

KABI700006872014



**IN THE COURT OF CIVIL JUDGE AND JMFC
AT SIRUGUPPA.**

Dated this the 1st day of June 2024.

Present:

Sri. HAJIHUSENSAB YADAWAD *B.Com, LL.B,*
Civil Judge & JMFC,
Siruguppa.

OS.NO.68/2014

Plaintiff: Sri. K.Shivappa
V/s

Defendants: Sri. Kadlekai Lingappa & others

Parties to I.A.No.X

Applicant: K.Yerriswamy
Defendant No.3
(By **Sri. V.P.K.**– Advocate)
V/s

Opponenst: Sri. Shivappa
Plaintiff
(By **Sri.N.A.S.** –Advocate)

ORDERS ON IA No. X FILED UNDER ORDER 7 RULE 11 (d)

R/W. SEC. 151 OF CPC

The counsel for Defendant No.3 filed IA No.X U/O 7 Rule 11 (d) R/w Sec.151 of CPC., to reject the plaint filed by the plaintiff as the same is barred by law of limitation.

2. The said application is accompanied with an affidavit of Defendant No.3, wherein he contended that the plaintiff has filed false suit against defendant. The plaintiff has contended at para No.7 of plaint that, he himself and defendant No.1 are having possession and enjoyment over suit properties till today. Further the defendant No.1 learnt that the defendant No.2 has obtained loan. The defendant No.1 executed document in favour of defendant No.2. Actually intention is to avail loan to mortgage, wherein without the knowledge of defendant No.1, the defendant No.2 has executed the registered sale-deed instead of mortgage and the said land security purpose only but not having sale transaction and not handed over the possession by the defendant No.1 in favour of defendant No.2. Further he contended about the contention of plaint para No.8, wherein the plaintiff has contended about sale deed executed by defendant No.1 in favour of defendant No.2 dated 22.03.2002 and sale-deed executed by defendant No.2 in favour of defendant No.3 dated 09.02.2010. Further the plaintiff submitted the same para about illegal registered sale-deeds as above mentioned are not binding on him and the plaintiff is not witness to the above sale deeds. Further he has

contended about the plaint para No.9, wherein the plaintiff alleged that he has no knowledge about the sale transaction or execution of sale deed of suit properties till he obtained certified copies of ROR and mutation copies.

3. Therefore, the suit of the plaintiff is time barred and not maintainable as per law. The plaintiff ought to have filed this suit within three years from the date of execution of registered sale-deed by defendant No.1 in favour of defendant No.2 dated 22.03.2002. But the plaintiff has filed suit after lapse of 12 years from the date of above sale-deed. Further he contended about the sale-deed executed by defendant No.2 in favour of defendant No.3 dated 09.02.2010 and sale-deed executed by defendant No.3 in favour of defendant No.4 dated 03.06.2014 and the sale-deed executed by defendant No.4 in favour of defendant No.5 dated 28.10.2020 and stated that at present defendant No.5 is the absolute owner of suit properties. Further it is stated that the plaintiff has shown false cause of action which is not correct. The suit ought to have filed within 3 years as per Section 58 of Limitation Act, but the plaintiff has filed suit after lapse of 12 years. Further it is stated that the suit of the plaintiff without seeking the relief of

cancellation of sale-deed executed in between defendant No.1 to 5 as null and void. Even otherwise the plaintiff is not entitle to seek the relief of cancellation of sale-deeds as the same is also time barred plaintiff has to seek the relief of cancellation of sale-deeds within 3 years from the date of execution of sale deed. Hence, the suit of the plaintiff is barred by law of limitation. On these grounds he prayed to reject the plaint by allowing the application.

4. On the contrary, the counsel for Plaintiff filed objections to the said application and contended that the application is not maintainable either in law or on facts. Further it is stated that the rights of defendant No.3 are died as he has sold suit properties in favour of defendant No.4. Therefore, the provision of 7 Rule 11(d) of CPC., is not applicable to the defendant No.3. Further he contended about the facts that the suit properties are coparcenary properties and the plaintiff is having share over it. On these grounds, the plaintiff prayed to dismiss the application with exemplary costs of Rs.5,00,000/-.

