

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND
JMFC.,AT DEVANAHALLI**

Present: Sri. PRATHAP KUMAR. N.,**B.A. L.L.B.,**
Prl. Civil Judge & JMFC.,
Devanahalli.

Dated this the 13th day of March, 2023

O.S.No.187/2013

Plaintiff : Sri. Subramanya

V/s

Defendant: Sri. Rajanna
Since dead by His Lrs and another

PARTIES IN I.A. NO.V

Applicant/Lrs of
defendant No.1(1) to (d) :Kantharaju and others.

-V/s-

Opponent/plaintiff : Sri. Subramanya

ORDER ON I.A.V

This order arising out of I.A filed by defendants U/o 7 Rule 11(a) and (d) R/w 151 of CPC seeking reject the plaint.

2. In support of application, the defendant has duly sworn affidavit and annexed the same along with application and stated that, the plaintiff has filed the suit

for the relief of declaration by way of adverse possession in respect of the suit schedule properties any also for other consequential reliefs, plaintiff is not in possession and enjoyment of the property at any point of time. in view of the judgment of the Hon'ble Apex court reported in AIR 2014 (1) SCC 669, the Hon'ble Apex Court held that, the plaintiff cannot seek for the relief of declaration by way of adverse possession and only the defendant can seek the said reliefs. In view of the same, the suit is not maintainable and liable to be rejected as there is a barred by law, plaintiff has filed the suit only in order to harass us without any manner of right, title and interest over the suit schedule properties, in view of the judgment of the Hon'ble Apex Court as well as in the absence of any documents, the plaintiff is not entitled for any relief and liable to be rejected, in view of the settled law the court cannot going to the merits of the case and it has to be decide at the preliminary stage, in order to avoid the waste of court precious time. if the Hon'ble court has decline to allow the above application we will be put to great hardship and injustice will be caused, on the other hand no hardship and injustice will be caused if this application is allowed. Hence prays to reject plaint.

03. On the contrary, plaintiff has resist application filed by defendant and stated that, application filed by

defendant is not maintainable either in law or on facts, the application filed under order 7 rule 11(d) of cpc is also without merit and the same is filed to mis lead this Hon'ble court. The judgment of the Hon'ble Apex court is misinterpreted by the Lrs of the 1st defendant to this case. In fact, the declaration of ownership by adverse possession is against the ownership assertiveness of the 2nd defendant and the injunction relief is sought against both the defendants, plea of adverse possession is, against the 2nd defendant who in its statutory existence, asserted its ownership. In exercise of the statutory powers vested on it, it also threatened the settled possession of the plaintiff which, inherently is an attempt of demolition of pre-existing right of settled possession. The said act is being defended by way of prescription. In fact, the plaintiffs suit is against the claim of the defendant No.2 and corollary relief is sought against defendant No.2 who tried to disturb the possession of the plaintiff at the instance of one of the local body ex-councillors. Moreover, the issue in the suit is of prescription and is associated with limitation. The same is to be decided by way of evidence. The case in hand, at this stage cannot be decided without trial. Accordingly, application filed by the LRs of defendant No.1 is ill motivated and the same is liable to be dismissed. The Lrs of the 1st defendant have, sworn to a false affidavit from para 1 to 9 and the prayer thereof. Admittedly, the

defendant No.1 has not setup any plea of ownership either testamentary, easementary or inheritance. Therefore, by way of this application he cannot assert that he is owner and the claim of the plaintiff is adverse to against him. Hence prays to reject the application filed by defendant.

04. Heard on arguments.

05. Upon perusal of the pleadings and documents, the following points are arise for my consideration.

POINTS

1. Whether plaintiff allegations disclosed the suit is barred by law and cause of action?

2. Whether plaintiff is liable to be rejected Under Order 7 Rule 11 of C.P.C.?

3. What order?

6. My findings to the above points as follows;

Point No. 1: In the Negative

Point No. 2: In the Negative

Point No. 3: As per final order for the following

REASONS

7. Point No.1 and 2: These points are interlinked and hence to avoid the repetition the same are taken together for discussion.

8. The plaintiff has filed present suit against defendants seeking relief of permanent injunction and consequential relief of declaration. Now defendant has filed application seeking rejection of plaint as barred by law.

9. On gone through the records it appears that, the plaintiff has filed this suit against defendant seeking relief of declaration by way of adverse possession in this suit defendants the original defendant No.1 was appears through his counsel and file written statement on dated 06-11-2013, thereafter case was reserved for evidence of plaintiff side, when such being the case the original defendant No.1 died on his Lrs were brought on record, then the Lrs of defendant No.1 has filed additional written statement on 16-01-2016, then the evidence has bee commenced, therefore the LRS of defendant No.1 has filed this application. Wherein already has been commenced and the original defendants were not questioned legality of the case, further the grounds observed by Lrs of defendant No.1 is to be considered after full fledged trail, at this stage it cannot be consider. therefore trial is need as well as application is not maintainable.

