

IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC AT ANEKAL

Present: Sri. T.Govindaiah, B.Com., LL.B.,
Senior Civil Judge, Anekal

O.S. No.656/2015

Dated this the 07th day of Nov, 2015

Plaintiff/s : Dr. Lakshman

V/s

Defendant/s : Sri. D.T.Santosh and others

ORDERS ON I.A No.3

The applicant/defendant No.3 has filed the present application U/o.7 Rule 11(a) & (d) of the Civil Procedure Code for rejection of plaint.

2. In support of the application, the applicant/defendant No.3 has sworn an affidavit wherein he states that he is the absolute owner of the suit property. The plaintiff filed the present suit for recovery a sum of Rs.12,34,50,000/- with future interest at the rate of 18% p.a. against the defendants No.1 and 2. As per the plaint averments, the plaintiff entered into memorandum of understanding with the defendant No.1 for purchasing the above 100 acres of land with

defendants No.1 and 2. The plaintiff is claiming to have paid an amount of Rs.8,00,00,000/- to the defendants No.1 and 2. Accordingly, as per the averments of the plaint, the defendants No.1 and 2 have committed breach of the said MOU and as a result, he has right to recovery the above said amount against the defendants No.1 and 2. As per the averments of the plaint, the plaintiff is not claiming any land. But, he is claiming recovery of amount against the defendants No.1 and 2. Defendant No.3 is no way concerned to the transaction between the plaintiff and defendants No.1 and 2. This defendant purchased the suit property through the sale deed dated 07.06.2012 i.e., five months prior to the said MOU. Therefore, the plaintiff purchased the suit property even prior to the said MOU. This defendant had acquired the right over the said property as absolute owner. Further, he is contended that the defendant No.3 is not a party to the MOU and since no rights are said to be enforced against the defendant No.3. The plaintiff filed the present suit for recovery of money against the defendants No.1 and 2 only. But, intentionally impleaded the defendant No.3 without any cause of action. Further, the plaintiff by suppressing the material facts, they have obtained the interim order against the defendant No.3. Therefore, the suit of the

plaintiff against the defendant No.3 is not maintainable as there is no cause of action and against to the principles of natural justice. Because the defendant No.3 is no way concerned to the transaction between the plaintiff and defendants No.1 and 2. Therefore, the defendant No.3 prays for reject the plaint.

3. On the other hand, the plaintiff filed his objection to the present application wherein he contended that the defendants No.1 and 2 entered into MOU on 08.11.2012 and 30.11.2012 with this plaintiff. The defendant No.3 agreed to sale the item Nos.1 to 4, 19 to 20 and 108 along with land Sy. No.116 and 117. The defendant No.3 is well aware to the entire transaction of plaintiff with defendants No.1 and 2. Therefore, the defendant No.3 is part of all negotiations between the plaintiff and defendants No.1 and 2. Despite the defendant No.3, he has entered into MOU for exchange the some of the properties. Accordingly, the sale of the plaintiff with defendants No.1 and 2. Therefore, the defendant No.3 purchased the properties which are subject matter of the MOU with this plaintiff. At the time of purchasing the properties, the defendant No.3 is well aware about the rights of the plaintiff. Therefore, the defendant No.3 purchased the property by colluding with defendants No.1 and 2. The defendant

No.3 purchased the property only with an intention to cause loss to the plaintiff. Under such circumstances, the suit of the plaintiff is maintainable against the defendants No.1 to 3. Hence, he prays for reject the I.A. No.3.

4. Heard arguments on both sides.
5. The points that would arise for the consideration of this court are;
 1. Whether the applicant/defendant No.3 has made out sufficient grounds to allow the application U/o.7 Rule 11(a) and (d) of CPC., and to reject the plaint?
 2. What order?
6. Perused the contention of both the parties and materials placed before the court.
7. My findings on the above points are as follows;