5. Heard arguments of both sides.

6. The following points are arose for my consideration.

1. Whether the suit of the plaintiff is barred by law of limitation?

2. What Order?

7. The findings of this Court on above point are as here under :

Point No.1 : In the **Negative**

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

REASONS

8. **Points No.1:-** The present application is filed to reject the plaint as the suit is barred by law of limitation. According to the defendant No.3 the first sale-deed with respect to suit properties was executed in the year 2002 ie., sale-deed executed by defendant No.1 in favour of defendant No.2 dated 22.03.2002. Later the suit property was sold of defendant No.2 to defendant No.3, from defendant No.3 to defendant No.4 and from defendant No.4 to defendant No.5. Lastly, the defendant No.5 has purchased the suit properties and he is the owner of suit properties. Therefore, according to Section 58 of Limitation Act, the plaintiff ought to have filed this suit within 3 years from the date of execution of first sale-deed ie., within 3 years from 22.03.2002.

9. It is pertinent to note that the plaintiff has approached this court seeking the relief of partition contending that he is having his legitimate share over suit property which have been alienated by defendant No.1 without his knowledge and consent. Further it is the contention of plaintiff that the suit schedule properties are his family ancestral properties which are available for partition and therefore he sought the relief of partition before this court. Further the plaintiff has contended that he came to knowledge about the execution of sale-deeds by defendant No.1 in favour of defendant No.2 when he obtained certified copies of sale-deeds ie., in the year 2014. Soon after getting copies of sale-deeds he has filed the present suit.

However it is the contention of defendant No.3 the suit of the plaintiff is barred by law of limitation as per Section 58 of Limitation Act. Therefore, it would be appropriate to go through the concerned Provision which reads as under:

PART-III SUITS RELATING TO DECLARATIONS

Art.58

Description of suit	Period of limitation	Time from which period begins to run
To obtain any other declaration	Three years	When the right to sue first accrues

10. According to the above Provision to seek declaration with respect to any other relief except the declaration sought under Article 56 and 57, should be filed within 3 years when the right to sue first accrues. Therefore, it is clear that the period of 3 years would begin when the right to sue first accrues to the plaintiff to seek cancellation of sale-deed. Applying the above Provision to the case on hand, it is the contention of plaintiff that he came to know about the transaction about the sale deed in the year 2014 and soon after coming to his knowledge he has filed present suit on 11.04.2014. Therefore, it is clear that the right to sue to file the present suit accrued to the present plaintiff in the year 2014. But the plaintiff has to establish his case that he came to knowledge about the execution of sale-deeds soon after obtaining Certified copies of sale-deed ie., in the year 2014. However, the plaintiff has filed IA No.XI to add relief of with respect to declaration of sale deeds as null and void. This court has already allowed the said application which was filed for amendment of plaint to add the prayer of above declaration, therefore the burden is upon the plaintiff to establish his case. However, it is the contention of plaintiff that the suit schedule properties are ancestral

properties and he is having legitimate share over it. Hence, an opportunity should be provided to the plaintiff to establish his case. Therefore, there are no grounds to hold that the suit of the plaintiff is barred by law of limitation. Hence, I answer **Point No.1 in the Negative.**

11. Point No.2:- Having thus discussed in detail referred above, I proceed to pass the following.

ORDER

The IA No.X filed by Defendant No.3 U/O 7

**Rule 11(d) R/w Sec.151 of CPC is hereby
rejected.**

No order as to costs.

(Dictated to the Stenographer, after transcribed, computerized, typed by him, corrected, corrected, signed and then pronounced by me in open Court, on this 1st day of June, 2024)

**(HAJIHUSENSAB YADAWAD)
Civil Judge & JMFC.,
Siruguppa.**