

KABK610006352018



IN THE COURT OF CIVIL JUDGE & J.M.F.C.
AT BANAHAATTI

:PRESENT:

Miss. Shushma T.C.
B.Com., LL.B.,

Civil Judge & J.M.F.C., Banahatti.

Original Suit No.89/2018

Dated this, the 03rd day of March, 2025.

1. Ramazan Lalasab Malali and 2 others

.... Plaintiffs

- Vs -

1. Shantavva W/o Mallappa Baragadagi and 3 others

.... Defendants

: PARTIES TO I.A. No. V :

1. Shantavva W/o Mallappa Baragadagi,
Residing near Vaibhav Talkies, Namadev Galli,
Banahatti, Tq: Jamakhandi.
2. Bharati W/o Sunil Shetti,
R/o: Maddi Area, Ainapur, Tq: Raibag.
3. Shivappa S/o Mallappa Baragadagi,
Residing near Vaibhav Talkies, Namadev Galli,
Banahatti, Tq: Jamakhandi.

... Applicants/Defendant No.1, 2 & 4

(Represented by Sri. A.N.J. Advocate)

- Vs -

1. Ramazan Lalasab Malali
 2. Ayub Lalasab Malali,
 3. Shiraj Lalasab Malali,
- All are R/o: Banahatti, Tq: Jamakhandi.

.... **Opponents/Plaintiffs**

(Represented by Sri. A.J.V. Advocate)

Provision under which : U/o 7 Rule 11 of CPC
application is filed

Relief sought for : Rejection of plaint

Date of filing the application : 10.06.2024

Number of the application : I.A No.5

Date of filing objection : 17.09.2024

Date of pronouncement of : 03.03.2025
the order

: ORDER ON I.A. No.5 :

The defendant No.1, 2 & 4 have filed this application under Order 7 Rule 11 of CPC, with a prayer to reject the plaint as the suit is barred by law of limitation. This application is filed after framing of issues and prior to commencement of trial and after the rejection of I.A No.4 filed by defendant No.1, 2 & 4 U/sec.151 of CPC seeking to tey the

issue No.8 framed by the court with regard to question of limitation as a preliminary issue.

2. In support of this application, defendant No.1 has sworn to an affidavit stating that, she is swearing to this affidavit on behalf of herself and also on behalf of other applicants and stated that, plaintiffs have filed this false suit against them for the relief of specific performance of contract on the basis of created documents which are barred by law of limitation. It is submitted that, suit is filed in 2018 i.e., after lapse of 18 years on the basis of agreement dated 22.05.2000 and plaintiffs ought to have filed this suit within 2003 and have not given any notice to defendants and have created suit document and have filed this false suit against them and the suit is barred by law of limitation. It is submitted that, they are in possession of suit property and have not executed any agreement of sale with plaintiffs and they have no other properties except the suit property and they had no necessity to alienate the same to anybody. It is submitted that, suit is not maintainable and plaintiffs are not entitled for any reliefs. On these grounds, prayed to allow the application and thereby, to reject the plaint.

3. On the other hand, learned counsel for plaintiffs resisted the application by filing statement of objection and contended that, application is not tenable in the eyes of law and defendants had filed an application at I.A No.4 on 07.06.2022 praying to treat issue No.8 i.e., question of Limitation as preliminary issue and this court, after considering the objection filed to the said application and after hearing both sides, has rejected the application on 01.04.2023 stating that, question of deciding limitation is a mixed question of law and fact and thereafter, the case was fixed for leading evidence of plaintiff. Once again the defendant No.1, 2 & 4 have come up with this application seeking to reject the plaint and the prayer made in this application is one and the same with that of the prayer made in I.A No.4. As this court has already stated that, question of limitation is a mixed question of law and facts and cannot be decided without leading evidence of both parties, this application filed under Order 7 Rule 11 of CPC is not maintainable and deserves to be dismissed. It is contended that, defendants are intending to delay the result of this suit by filing one or the other applications. The plaintiffs have clearly stated as to when the cause of action

arose to them and the burden of issue No.8 is cast on defendants and they have to prove the same by leading evidence. Hence, prayed to take the evidence of both parties on all issues. On these grounds, prayed to reject the application.

