

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

PRESENT

SRI. PRAVEEN NAYAK, LLM.,
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.

Dated this day of 10th July 2023.

O.S.No.600/2022

Sri. Krishnappa : **Plaintiff**

(Plts. - By Sri. N.K.G.,
Advocate)

- V/s. -

Sri. Buddappa @ Rajanna & Others : **Defendants**

(Def.1 - By Sri.
M.B.L., Advocate)
(Def.2 & 4 - By Sri.
A.M., Advocate)
(Def.5 By Sri. M.M.,
Advocate)

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ORDER ON I.A. FILED UNDER ORDER 7 RULE
11 (a), (b) AND (d) OF C.P.C.

The defendant No.5 has filed this I.A. under order 7 Rule 11 (a), (b) & (d) of C.P.C seeking to reject the plaint.

2. Facts of the case of the plaintiff are hereunder :

The suit is filed by the plaintiff for the relief of declaration and permanent injunction. It is pleaded that the plaintiff is the absolute owner in possession of the suit property by virtue of registered sale deeds dated 15.07.1977 and 22.11.1978. Khata and Mutation entries are changed in his name. The defendants are having their property at the eastern side and southern side of the suit property and causing interference in the possession of the plaintiff over the suit property. The cause of action arose on 14.05.2022, when such interference was made by the defendants. Hence prayed to decree the suit.

3. The defendant No.5 filed written statement and also filed instant application seeking rejection of plaint. It is pleaded by the applicant that the the plaintiff has filed the present suit for the relief of declaration against the defendants on the basis of registered sale

deed dated 15.07.1977 and 22.11.1978. The plaintiff has shown imaginary boundaries and extents and the question of declaration of title does not arise. The plaintiff approached the court with unclean hand by suppressing true and material facts. The suit is filed after laps of 44-46 years. The plaintiff has not paid the proper court fee as per present market value. The suit is barred by law and no proper cause of action pleaded by the plaintiff. The defendant No.5 being the woman having small piece of land and she cannot interfere in the possession of the plaintiff. Hence prayed to allow the application.

4. The defendant No.5 has mainly relied upon the following grounds :

- a. The plaintiff has no cause of action to maintain the suit.
- b. The suit filed by him is not properly valued.
- c. The suit is filed after laps of 45-46 years and the same is barred by law of limitation.

5. As far as cause of action is concerned they claimed the following instance to contend that the

plaintiff has no real cause to maintain the suit and he has pleaded the illusion of cause to maintain the suit :

- a. The plaintiff has prayed for the relief of declaration against the defendant on the basis of alleged registered sale deeds dated 15.07.1977 and 22.11.1978 and the boundaries shown are imaginary.
- b. plaintiff has no cause of action to maintain the suit. The cause of action shown is imaginary.

6. As far as limitation is concerned, they have contended that the plaintiff has claimed relief of declaration after lapse of nearly about 45-46 years. Therefore they have contended that the plaintiff has no cause to maintain the suit. Hence they seek to reject the plaint.

7. The plaintiff objected the said application by taking the same stand as taken in the plaint. He has denied all the averments of application. He seeks to adjudicate his right over suit property.

8. Heard both the sides.

9. Having heard both the sides and having perused the material on record, following points would arise for my consideration :

1. Whether the defendant No.5 has made out grounds to reject the plaint?

2. What order?

10. **My findings on above points are as under:**

Point No.1 : **In the Negative,**

Point No.2 : **As per final Order for the following :**

REASONS

11. **Point No.1** : The defendant No.5 seeks to reject the plaint on three grounds. Firstly, according to them the plaintiff has no cause of action to maintain the suit. Secondly, the relief of declaration claimed by the plaintiff is barred by law of limitation. Thirdly, the court fee paid by the plaintiff is not in accordance with the present market value.

12. It is trite to mention here that while considering an application filed under Order 7 Rule 11 of C.P.C., the court needs to look into the plaint averments alone. It is also trite law that the averments of Written Statement are irrelevant in considering the issue of existence or non existence of cause of action. Therefore, the claim of defendant in seeking rejection of plaint has to be considered in the light of said settled law. All the allegations made by defendants in their application indicate that they attacked the title of plaintiff over suit property. The grounds urged by them are in the nature of attacking the alleged title of plaintiff over suit property. The said fact needs to be adjudicated in the trail. Therefore the said issue of limitation cannot be considered at this stage which is purely a mixed question of law and facts.

13. It is also settled position of law that the cause of action is a bundle of facts and to be gathered by meaningful reading of the entire plaint averments. The plaintiff sought for relief of declaration against the defendants on the basis of registered sale deeds dated 15.07.1977 and 22.11.1978. The plaintiff has shown the cause of action to have arose on 14.05.2022. Unless the contrary is proved, the cause action shown by the plaintiff can not be disbelieved. In order to decide the same the detailed trail is necessary.

14. The defendant No.5 has contended that the plaintiff has not paid the proper court fee as per present market value. The plaintiff has valued the suit under Karnataka Court Fees and Suit Valuation Act and paid court fees accordingly. There is no document on record to show the present market value of the property at this stage. The defendant No.5 has contended that the boundaries shown in the plaint are imaginary and the extent of the property is also not proper. The above aspect is a question of trial and the same cannot be determined at this stage. Therefore the grounds raised by defendants in seeking rejection of plaint fails. **Accordingly I hold above point in the Negative.**

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

O R D E R

IA No.II filed by defendant No.5 under order 7 Rule 11(a), (b) and (d) of C.P.C is hereby rejected.

(SRI. PRAVEEN NAYAK)
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.