

**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE & J.M.F.C., AT DEVANAHALLI.**

PRESENT

**SRI. PATIL HARISH RANGANAGOWDA,
B.A., LL.B.(Hon's)**

Addl. Senior Civil Judge & J.M.F.C.
Devanahalli.

Dated this day of 05thNovember 2022.

O.S.No.118/2018

Sri. Rajanna, : **Plaintiff**
S/o Late. Muniyappa,
Aged about 60 years,
R/at: Gobbaragunte Village,
Kasaba Hobli,
Devanahalli Taluk,
Bangalore Rural District.
Bangalore - 562 124.

(Plt. - By Sri. N.K.M., / N.K.G.,
Advocate)

- V/s. -

1. Smt. Pillamma, : **Defendants**
W/o. Late B.Munishamappa,
Aged about 66 years,
2. Smt. Anitha,
W/o. Late Lakshmaiah,
Aged about 38 years,

3. Kum. Nandini,
D/o. Late Lakshmaiah,
Aged about 20 years,
4. Kum. Kusuma,
D/o. Late Lakshmaiah,
Aged about 16 years,
minor, being represented
By Mother/Natural Guardian,
Smt. Anitha.

Defendants No.1 to 4 are
Residing at No.735, 3rd Cross,
23rd Ward, Chamarajpet,
Chikkaballapura Town,
Chikkaballapura -562 101.

(Defns.1 to 4 - By Sri. N.S.G.,
Advocates)

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**ORDERS ON I.A. FILED BY DEFENDENTS U/O 7 RULE 11
(A) & (D) OF C.P.C.**

The defendants have filed I.A. U/o.7 rule 11 (a) & (d) of C.P.C. seeking to reject the plaint as it does not disclose cause of action and barred by law. Before proceeding with the instant application, the facts need to be mention hereunder.

2. The facts of the case are unfurled hereunder :

The plaintiff has filed this suit seeking for the relief of declaration and other consequential relief of permanent

injunction to declare that he is the absolute owners of suit property and restrain the defendants from interfering with his possession over suit property. According to him, the suit property was purchased by his grandfather Chikkamunishamappa under registered sale deed dated 08.08.1951 from one Divakaraiah S/o Narayana Rao. Since then he was in possession of said property till his last breath. Thereafter, his two sons namely Muniyappa and Narayanappa succeeded the said property and got divided the same on oral partition. The said Muniyappa got an area measuring 1 acre 17 and said Narayanappa got 1 acre 13 gunta. Accordingly the mutation came to be effected by virtue of M.R.No.4/1996-97. The father-in-law of defendant No.1 by name Munishamappa created the revenue entries over the suit property by the virtue of alleged sale deed dated 01.11.1965. Even as on the date of said sale deed the property was standing in the name of Chikkamunishamappa and he continued in possession of said property. There was no partition among the sons of said Chikkamunishamappa and therefore the said Munishamappa S/o Chikkamunishamappa had no right convey the suit property. Therefore on coming to know about the entry of name father in law of defendant No.1, he filed appeal before Assistant commissioner at R.A.No.110/2007-2008. The said appeal came to be allowed by directing the subordinate authorities to mutate the name of plaintiff over suit property. Accordingly, his name came

to be mutated over suit property by virtue of M.R.No.15/2009-2010. The defendants have had filed appeal before Deputy Commissioner who had rejected the said appeal. Against which the writ petition pending before Hon'ble High Court of Karnataka. Meanwhile the defendants interfered with his possession over suit property. Therefore he filed suit bearing O.S.No.763/2007, seeking for the relief of declaration and permanent injunction. He got withdrawn the said suit with a liberty to file fresh suit. Accordingly, he filed this fresh suit seeking for the relief of declaration and permanent injunction.

3. The defendants appeared through their counsel and traversed the suit claim filing written statement. In addition to filing of written statement, they also filed this present application seeking rejection of plaint on the ground that plaintiffs have no right to sue and there is no cause of action to maintain the suit. They have also contended that, the suit is barred by law of limitation. According to them the cause of action to file suit has arisen in the year 2007. The plaintiff has filed this suit after lapse of nearly about 3 years from the date of withdrawal of suit. Therefore the suit is barred by law of limitation. **Hence they seek to reject the plaint.**

4. The plaintiffs filed objection to the said application by reiterating the stand taken in the plaint. Heard both the sides.