4. Heard both sides and perused the plaint averments.
5. The points that would arise for my consideration are as under:
 1. Whether plaint deserves to be rejected as barred by law of limitation?
 2. What order?
6. 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 :

7. **Point No.1:** The contents of this application and statement of objection are discussed in detail in the above paragraphs and hence, I am directly discussing the matter in question. The plaintiffs have filed this suit for the relief of specific performance of contract against defendants based on two documents styled as agreement of sale dated 19.03.1999 &

07.04.2000. It is the case of plaintiffs that, one Pawvatewwa had agreed to sell suit property to their father for Rs.1,70,000/- and have received earnest amount of Rs.70,000/- and the defendants have also consented for the same and thereafter, Parvatewwa and defendants agreed to sell middle portion of suit property to the extent of 23 x22 ft. for Rs.1,70,000/- and have received earnest amount of Rs.1,00,000/- and further Pawvatewwa executed another sale agreement agreeing to sell the suit property to the father of plaintiffs for Rs.3,45,000/- and had received earnest amount of Rs.2,50,000/- and agreed to execute sale deed by receiving balance amount. It is stated that, plaintiffs are in possession of suit property and defendants are trying to evict them from the same without due process of law. Hence, they have filed this suit. In the cause of action column, plaintiffs have stated that, according to them cause of action arose on 07.04.2000 and on 22.05.2000 when Parvatewwa and defendants had agreed to sell suit open space on 21.05.2003 to plaintiffs by receiving earnest money of Rs.2,50,000/- and further arose on 17.04.2018 when plaintiffs had issued legal notice calling defendants to execute sale deed and when the same was

refused by defendants and lastly arose during 1st week of May 2018 when defendants threatened plaintiffs to dispossess them from suit property and from time to time.

8. On the other hand, defendant No.1, 2 & 4 have filed their written statement opposing the entire plaint and contended that, father of plaintiffs continued in possession of property as a tenant and after his death, plaintiffs did not vacate the same in spite of several demands made by defendants and they illegally claimed through suit agreement which is unregistered and created suit document and they had never agreed to sell suit property to them at any time. It is contended that, plaintiffs are in illegal possession of suit property and suit is not maintainable.
9. Based on rival contentions of parties, issues are framed in this suit and when the case was posted for plaintiff evidence, applicants have come up with this application U/o 7 Rule 11 of CPC seeking to reject the plaint as the suit is barred by limitation. Before advertng to the appreciation of application on hand, at this juncture, it is necessary to look into the provision of Order 7 Rule 11 of CPC which reads as under:

“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 a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned 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 to comply with the provision 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.”

From the plain reading of this order, it is clear that, when plaint does not disclose cause of action and when any statement made in the plaint appears to be barred by any law, suit has to be rejected.

10. On perusal of Order 7 Rule 11 of CPC., makes it clear that, relevant facts which needs to be looked into for deciding an application, are the averments in the plaint alone. For the purpose of deciding an application under Rule 11 of Order 7 of CPC., the averments in the plaint are the germine. The plea taken by the defendant in written statement would be wholly irrelevant at this stage.
11. On perusal of plaint averments, it is clear to disclose the cause of action wherein, it is stated that, there is cause of action firstly arose on 07.04.2000 and on 22.05.2000 and on 21.05.2003 and further arose on 17.04.2018 when plaintiffs had issued legal notice calling defendants to execute sale deed and when the same was refused by defendants and lastly arose during 1st week of May 2018 when defendants threatened plaintiffs to dispossess them from suit property. The contention of defendants that, they have not executed any document styled as agreement of sale in respect of suit property and the same is created etc., are the questions to be adjudicated during full fledge trial. The issues in this regard are already framed by the court. Hence, the burden is on plaintiffs to prove their case and upon defendants to disprove

the case of plaintiffs. The issue relating to limitation is also framed by the court at issue No.8 and the burden is defendants to prove the same. It is a settled principle of law that, an application under Order VII Rule 11 of CPC has to be examined only on the basis of plaint averments.

