

KABK210003752006



**IN THE COURT OF PRI. CIVIL JUDGE & J.M.F.C, MUDHOL,
AT: MUDHOL.**

PRESENT: Sri.Lagama S.Hukkeri.

B.A., LL.B (Spl),

Pri. Civil Judge & JMFC., Mudhol.

Dated this the 14th Day of August-2025

O.S.No.311/2006

Plaintiffs:

1. Yallappa S/o Siddappa Kagi
(Since deceased by his LR's)
& others.

(By Sri.IHA, Advocate)

-V/s-

Defendants:

1. Sangappa S/o Balachandra Birajanavar
& others.

(D-1 By Sri.PMV, Advocate)

(D-3 By Sri.MBH, Advocate)

(D-2 ex-parte)

:: I.A.No.V ::

Applicant/Defendant No.3:

1. Gangappa S/o Muttappa Kanabur.
Age: 44 years, Occ: Agriculture,
R/o: Belagali, Tal: Mudhol, Dist: Bagalkot.

-V/s-

Opponents/Plaintiffs:

1. Yallappa S/o Siddappa Kagi
(Since deceased by his LR's)
- 1A) Smt. Yallavva W/o Yallappa Kagi.
Age: 64 years, Occ: Household work,
R/o: Belagali, Tal: Mudhol, Dist: Bagalkot.
- 1B) Shivappa S/o Yallappa Kagi.
Age: 41 years, Occ: Agriculture,
R/o: Belagali, Tal: Mudhol, Dist: Bagalkot.
- 1C) Smt. Bandavva W/o Vittal Nayak (Masalyar)
Age: 45 years, Occ: Household work,
R/o: Bhantanur, Tal: Mudhol, Dist: Bagalkot.
- 1D) Smt. Mahadevi W/o Sadashiv Santi.
Age: 43 years, Occ: Household work,
R/o: Belagali, Tal: Mudhol, Dist: Bagalkot.

ORDER ON IA NO.V

The applicant/defendant No.3 has filed this application under Order VII Rule 11 (a) and 11 (d) R/with Sec.151 of CPC, praying to reject the plaint on the ground of non disclosure of cause of action and same is barred by law of limitation in the interest of justice and equity.

2. In the affidavit accompanying the application filed by the defendant No.3 stated that, original plaintiff has filed this suit for the relief of declaration and consequential relief of injunction and family of plaintiff is no way concerned to the family of defendant

No.2. Though original plaintiff and defendant No.2 are natural brothers, deceased plaintiff went in adoption to one Sabu Nandeshwar of Saudi Village of Athani Taluka District Belagavi and long back joint family severance was taken place. Further it is stated that One Siddhappa Parsappa Kagi had 4 sons by name Yallappa, Gangappa, Shivalingappa, defendant No.2 and one daughter by name Sattewwa. Among the said children, deceased plaintiff Yallappa went in adoption to one Sabu Nandeshwar of Saudi Village of Athani Taluka long back prior to 1965. After the adoption of original plaintiff by name Yallappa, he ceases to be the member of his generative family and he has acquired the name and properties of his adoptive family at Saudi Village. Such being the case plaintiff has no share in the present suit property.

3. Further it is stated that propositus Siddappa Kagi i.e. father deceased plaintiff and defendant No.2 died on 05.06.1965 and after his death, names of his legal heirs came to be entered in the records of the suit property and other family properties as per ME No. 1922 dated 12-12-1965, which is certified on 17,01.1966. Further it is contended that deceased plaintiff, who had already went in adoption, has gave consent for certification of ME No.1922. Therefore, the names of three sons of the

propositus, excluding the present plaintiff and daughter, came to be entered as legal heirs in the records of the suit property. The said entry is final and conclusive and at no point of time they are challenged by anybody else. In the year 1985 there was partition among the legal heirs of Propositus Siddappa and at that time excluding the deceased plaintiff, Partition was effected on 27.07.1985 and accordingly ME No. 6846 came to be certified. The Survey No.211/4 originally measuring 3 acres 16 guntas came to be divided into 3 equal squares among the Gangappa, Shivalingappa and defendants No.2 each of them were got 1 acre 05 guntas of land in Survey No. 211/4.