5. Having heard both the sides,the following point would arise for my consideration.

- 1) Whether the defendants made out ground to reject the plaint?
- 2) What order?

6. Having heard and having perused the material on record, my findings to above points is as under:-

Point No.1:- In the Negative

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

REASONS

7. Point No.1 :- Admittedly the present suit is one for declaration of title and other consequential relief of nullification of sale deed and permanent injunction. The plaintiff claimed that, the suit property was owned by his grandfather Chikkamunishamappa having acquired under registered sale deed 08.08.1951. According to him the said grandfather died leaving behind 2 sons namely Muniyappa and Narayanappa and who got divided the property. The said Muniyappa died intestate leaving behind him to succeed the said property. Therefore he has succeeded the property. The defendants have appeared and filed written

statement by contending that, the said Chikkamunishamappa had purchased the property and died leaving behind Muniyappa and Narayanappa who got divided the property and Muniyappa became owner of suit property. The said Muniyappa alienated the suit property to father in law of defendant No.1 under registered sale deed dated 01.11.1965. Therefore the father in law of defendant No.1 came in possession of suit property and died leaving behind them to succeed the property. Therefore they succeeded the property. **Hence they seek to reject the plaint.**

8. As indicated above the defendants seek to reject the plaint on following grounds:

1. Their is no cause of action to the plaintiff to sue them
2. The relief claimed by the plaintiff is barred by law of limitation.

9. According to them there is no cause of action to the plaintiffs to maintain the suit as the property was sold way back in the year 1965. Secondly the plaintiff himself challenged the revenue entries before revenue authorities in the year 2007. Therefore the cause of action started in the year 2007 and it is running since then. Therefore the plaintiff could not have filed the suit after lapse of more than 3 years from the date of knowledge of denial of title.

Therefore the suit filed by him after lapse of nearly about 11 years from the date of original cause of action is barred by law. **Hence they seek to reject the plaint.**

10. Admittedly the claim of plaintiff is under one Chikkamunishamappa who had purchased the property under registered sale deed. There is no dispute between parties in regard to acquisition of property by the said Chikkamunishamappa. The only dispute between parties is in regard to alienation made by one of the son of said in Chikkamunishamappa favour of father in law of defendant No.1. The defense of defendant is about purchasing of property by the father in law from the said Muniyappa. The plaintiff has contended that on the date of said alienation, the said Chikkamunishamappa was alive and his son as no right to part the said property. It is needless to mention here that, the parties are litigating their right over suit property since from 2007 before various forum including revenue authorities. The appeal filed by plaintiff came to be allowed by the Assistant Commissioner and which was confirmed by the Deputy Commissioner in the revision petition. The said orders have been assailed before Hon'ble High Court of Karnataka in the writ petition. Therefore it indicates serious issue of dispute of title over suit property. The said dispute of title requires to be examined by framing up of appropriate issues. Therefore cause of action claimed by the plaintiff cannot be doubted at this stage.

11. As regards limitation is concerned the parties are litigating the issue of title over suit property from last 11 years before various authorities. The said issue of title has not been set at rest. The earlier suit filed by the plaintiff was dismissed as withdrawn with a liberty to the file fresh suit. The present suit is filed after lapse of 2 years from the date of giving liberty. The defendant can take advantage of said fact. However said ground of limitation also requires to be considered by framing appropriate issues. **Therefore I hold above point in the Negative.**

12. Point No.2 : In the light of aforesaid finding on the above said point, I proceed to pass the following :

ORDER

The I.A. filed by defendant U/o. 7 Rule 11(a) & (d) of C.P.C. is hereby rejected.

Call on - 22-11-2022. For Issues.

(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 05th Day of November 2022).

**(SRI. PATIL HARISH RANGANAGOWDA)
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.**