

**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 the 24th Day of November, 2021.

O.S.No.819/2014

1. Sri. Brijesh Reddy, Lakhmamma, : **Plaintiffs**
S/o H. Chandra Reddy,
Aged about 40 years,
#542, XVII Cross, XV Main, IV Sector
HSR Layout,
Bangalore-560 102

2. A. Ashraf Ali,
S/o Late. V.R. Abdullah,
Aged about 46 years.
#2, Matadahakku Main Road,
MLA Layout, RT Nagar,
Bangalore-560 032

(By Sri. G.S.P.K,
Advocate)

- V/s.-

1. Prof. Dr. Mumatazalikhan, : **Defendants**
S/o Late. Mustafa Ali Khan,
Aged about 81 years,
#18, I-C Main Road,
Ganganagar Extn.
Bangalore-560 032

2. Iqbal Ahmed,
S/o. Mohiuddin,
Aged about 52 years,
Zenith Academy,

#16, Near Cloes Park,
Saunders Road
Fraser Town, Bangalore- 560 025

(D1,- By Sri. K.C.S.,
Advocate)

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**Orders on I.A.3 filed under Order 7 Rule 11(d) r/w.  
Section 151 of C.P.C.**

The defendant No.1 had filed I.A. U/o 7 Rule 11(d) of C.P.C. seeking to reject the plaint as the plaintiff has no cause of action to maintain the suit. Hence he seeks to reject the plaint. Before proceeding with the instant application, the facts need to be mention here.

2. **Facts of case are unfurled hereunder:** It is pleaded by the plaintiffs that the defendant No.1 is the absolute owner of suit property and has agreed to convey the same to them for valuable sale consideration of Rs.12 Crore and has received advance sale considaration of Rs.75,00,000/-. He has executed an agreement of sale on 20-01-2011by agreeing to convey the suit property. He has to clear all the hurdles in execution of sale deed as there is suit pending at O.S. No. 349-2013 against defendant No.1. The defendant No.1 requested them to negotiate settlement with the plaintiff in the said suit. They have further pleaded that when they are trying to negotiate with the plaintiff

in the said case, they noticed paper publication issued by defendant No.2 calling for objection from general public on his intending purchase of suit property from defendant No.1. They immediately enquired the defendant No.2 who in turn informed them that the defendant No.1 has agreed to convey the property to him. Therefore they were forced to file this suit seeking enforcement of agreement of sale dated 20-01-2011. The defendant No.1 appeared in the suit and traversed the claim of plaintiffs by contending that the agreement of sale claimed by the plaintiffs has already been terminated by repaying advance sale consideration of Rs. 75,00,000/- through RTGS to the account of plaintiff No.2. Therefore there is no subsisting agreement exist in between them to enforce the same. He has further contended that the plaintiffs have failed to perform their part contract by paying remaining consideration within stipulated period of one year. Therefore he has terminated the agreement by repaying the advance amount and getting execution of deed of declaration of rescinding the contract. Hence he seeks to dismiss the suit.

3. As indicated above the defendant No.1 has also filed the instance application seeking rejection of plaint on the ground of

no cause of action and barred by law. According to him the plaintiffs failed to pay the remaining sale consideration within stipulated period of one year. Therefore he has terminated the agreement by issuing notice and getting execution of declaration deed. Therefore there is no subsisting agreement exists between them. He has also contended that the claim of plaintiffs in enforcing the agreement of sale 20-01-2011 is barred by law of limitation. Hence he seeks to reject the plaint. The plaintiffs objected the said application by taking same stand as taken in the plaint. The records indicates filing of written argument by the counsel for first defendant by taking same stand as taken in the application.

**4. Having perused to the grounds urged in the application and having perused the material on record including written arguments, following points would arise for my consideration :**

- 1) Whether the defendants No.1 makes  
out ground to reject the plaint
- 2) What order or decree?

**5. Having Notice the grounds urged in the application, Plaints averments and Written arguments, 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**

**6. Point No.1 :-** It is the assertion of plaintiffs that the defendant No.1 by representing him as owner of suit property has agreed to convey suit property for valuable sale consideration of Rs.12 Crore. He has received advance sale consideration of Rs.75,00,00/- and agreed to convey the suit property after complying the terms of agreement. However he has abruptly returned the advance sale consideration to the account of plaintiff No.2 without fulfilling his part of contract and now tried to alienate the said property to defendant No.2. Therefore they were forced to file this suit. The defendant No.1 objected the suit claim by contending that he has terminated agreement by issuing notice. Therefore there is no subsisting agreement exist in between them. Therefore he seeks to reject the plaint. The defendant No.1 has raised two grounds in seeking rejection of plaint. Firstly he has contended that about termination of agreement by repaying

advance sale consideration to the plaintiff No.2 through the R.T.G.S. Secondly he has contended that the claim enforcement of agreement of sale is barred by law of limitation. According to him the agreement of sale stipulates one year time to pay remaining sale consideration. However the plaintiff has failed to pay the said amount and therefore he has terminated the said agreement. The plaintiffs have assailed the act of defendant No.1 in returning the advance sale consideration by contending that he cannot unilaterally cancel the agreement by returning the said advance sale consideration. They also contended that the title of defendant No.1 is under adjudication at suit bearing O.S. 349/2013. Therefore they have assailed the act of defendant No.1 in repaying the said advance sale consideration. The plaint averments indicates assailing of acts of defendant No.1 in repaying the advance sale consideration and going back to the promise made in the agreement of sale. The said assertion needs to be enquired in the Trial. Therefore only on the claim of defendant No.1

about termination of agreement of sale, the suit cannot be thrown out. Therefore first ground urged by the defendant No.1 in throwing away the suit fails for consideration at this stage.

7. He has also contended that the relief of enforcement of agreement of sale is barred by law of limitation. According to him there is condition stipulated in the agreement of sale casting duty on plaintiffs to pay remaining sale consideration within One year. They have failed to pay the said amount within said period. Therefore according to him the claim made by plaintiffs in enforcing the agreement of sale is barred by law of limitation. The said contention cannot be accepted for a simple reason that the said one year period ends on 20-1-2012 and suit is filed 9-12-2014 i.e. within three years from the date of performance of terms of agreement. Even if the said period is taken into consideration as essence of time running between the parties in completion of contract, the said time would end on 20-01-2012. The plaintiffs have to enforce the agreement within three years from 21-01-2012. They have

enforce the agreement of sale within time. The defendant No.1 has contended about earlier agreement of sale executed between himself and plaintiffs in the year 2010 and contended about limitation from the said period. However there is no whisper about said agreement of sale in the plaint. Therefore in the absence of such contention the limitation cannot be considered from the said date. Therefore I hold that said ground also aid to the defendant No.1 in seeking rejection of plaint. Hence I hold above points in the negative.

**8. Point NO.2**:- In the light of aforesaid findings on the above said points, I proceed to pass the following

**ORDER**

The application filed by the defendant No.1 U/o 7 Rule 11 of C.P.C. is hereby rejected.

**Call On: 27-11-2021, for issues.**

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

