



IN THE COURT OF SENIOR CIVIL JUDGE & J.M.F.C. KHANAPUR.

AT : KHANAPUR.

PRESENT

**SMT. ZAREENA,
B.Com., LL.B.(Spl).,
Senior Civil Judge and JMFC,
Khanapur.**

Original Suit No.43/2020

Dated this the 10th day of August, 2023

Plaintiff:-

1. Shri.Khachu s/o Narayan Balaji.

V/s

Defendants:-

1. Smt.Parvati wd/o Babali Balaji
and others.

I.A.No.3

Applicant/Plaintiff:-

1. Smt.Vaishali w/o Shrirang Katavati,
Age: 55 years, Occ: Business,

R/o: C/o Dr.Srirang Katwati, KLE
Hospital, Belagavi and others.

(By Shri.M.S.Desai, Advocate)

//V/s//

Opponents/Defendants:-

1. Shri.Khachu s/o Narayan Balaji,
Age: 60 years, Occ: Agriculture,
R/o: Kalmani, Now at : Piranwadi,
Tal: Khanapur, Dist: Belagavi.

(Shri.K.G.Kallekar, Advocate)

Orders on I.A.No.3

This application is filed by the defendant No.9 under Order 7 Rules 11(a) and (d) R/w Order 14 Rule 2 R/w Sec.151 of CPC, praying to reject the plaint as it does not disclose the cause of action and suit is barred by law of limitation.

- 2) In the supporting affidavit, the defendant No.9 has stated that, the plaintiff has filed the present suit for the relief of partition, separate possession and declaration. The averments made in the plaint does not disclose the cause of action to file the present suit. The plaint averments of para No.4 to 11 are

cleverly drafted to bring the suit within the period of limitation. Mere clever drafting the plaintiff cannot bring the suit within the period of limitation, if otherwise same is barred by law. The plaintiff has deliberately did not specifically mentioned the date of sale deeds in the plaint. The plaintiff knew that if he mentioned the date of execution of sale deeds in the plaint, then present suit clearly barred by time. The plaintiff deliberately did not specifically pray to set aside the registered sale deeds. The plaintiff knew and aware that if he would asked for such a specific relief, in that case, the suit would be dismissed at the threshold being barred by law and therefore deliberately the plaintiff specifically did not seek for the relief of quashing and setting aside the registered sale deeds in para No.15 of the plaint. The para No.15 does not disclose the declaration regarding which are the sale deeds that are not binding upon the plaintiff. The plaintiff is executant of the registered Sale deed in favour of Defendant No.9 and he has absolute knowledge regarding the same and therefore in order

to overcome the period of Limitation, he has taken a plea to create an illusory cause of action. The plea raised in the plaint is being meritless and devoid of any truth. There is no cause of action to institute the suit. The suit is clearly barred by law. Further stated that, I am advised to file the accompanying application in order to save the wastage of judicious time and labour. If the application is allowed then the plaintiff will not be put to any type of lose, hardship, inconvenience etc. On the contrary if the same is rejected then she will be put to loss, untold hardship more inconvenience etc. The plaintiff has unnecessarily dragged her to the Court by filing vexatious, frivolous and time barred suit with a malafide intention and oblique motive to harass her. Hence prayed to allow the application by rejecting the plaint with costs.

3) The plaintiff has filed his objections to the I.A.No.3 contending that, the application filed by the defendant is false, frivolous and not tenable in law. The defendants No.1 to 9 colluding with each other have filed this application. The

averments and allegations made out in the application is false and totally denied by the plaintiff in toto. Therefore the I.A.No.3 ought to be rejected with heavy costs. The present application is premature one and filed after belated stage as all the defendants have filed their written statement, the issues were framed and matter is posted for evidence of plaintiff. The present application is not maintainable in the eye of law as it is held by Hon'ble High Court in ILR 2017 Kar 3505. The averments and allegations made out in para of the affidavit filed by the defendant No.9 is false and totally denied by the plaintiff in toto. The say of the defendant No.9 that there is no cause of action arose as stated by the plaintiff as this is only imaginary and false one. Further the say of the defendant that he has filed the accompanying application for rejection of the plaint on the grounds that, suit is barred by law of limitation where it does not disclose the cause of action to file the suit. The plaint averments of para No.4 to 11 are cleverly drafting to bring the suit within the period of limitation etc., are false and totally

denied by this plaintiff in toto. Further the say of the defendant No.9 that the plaintiff has deliberately did not specifically mentioned the date of sale deeds in the plaint, then the present suit clearly barred by time etc., are false and totally denied by plaintiff in toto. On this count also the application filed by the defendant No.9 is liable to be rejected. If the present application is rejected no loss or hardship will be caused to the defendant No.9. On the contrary if the present I.A. is allowed then plaintiff will be put to heavy and irreparable loss. Hence prayed to dismiss the I.A.No.3.

4) Heard the arguments of both sides. Perused the entire materials placed on record.