4. Further it is stated that deceased plaintiff who went in adoption, sold all his properties acquired from adoptive family in Saudi Village and very recently he returned to the Belagali Village and started to reside there. Further it is stated that plaintiff has obtained two Aadhar cards one describing himself by the genitive family name as Yallappa Siddappa Kagi and another describing himself by his adoptive family name as Yallappa Sabu Nandeshwar. The true and correct name of deceased plaintiff is Yallappa Sabu Nandeshwar. Further it is stated that original plaintiff Yallappa Sabu Nandeshwar has

purchased 1/3rd share in Survey No. 211/4A and another land from Gangappa Siddappa Kagi by registered sale deed Dated 02.08.1993 and another 1/3rd share was purchased from his another brother by name Shivalingappa by registered sale deed dated 19.11.1995 The said sale deeds are evidence by ME Nos. 10990 and 10698 dated 26.11.1994 and 10.01.1996 and deceased plaintiff has become owner of 2/3rd share in the original Survey No. 211/4A measuring 3 acres 16 guntas.

5. Further it is stated that defendant No.2 has sold the land bearing R.S.No. 211/4A/2 measuring 1 acre 05 guntas to the defendant No.1 Sangappa Balachandra Birajanavar by registered sale dated 18.06.2004 for valuable consideration of ₹ 1,04,000/- and defendant No.2 put the defendant No.1 in possession of the said property. Subsequently defendant No.1 for his family necessity sold the suit land bearing RS No.211/4B/2 and another land bearing RS No.211/5B measuring 2 acres to the present defendant No.3 for valuable consideration of ₹ 3,34,000/- through registered sale deed dated 15.09.2006 and accordingly name of the defendant No.3 came to be entered in the RTC extract of the suit land and another land. Accordingly, MR. No. 427/2006-07 came to certified on 15.11.2006. Further

it is stated that after purchase of the suit land, defendant No.3 has made improvements by levelling, by providing irrigation facilities by investing lakhs of rupees. Further it is stated that defendant No.3 is the bona fide purchaser of the suit property for value without notice. Since inception deceased plaintiff and after his demise, present plaintiffs have not challenged any of the mutation entries effected from time to time and also they have not challenged the sale deeds. Hence suit of the plaintiff is barred by law of limitation and also plaint of the plaintiff does not disclose the cause of action to file present suit, but only to harass the defendants, plaintiff has filed this false and bogus suit making false allegations and suppressing material facts. Further it is contended that if the present application is allowed, no loss or harm will be caused to the other side and on the other hand,, if the present application is not allowed, he will be put to serious loss and hardship. On these grounds defendant No.3 prays to allow the present application.

6. The plaintiff has filed objection to the present application denying all its averments and contended that deceased plaintiff by name Yallappa Siddappa Kagi has filed this suit for the relief of declaration seeking the decree of declaration that plaintiff is

the owner in actual possession of suit land bearing RS No. 211/4B/2 by canceling the alleged sale deed dated 18.06.2004 executed by defendant No.2 in favour of defendant No. 1. Further it is contended that the present suit came to be dismissed and being aggrieved by the judgment and decree passed in the present suit, original Plaintiff has prepared RA No.39/2007 before the Hon'ble Senior Civil Judge Mudhol and said appeal came to be allowed and judgment and decree passed by the trial Court was set aside. Further it is contended that being aggrieved by the order passed in RA No. 39/2007, defendant No.3 has prepared RSA No.5197/2013 before the Hon'ble High Court of Karnataka and Hon'ble High Court of Karnataka allowed the RSA No.5197/2013 and set aside the judgment and decree passed in RA No. 39/2007 and OS No. 311/2006 by the Hon'ble Senior Civil Judge Mudhol and this court respectively and remanded the matter to the trial court for fresh consideration in accordance with law. Further it is contended that as per the remand order this suit is taken on board and same is to be heard and decided on merits in accordance with law. Further it is contended that the original suit and appeal were heard, but the question of cause of action has not been raised by the defendant