Point No.1 : In the Affirmative

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

REASONS

8. **Point No.1:-** As stated above, the applicant/defendant No.3 filed the present application for rejection of plaint. On perusal of

the plaint averments, it is clear that the plaintiff filed the present suit for recovery a sum of Rs.12,34,50,000/- along with future interest at the rate of 18% p.a. As per the plaint averments, the defendants No.1 and 2 entered into MOU with plaintiff on 08.11.2012 and another MOU on 30.11.2012. As per the averments, the defendants No.1 and 2 executed MOU with plaintiff with an intention to development of the properties. Thereafter, the defendants No.1 and 2 sold some of the properties measuring 10 acres in land Sy. No.116 and 117 of Ballur Village in favour of 3rd defendant. The transaction with the defendant No.3 is only with an intention to cause loss to the plaintiff. Due to the illegal acts of the defendants No.1 and 2, the plaintiff sustained loss. Thereafter, the plaintiff approached the defendants No.1 and 2 to return sum of Rs.9,00,00,000/- along with interest at the rate of 18% p.a. But, the defendants No.1 and 2 stating one or other reasons went on postponing the same. In spite of repeated requests made by the plaintiff, the defendants No.1 and 2 have not paid any amount along with interest. Now, the plaintiff filed the present suit for recovery of sum of Rs.9,00,00,000/- principal amount along with interest at the rate of 18% from 08.11.2012 to 08.06.2015.

Accordingly, the plaintiff filed the present suit for recovery a sum of Rs.12,34,50,000/- against the defendants No.1 and 2.

9. On perusal of the plaint averments, the plaintiff is not claiming any relief against the defendant No.3. As per the plaint averments, the plaintiff has no any transaction with the defendant No.3. It is important to note that as per the contention of the defendant No.3, he purchased the properties from the defendants No.1 and 2 on 07.06.2012. Therefore, the transaction between the defendants No.1 and 2 with defendant No.3 is five months prior to the transaction with the plaintiff. On perusal of the plaint averments, it is clear that at the time of transaction with the defendant No.3, the defendants No.1 and 2 have not entered into any memorandum of understanding with the plaintiff. Further, on perusal of the plaint averments, the plaintiff has not been claiming any rights over the any properties. The claim of the plaintiff is only against the defendants No.1 and 2 for recovery a sum of Rs.12,34,50,000/-.

10. It is important to note that the plaintiff is entered into the memorandum of understanding with the defendants No.1 and 2 on 08.11.2012 and 30.11.2012. But, the defendant No.3 purchased the

properties from the defendants No.1 and 2 on 07.06.2012. These facts clearly go to show that there is no memorandum of understanding between the plaintiff and defendants No.1 and 2 at the time of execution of the sale deed in favour of defendant No.3. Moreover, on perusal of the entire averments of plaint, the plaintiff is not claiming any property or any relief against the defendant No.3. But, the plaintiff mentioned the schedules item Nos.1 to 109. But, the plaintiff is not claiming any right over the said properties.

11. It is important to note that the plaint averments itself reveal that the plaintiff has no any transaction with the defendant No.3 and he has not been claiming any right over the suit properties. Under such circumstances, the plaint averments reveal that he is claiming an amount of Rs.12,34,50,000/- against the defendants No.1 and 2 only. Therefore, the claim of the plaintiff is only against the defendants No.1 and 2. Under such circumstances, the plaint averments has not disclosed any cause of action against the defendant No.3. If really the plaintiff entered into memorandum of understanding with defendants No.1 and 2 and if really the plaintiff paid an amount of Rs.9,00,00,000/- to defendants No.1 and 2, the

plaintiff is every right to claim the said amount against the defendants No.1 and 2. But, the plaintiff is no way concerned to the defendant No.3. Under such circumstances, the plaint averments itself reveal that the plaintiff is not claiming any right over the suit property. Further, the transaction of defendant No.3 with defendants No.1 and 2 is five months prior to memorandum of understanding with plaintiff. Under such circumstances, the plaint averments itself reveal that the plaintiff is well aware about the transaction between the defendants No.1 and 2 with defendant No.3 and he entered into MOU with defendants No.1 and 2. Under such circumstances, the defendant No.3 is no way concerned to the transaction between the plaintiff and defendants No.1 & 2. Under such circumstances, the suit of the plaintiff is not maintainable against the defendant No.3 and there is no cause of action against the defendant No.3. Therefore, the applicant/defendant No.3 has made out sufficient grounds to allow the present application. Accordingly, Point No.1 is answered in the Affirmative.

12. **Point No.2:** - In view of the above discussions and conclusion to Point No.1, this court proceeds to pass the following;

ORDERS

**I.A No.3 U/o.7 Rule 11(a) and (d) of CPC.,
filed by the applicant/defendant No.3 is allowed
and the plaint is rejected against the defendant
No.3 as there is no cause of action against the
defendant No.3.**

No orders as to cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected by me and pronounced in the open court on this the 07th day of Nov, 2015).

(T. Govindaiah)
Senior Civil Judge,
Anekal.