5) On the basis of the said rival contentions, the following points arise for consideration:-

1. Whether the petitioner has made out grounds to reject the plaint on the ground of no cause of action and barred by limitation as sought in the application ?

2. What Order ?

6) My findings on the above points are as under:-

Point No.1 : In the negative

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

REASONS

7) **Point No.1:-** The defendant No.9 has filed this application U/O 7 Rule 11(a) and (d) R/w Order 14 Rule 2 R/w Section 151 of CPC with a prayer to reject the plaint on the ground of non disclosing of cause of action in the plaint for institution of suit and also on the ground that, the said suit is barred by limitation. In the sub joined affidavit filed along with the IA No.9, the defendant No.9 has stated that, the averments made in the plaint does not discloses the cause of action for institution of suit in clear terms. Further contended that, the averments made in para No. 4 to 11 of the plaint are cleverly drafted to bring the suit within the period of Limitation. Further it is stated that, the plaintiff has deliberately did not mentioned the date of execution of sale deeds in the plaint with an oblique motive to

bring the suit within limitation since, plaintiff knew and aware that, if he ask for such specific relief in the case then the suit would be dismissed at the threshold being barred by law of Limitation.

8) Further it is contended that, plaintiff has deliberately and specifically not sought the relief for setting aside the sale deeds in prayer column at para No.15 of the plaint. Further contended that, plaintiff has got specific knowledge regarding the execution of sale deeds in favour of the defendant No.9 since, he was also one of the executant of this document. Hence in order to overcome the period of limitation, plaintiff has taken plea to create imaginary cause of action. There is no cause of action to institute the present suit.

9) On the other hand the plaintiff has resisted the application by filing his objection wherein he denied all the allegations of affidavit filed by defendant No.9 along with application.

10) I have meticulously gone through the pleadings, application, affidavit filed along with I.A., objections, documents

and other materials placed on record. On careful perusal of the plaint at para No.11 it disclose the cause of action arose for filing of the suit as on 20.11.2019, when the plaintiff learnt that, the defendant is negotiating with 3rd parties and trying to alienate the suit schedule property to the stranger and also threatened to dispossess him from the suit schedule property. From the above para No.11 of the plaint one thing become clear that, the plaintiff has shown the actual cause of action for institution of suit against the defendants. Thus in view of the above pleadings the plaint cannot be rejected on the ground of “cause of action” U/O 7 Rule 11(a) of CPC as sought for by defendant No.9 herein. Moreover the “cause of action” are the bundle of facts which cannot be adjudicated at the threshold of the case.

11) The defendant No.9 has further sought the rejection of plaint U/O 7 Rule 11(d) on the ground that, suit of the plaintiff is barred by limitation. According to her plaintiff did clearly not pleaded in the plaint regarding the date, year of execution of sale deeds at para No.15 of the plaint, with an apprehension

that, his suit would be dismissed on the ground of limitation of the date and year of execution of sale deed shown in the plaint. Further contended that, the plaintiff himself is one of the vendor who executed sale deed in favour of defendant No.9 in respect of portion of suit land in the year 2000. Hence he has specific and personal knowledge regarding this execution of sale deed but intentionally not mentioned the date, month, year of execution of the sale deed in the plaint in order to overcome the period of limitation. But he has not produced the translated copy of sale deed dated 16.10.2000, she has produced zerox copy of the sale deed with list of document dated 3.9.2022 which is in Marathi language. Hence the contents of the same cannot be readable. More over in order to arrive at conclusion suit is barred by limitation, it requires trial. The plea of limitation is mixed question of law and facts which requires trial, at the threshold the plaint cannot be rejected on this ground.

12) The learned counsel for the defendant No.9 has placed his reliance on the following citations.

1. HCR 2017 Kant. 191 decided between Prameela N. (Smt.) V/s L. Mahadevaiah
2. AIR 2019 SC 1430 decided between Raghwendra Sharan Singh V/s Ram Prasanna Singh (Dead) by Lrs.
3. AIR 2022 SC 4724 decided between C.S. Ramaswamy V/s V.K. Senthil and others.

13) I have carefully perused the above decisions of the Hon'ble Courts. I do respectfully agree with the above proposition held in those decisions on Order 7 Rule 11(b) and (d) of CPC. But the fact of the present case is different from the facts of the case decided by the Hon'ble Courts. Hence the said decisions relied by the defendant No.9 counsel are not applicable to the case on hand at this juncture. In view of the above facts and reasons I hold **Point No.1 in the negative.**

14) **Point No.2:-** In view of my findings on above points No.1 to 3, I proceed to pass the following...

ORDER

I.A.No.3 filed by the defendant No.9

under Order 7 Rules 11(a) and (d) R/w

**Order 14 Rule 2 R/w Sec.151 of CPC, is
hereby rejected.**

(Partly dictated and partly directly dictated to the Stenographer on Computer, the same is revised, corrected by me and then pronounced in the Open Court on this the 10th day of August, 2022).

**sd/-
(Smt. Zareena)
Senior Civil Judge & JMFC.,
Khanapur.**