No.3 since 2006, as such now he has no locus standi to claim the rejection of the plaint on this ground and further contended that cause of action means and includes bundle of events and which are clearly pleaded by the plaintiff in his plaint and as such the suit of the plaintiff discloses the cause of action. On these grounds, plaintiff prayed to reject the present application.

7. Heard the arguments of both sides and by perusal of pleadings, application and documents on record and written argument, following points arise for my consideration as under:

: P O I N T S :

1. Whether the applicant/defendant No.3 has made out sufficient grounds to reject the plaint U/Or. 7 Rule 11 (a) & (d) of CPC ?

2. What order?

8. My findings to the above points are as follows:

Point No. 1: In the Negative,

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

following....

: R E A S O N S :

9. **POINT NO.1:-** I have already narrated the facts stated in the affidavit annexed to the application and the objections filed by the plaintiffs to the above application.

10. The learned counsel for the defendant No.3 vehemently argued that original plaintiff and Defendant No.2 are natural brothers and original plaintiff went in adoption to one Sabu Nandeshwar of Saudi Village of Athani Taluka and long back joint family severance was taken place and original plaintiff is no way concerned to the family of defendant No.2. Further, it is vehemently argued that one Siddhappa Parashappa Kage had children by name Yallappa, Gangappa, Sivalingappa and present dependent No.2 and one daughter by name Sattewwa. The propositus Siddappa Kagi expired on 05.06.1965 and after his death, names of his legal heirs came to be entered in the records of the suit property as well as in the records of other family properties as per ME No. 1922 dated 12.12.1965 and deceased original plaintiff has gave consent for certification of ME No. 1922, and accordingly names of 3 sons of propositus Siddappa came to be entered in the revenue records of the suit property excluding the present plaintiff and daughter.

11. Further, it is vehemently argued that in the year 1985 partition took place among the legal heirs of propositus Siddappa and at that time, excluding the present plaintiff, partition was effected with respect to Survey No.211/4 measuring 3 acres 16

guntas and said land came to be divided into 3 equal shares among the Gangappa, Sivalingappa and defendant No.2 and each of them got 1 acre 05 guntas of land in the said survey number. Further it is vehemently argued that original plaintiff Yallappa has purchased 1/3rd share in Survey No. 211/4A and another land from Gangappa Siddappa Kagi through registered sale deed dated 02.08.1993 and another 1/3rd share was purchased from his another brother by name Shivalingappa through registered sale deed dated 19.11.1995 and accordingly original plaintiff has become the owner to the extent of 2/3rd share in the original Survey No. 211/4A measuring 3 acres 16 guntas. Such being the case, defendant No.2 sold the land bearing R.S.No.211/4A/2 measuring 1 acre 05 guntas to defendant No.1 Sangappa Balachandra Birajanavar through registered sale deed dated 18.06.2004 for valuable consideration and subsequently defendant No.1 has sold said property bearing R.S.No.211/4A/2 measuring 1 acre 5 guntas to the defendant No.2 and another land bearing R.S.No. 211/5B measuring 2 acres to the defendant No.3 for his family necessity through registered sale deed dated 15.9.2006. Accordingly defendant No.3 name came to be entered in the revenue records of the suit

land and another land as per MR No.427/2006-07 dated 15.11.2006. Further it is vehemently argued that after purchase of the suit land from defendant No.1, defendant No.3 has improved the said land by levelling, by providing irrigation facilities by investing lakhs together rupees. Further it is vehemently argued that defendant No.3 is the bona fide purchaser of the suit property for value without notice. Since inception original plaintiff and after his demise, present plaintiffs have not challenged any of the mutation entries effected from time to time and also they have not challenged the sale deeds. Hence suit of the plaintiffs is barred by limitation and plaint of the plaintiffs does not disclose the cause of action to file present suit and only in order to harass the defendants, plaintiff has filed present false and bogus suit by making false allegations and suppressing the material facts. On these grounds learned counsel for defendant No.3 prayed to allow the present application.

