that, ownership of the property is a matter to be considered at the time of evidence and it is not relevant for deciding this application. Hence, said decision is also not applicable case on hand. Learned counsel for defendant No.1 cited another decision reported in AIR 2020 Supreme Court 3310. In the said case sale deed was challenged beyond period of limitation on the ground of non

payment of sale consideration. But recitals in the sale deed indicated the payment of sale consideration. Therefore apparently from the material available on record in that case suit was held to be barred by limitation and bar of limitation could be made out from the material available on record in the said case without requiring any recording of evidence. But in the present case as already discussed knowledge of plaintiff about sale deed is question of fact requires to be decided in evidence and in the present case suit is not apparently appearing to be barred by limitation. Hence, said decision is not applicable to the case on hand. Learned counsel for defendant No.1 cited another decision reported in Civil Appeal No. 6363/2014. In that case also it was clear from the plaint averments that, plaintiff had knowledge about sale deed and considering the same it was held that suit was barred by limitation. But in the present case no such averments are found in the plaint indicating knowledge of plaintiff about sale deed in question. Hence, said decision is also not applicable to the case on hand. Learned counsel for defendant No.1 cited another decision in RSA No.764/2005 which is pertaining to right of preemption under section 22 of Hindu Succession Act. As already discussed preemption being consequential relief to the main relief also requires evidence to be recorded as preemption may re-accrue in the event of declaration sale deed as not binding. Learned counsel for defendant No.1 cited another decision reported in AIR 2007 Gauhati 70. In the said case Hon'ble High Court of Gauhati held that right of preemption is available only before

completion of transfer of property and section 22 of Hindu Succession Act is silent about what is the course of action to be adopted if transfer is already completed. Once again it is to be noted that, preemption is not the main relief in the present and it is claimed as consequential relief to the main relief and needless to state that result of consequential relief always depends upon the result of main relief and if sale deed is declared as void or not binding on the Plaintiffs on merits of the case, then the possibility of reaccredual of right of preemption cannot be ruled out. Further in the said case court held that defendant having independent right transferred his share in favour of 3rd party. Plaintiff being co-shares is not entitled to claim his preferential right over the suit land under section 22 of Hindu Succession Act. But in the present case the very right of the executant in executing the sale deed has been questioned and plaintiff has stated no partition as taken place in respect of suit property. Therefore, at this stage without recording evidence it is not possible to decide whether seller had absolute right to transfer the suit property. In that case individual share of family member i.e., defendant was already established, but in the present case trial is yet to take place. Hence, said case is not applicable this case. What is stated in the said case by the Hon'ble Court is that after partition if one sharer transfer his share over the suit property other sharer cannot claim preferential right. It indicates that when property is joint co-sharers can claim preferential right if one of the sharers proposes to transfer his share in the property. But in

the present case plaintiff has claimed that, no partition has taken place in respect of suit property. Hence, the said aspect is to be adjudicated upon by recording evidence. Under such circumstances said decision is to be held as not applicable to the case on hand. Thus viewed from any angle it is to be held that defendant No.1 has not made out grounds to reject the plaint. Hence, I answer Point No.1 in the Negative.

15. **POINT NO.2:-** For the reasons stated above I am of the opinion that, application is to be rejected with cost and hence I proceed to pass following:-

ORDER

Application filed by defendant No.1
under Order 7 Rule 11(a) to (d) R/w
Section 151 of CPC dated 04/03/2021 is
hereby rejected with cost of Rs. 1,000/-.

Cost shall follow the suit.

(Dictated to stenographer directly on computer corrected by me, then signed and pronounced in the open court on this the 3rd day of February 2022)

**Prl. Civil Judge & JMFC,
Bailhongal.**