

**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 16th February 2023.

O.S.No.269/2022

Smt. Narayanamma, : **Plaintiff**

(Plt. - By Sri.M.V.G.,
Advocate)

- V/s. -

Sri. Muniyappa & Others, : **Defendants**

(Def.1 to 8 - By Sri.
B.S.N., Advocate)
Def.9 - Ex-parte
(Lrs. D.1(a) - By Sri.
B.S.N., Advocate)

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ORDERS ON I.A. FILED U/O 7 RULE 11 OF C.P.C.

The defendants No.1 to 8 have filed this I.A. under order 7 Rule 11(a),(b) & (d) of C.P.C seeking to reject the plaint as it does not disclosed 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: It is pleaded by the plaintiff that, her father Alagappa was the absolute owner of property bearing Sy.No.21/1, measuring 5 acre 34 gunta situated at palya village having succeeded from his ancestor. The said Alagappa has alienated an area measuring 3 acre 15.12 gunta to two different persons under sale deeds dated 14-07-1948 and 09-07-1963. He has retained an area measuring 2 acre 18.04 guntas which is subject matter of suit property. The said Alagappa due to his ignorance and illiteracy could not mutate his name over suit property. She also failed to mutate her name over suit property. However she is in possession of suit property by raising seasonal crops likes Ragi, Avare & Jola. The defendants without having any right title and interest over suit property have mutated their names by virtue of MR.No.12/2010-2011. She has challenged the said entries before Assistant commissioner who has allowed the appeal and directed the Tahasildar to make an inquiry over the measurement of property. The Tahasildar after holding inquiry has ordered to mutate her name only to an extent of 6 gunta. The defendants by taking undue advantage of said facts are trying to interfere with her possession over said property. Hence she filed this suit. The defendants appeared through

their counsel and filed detailed written statement by denying the claim of plaintiff over suit property. According to them said Alagappa had sold entire extent of 5 acre 24 guntas under different sale deeds to different persons. He did not retain any land over the suit property bearing Sy.No.21/1. Therefore the plaintiff cannot claim that, she has succeeded the property from her father Alagappa. Therefore she has no right to lay her hand over suit property. Hence they seek to dismiss the suit.

3. In addition to filing of written statement, they also filed application U/o.7 Rule 11 (a),(b) and (d) of C.P.C seeking to reject the plaint as it does not disclose cause of action and barred by law of limitation. They have contended that, the said Alagappa himself alienated the entire property under different sale deeds to different persons. Therefore he did not retain any extent over the suit property to claim the same by the plaintiff. Therefore the plaintiff cannot maintain the suit only on the basis of false claim. Therefore they seek to reject the plaint.

4. The plaintiff has filed objections to the said application by taking same stand as taken in the plaint. She seeks to adjudicate her right over suit property. Therefore she seeks to reject the application. Heard both the sides.

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

- 1) Whether the defendants No.1 to 8 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:- The plaintiff has contended that, her father Alagappa has retained the suit property measuring 2 acre 18 gunta by alienating an area measuring 3 acre 15 gunta out of total extent of 5 acre 34 guntas. According to her the defendants have got mutated their name over suit property which was challenged before revenue authorities. The revenue authorities have ordered to mutate her name only to an extent of 6 gunta. Therefore the defendants are trying to interfere with her possession over suit property. The defendants have denied the factum of retainment of any land by the said Alagappa. According to them the said Alagappa have sold entire extent of suit property under different sale deeds. Therefore they claimed that, the plaintiff has no right to lay her hand over suit property which was acquired by defendant No.9. The material pleading on record indicates that, the parties are in variance regarding factum of retainment of any land by the said Alagappa. The plaintiff claimed that, the said Alagappa had retained an area measuring 2 acre 18 gunta which is the subject mater of suit. According to the defendants the said Alagappa did not retain any area and he has parted the entire

extent of property. The defendants relied upon the various registered sale deeds to buttress their case. The plaintiff has produced two copies of sale deed indicating about parting of an measuring 3 acre 15.12 guntas by her father. She has also produced orders of revenue authorities. The claim of plaintiff is about retainment of an area measuring 2.18.04 gunta by her father. However the revenue authorities have found the interest of said Alagappa to an extent of 6 gunta over suit property. Therefore the claim of plaintiff needs to be examined by taking in to consideration the recitals of sale deed and order of Assistant commissioner. Therefore it is well settled law that, while considering the issue of existence or non existence of cause of action the plaint averments and documents submitted along with plaint are alone need to be looked in to. The said document indicate the dispute which could be tried by Civil Court. The contention of defendants about parting of entire extent by the father of plaintiff stands in the position of defense to the suit. The assertion and denial of party requires to be examine by holding trail. The issue of limitation is a mixed question of law and facts which cannot be conveniently examined on the interim application that to when the parties are in variance in regard to alienation. **Hence i hold above point in the Negative.**

8. 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
defendants U/o. 7 Rule 11(a)

(b) and (d) of C.P.C. is hereby rejected. Issues are framed and read over in open court.

**Call on : 18-03-2023 for
plaintiff evidence.**

(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 16th Day of February 2023).

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