12. The learned counsel for the plaintiffs vehemently argued that original plaintiff by name Yallappa Siddappa Kage has filed present suit for the relief of declaration seeking the decree of declaration that plaintiff is the owner in actual possession of the

suit land bearing RS No.211/4B/2 by cancelling the alleged sale deed dated 18.06.2004 executed by defendant No.2 in favour of defendant No.1 and said suit came to be dismissed. Being aggrieved by the judgment and decree passed in the present suit, plaintiff has preferred RA No. 39/2007 before the Hon'ble Senior Civil Judge Mudhol and said appeal came to be allowed and judgment and decree passed by this court was set aside. Being aggrieved by the judgment and decree passed in RA No.39/2007, defendant No.3 has prepared RSA No.5197/2013 before the Hon'ble High Court of Karnataka and Hon'ble High Court of Karnataka has set aside the Judgments and decrees passed by first appellate court and trial court in the present suit and remanded the matter to the trial court for fresh trial in accordance with law. Further it is vehemently argued that original suit and regular appeal were heard, but the question of cause of action has not been raised by the defendant No.3 since 2006, as such now he has no locus standi to claim the rejection of plaint on this ground and cause of action means and includes bundle of events while which have been clearly pleaded by the plaintiff in his plaint and therefore plaint of the plaintiff discloses the cause of action to file the present suit. Further it is

vehemently argued that the defendant No.3 never alleged under which law the suit of the plaintiff is barred and as such on mere allegation, plaint cannot be rejected. On these grounds, the learned counsel for the plaintiffs prayed to reject the present application.

13. It is well settled principles of law that, while considering the application for rejection of plaint, plaint averments alone shall be looked into and not the contentions raised by the defendants in the written statement.

14. The Hon'ble Supreme Court in its decision in **Civil Appeal No.3500/2018 between Chhotanben and another -Vs- Kirit bhai Jalkrushnabhai Thakkar and others**, has observed that, " for the purposes of deciding an application under clauses (a) and (b) of Rule 11 of Order VII CPC, the averments in the plaint are germane: the pleas taken by the defendants in the written statement would be wholly irrelevant at the stage."

15. The Hon'ble High Court of Karnataka in **Civil Revision Petition No.100022/2018 between Venkappa @ Venkangouda -Vs- Ramanagouda & others**. At para No.13 held that:

"it is clear that to reject a plaint exercising power U/Or.VII Rule 11(a) of CPC what is require to

be seen is only the averments of the plaint and not the defence.”

Hence it is well established principle of law that, the plaint shall be rejected only on the basis of plaint averments and not by the contentions raised by the defendant in his written statement.

16. I have carefully gone through the contents of para No.1 to 17 of the plaint. The original plaintiff specifically contended that suit schedule property was fallen to his share in a family partition taken place among his brothers and since then to till date, he is in actual possession and enjoyment of the suit property. Further plaintiff specifically contended that he is an old aged illiterate person and defendant No.2 is his younger brother and defendant No.1 is neighbouring land owner of the suit property and he knows about the family plaintiff and defendant No.2. Further it is contended that in the last week of January 2006, Defendant No.1 attempted to obstruct the peaceful possession and enjoyment of the plaintiff and his family members over the suit property by denying the lawful title of the plaintiff and hence the plaintiff has verified the records with respect to the suit property and came to know that defendant No.1 and 2 after colluding with each other, have manipulated a