12. At this stage, I would like to refer to the following decisions;

- (a) In **(2016) ILR (Karnataka) 2429** between **N. Triveni Vs. G.T. Shankar**, wherein it is observed that, while considering the application under Order 7 Rule 11 CPC, the court has to examine the averments in the plaint and the plea taken by the defendant in the written statement would be irrelevant. Further, at the stage of exercising the power under Order 7 Rule 11 of CPC, the case of the defendant stated in the written statement or in the application filed for rejection of the plaint is immaterial. It is only if the averments in the plaint ex-facie do not disclose a cause of action or the suit appears to be barred under any law, the plaint can be rejected. Otherwise, the case of the parties has to be adjudicated by conducting the trial.
- (b) In **AIR 2005 (SC) 2897** between **Srinivas Murthy and others Vs. Mariyamma (dead) by proposed L.Rs & others**, wherein, the Hon'ble Apex Court has observed that, the trial court must remember that, if on a meaningful and not formal reading of the plaint, it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power U/o 7 Rule 11 CPC taking care to see that, the ground mentioned therein is fulfilled. If clear drafting has created the illusion of a cause of action, the court must nip it in the bud at the first hearing by examining the party searchingly U/o 10 of CPC.

- (c) In **2022 (1) KCCR 13** between **M/s Metropol Overseas Ltd. Vs. H.S. Deekshit and others** wherein the Hon'ble High Court has observed that, the plaint can be rejected U/o 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that, the power U/o 7 Rule 11 CPC can be exercised by the court at any stage of the trial. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that, the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power U/o 7 Rule 11 CPC the averments of the plaint have to be read as a whole to find out whether averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that, the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in written statement as well as the contentions of defendant are wholly immaterial while considering the prayer of defendant for rejection of plaint. Further, reliance is placed on a decision rendered in *Sopan Sukhdevo and others v/s Asst. Charity Commissioner*.

It is also observed that, in every case, the law of limitation is not a mixed question of law and facts. Where a plaint ex-facie indicates that, it is barred by law, the court ought to exercise power U/o 7 Rule 11 and reject the plaint. In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact. By the statute, jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown.

In the light of above decisions, when we look into the averments of plaint and on perusal of entire materials on record and on meaningful reading of the plaint, it is clear

that, suit of plaintiff discloses cause of action and the contention of defendants that, suit is barred by law of limitation requires to be adjudicated after full-fledged trial in view of the rival contentions urged by both parties and the said contentions are to be proved by them. Moreover, an issue is framed in this regard and hence, without the evidence of parties on the said issue, it would be unjust to reject the plaint at the threshold without giving an opportunity for plaintiffs to disprove the said issue No.8 and moreover, question of limitation is a mixed question of law and facts and same cannot be adjudicated at the earlier stage without giving an opportunity for parties to face the trial.

13. From the meaningful reading of plaint, it is clear that, suit of the plaintiffs is showing cause of action and the question of limitation is a mixed question of law and facts and in view of the framing of an issue in this regard casting burden on defendants, it is their duty to prove the said issue. The very contention of defendants that, they have not executed any document of agreement of sale and the suit document is created etc., is to be proved after trial and as already stated, plaint averments are germane and the contentions of

defendants cannot be looked into. As already discussed, plaint is disclosing cause of action and is prima facie not barred by any law. Hence, this application filed by defendant No.1, 2 & 4 finds no merit and by considering facts and circumstances of the case, I proceed to answer point No.1 in the **Negative**.

14. **Point No.2:** In view of my discussion and reasons given while answering the above point, I proceed to pass the following:

: O R D E R :

I.A No.5 filed by defendant No.1, 2 & 4 U/o 7

Rule 11 of CPC is hereby rejected.

There shall be no order as to costs.

(Dictated to the stenographer directly on computer, typed by him, corrected by me and then, signed and pronounced by me in the open court on this, the 03rd day of March, 2025)

(Shushma T.C.)
Civil Judge & JMFC., Banahatti.