document styled as sale deed dated 18.06.2004 and original plaintiff has not sold the suit property to defendant No.1 on 18.06.2004. Further it is contended that original plaintiff was not in need of money and defendant No.1 and 2, after colluding with each other, have played fraud on the original plaintiff to engulf the suit property and manipulated a document styled as sale deed dated 18.06.2004 and defendant No.2 has misrepresented himself as a owner before the Registering Authority and executed the registered sale deed dated 18.06.2004 in favour of defendant No.2 with respect to the suit schedule property. Therefore plaintiff has contended that alleged sale transaction with respect to suit property between the defendant No.1 and 2 is void and illegal and same is not binding on him and till today he is in actual possession and enjoyment of the suit property to the knowledge of the defendants.

17. Further, in Para No.14 of the plaint, original plaintiff has contended that cause of action to present suit arose in the first week of this month, when the defendants attempted to obstruct peaceful possession and enjoyment of the plaintiff over the suit land by denying his lawful title over the same and thereafter. These contents of the plaint gave cause of action to the original

plaintiff to file present suit for the relief of declaration and consequential relief of permanent injunction with respect to the suit schedule property.

18. By considering the rival contentions, this Court carefully gone through the plaint averments and also the documents produced by the plaintiff. The bundle of facts pleaded coupled with documents shows that cause of action to the present suit arose in the first week of January 2006, when defendants attempted to obstruct peaceful possession and enjoyment of the original plaintiff over the suit schedule property. The defendant No.3 has contended that original plaintiff by name Yallappa went in adoption to one Sabu Nandeshwar of Saudi Village of Athani Taluka and as such joint family severance was taken place long back prior to 1965. Therefore after the demise of propositus Siddappa, with the consent of original plaintiff, only names of other legal heirs of propositus Siddappa came to be entered in the records of properties held by the deceased Siddappa and then they have effected partition and they have dealt with their properties as allotted in the partition as exclusive owners. Further defendant No.3 has contended that subsequently defendant No.2 has sold suit schedule property to defendant

No.1 for his family necessity on 18.06.2004 and thereafter he has purchased the suit property from defendant No.1. on 15.9.2006 for valuable consideration and accordingly from time to time mutation entries are certified. Since inception original plaintiff and after his demise, present plaintiffs have not challenged any of the mutation entries effected from time to time and also they have not challenged the sale deeds. Hence Suit of the plaintiff is barred by law of limitation and also plaint of the plaintiff does not disclose the cause of action.

19. At this stage, this Court cannot consider the averments of the application filed by the defendant No.3 as well as the documents produced by him because while deciding application filed under Order VII Rule 11 of CPC, Court has to consider only plaint averments and documents produced by the plaintiffs. The written statement and documents produced by defendant No.3 cannot be considered. Further, as per the plaint averments, defendant No.2 by representing himself as the owner of the suit schedule property sold the suit property in favour of defendant No.2 on 18.06.2004 and original plaintiff has filed present suit in the year 2006. Therefore it prima facie appears that the suit filed by the original plaintiff is within the period of limitation. Further

whether original plaintiff went in adoption or not and whether plaintiffs have got right and interest in the suit property or not will be decided after full fledged trial. Therefore this Court is of the opinion that defendant No.3 has failed to show that present suit of the plaintiff is barred by law of limitation and there is no cause of action arose to the present suit. **Hence I answer point No. 1 in the Negative.**

20. POINT NO.2:- For the foregoing discussion on point No.1, I proceed to pass the following:

:: ORDER ::

The interim application No.5 filed by the applicant/defendant No. 3 under Order VII Rule 11(a) and 11(d) R/with Sec.151 of CPC is hereby rejected.

No order as to costs.

(Dictated to the stenographer directly on the computer typed by her, corrected and then pronounced by me in the open court this the day of **14th Day of August-2025**)

**(Lagama S Hukkeri.)
Prl. Civil Judge & J.M.F.C.,
Mudhol.**