10. On considering both submission U/o 7 Rule 11 (a

to d) is not appear suit instituted by the plaintiff either barred by law or barred by any other law etc., Further hopeless rival pleadings this court feels that trial is need for adjudicate the mater in dispute.

11. The provision Under Order 7 Rule 11 of C.P.C., is deal with court shall be rejected the plaint in following cases.

- a) *Where it does not disclose a cause of action.*
- b) *Where the relief claimed is undervalued, and the plaintiff, and being required by the court to correct the valuation within a time to be fix by the court, fails to do so.*
- c) *Where the relief claimed is properly valued but, the plaintiff is written upon paper insufficiently stamped, and the plaintiff on being required by the court to supply the requests stamp paper within a time to be fix by the court, fails to do so.*
- d) *Where the suit appears from the statement in the plaint to be barred by any law.*
- e) *Where it is not filed in duplicate.*
- f) *Where the plaintiff fails, compile with the provision of rule 9.*

The specific provision under order VII rule 11(d) of C.P.C., deal with where the suit appears from the statement in the plaint to be barred by any law. In

absence of any specific provision for bar to entertain the suit this court cannot assumed, presumed suit is bar.

12. The provision Under Order VII Rule 11(d) of C.P.C., is applicable only extraordinary circumstance and it has to be limited application. It must be shown that, suit is bar under any law. Such a conclusion must be drawn from the averment made in the plaint. But, the defendants has to fail to ascertain under which provision of Hindu Successions Act, is bar to filing such a suit. In this regard, I relied on a decision of Hon'ble Apex court reported in **2008(12) SCC 661 in between (Kamala and others V/s. K.T. Eshwara SA and others)** in which it is held as under;

A. Civil Procedure Code, 1908, Or.7 R.11(d), S.12, Or.14 R.2(2) and Or.18 - Rejection of plaint - Application of Or.7 R.11(d) - Precondition for - Necessary considerations for determination thereof - Bar of res judicata - Consideration of, at said stage - Power as to - Held, Or.7 R.11(d) has limited application - For applicability thereof it has to be shown that, the suit is barred under any law - Such conclusion has to be drawn from the averments made in the plaint - For invocation of Or7 R.11(d), no amount of evidence can be looked into - At that stage, the issue on merit of the matter would not be within the realm

of the court - Principles of res judicata, when attracted, would bar another suit in view of S.12 C.P.C. - But, such question being a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit, may be taken up either as a preliminary issue or at the final hearing - Said question cannot be determined at the stage of proceeding under Or.7 R.11(d).

Appellants filing a suit claiming partition in the properties which were same as were described in earlier partition suit - Earlier suit was dismissed for default at the stage of final decree proceedings - Respondent-defendants contending that: (i) the present suit was barred by principles of res judicata, (ii) there had been a division of the joint family properties by meres and bounds, which having been admitted in the plaint, no cause of action survived for grant of a decree for partition, (iii) severance of joint status being not vitiated by any fraud, it should not be permitted to be reopened at this stage, (iv) after passing of the preliminary decree in the earlier suit, no property was available for partition, and (v) sale deeds having been executed by the co-shares and their validity having not been assailed directly, the same could not be done in an indirect manner by

way of the present suit - Held, what would be the effect of a partition suit which had not been taken to its logical conclusion by getting the properties partitioned by metes and bounds, could not be gone into in a proceeding under Or.7 R.11(d) - Contentions raised for rejection of the present suit involved various questions which could not be considered at the stage of proceeding under Or.7 R.11(d) - Thus, rejection of plaint under Or.7 R.11(d) C.P.C., by courts below, held on facts, was not proper.

B. Civil Procedure Code, 1908 - Or.7 R.11(d), Ss.15 to 20 and Or.14 R.2(2)(a) - Rejection of plaint - Grounds for - Absence of jurisdiction on the part of a court, held, can be invoked at two different stages - Or.7 R.11 is one and Or.14 r.2 is the other.

C. Civil Procedure Code, 1908 - Or.7 R.11(a) to (f) - Rejection of plaint - Different clauses in Or.7 R.11 provided in relation to, held, should not be mixed up - Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground, a clear finding to that effect must be arrived at.

21. Order 7 Rule 11(d) of the code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion,

should not be mixed up. Whereas in a given case, an application for rejection of the plaint may filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. for that purpose, there cannot be any addition or subtraction. absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

Further, I relied on another decision of Hon'ble Apex court reported in 2020 SCC Online SC 482 in between (Shakti Bhog Food Industries Ltd., V/s. Central Bank of India and another) in which it is held as under;

28. Similarly, in S.S. Rathore (supra), the Court was dealing with a case governed by Article 58 of the 1963 Act, which specifically provides that, time begins to run when the right to sue "first" accrues. In Ram Prakash Gupta (supra), the Court dealt with a case governed by Article 59 of the 1963 Act, which provides that the suit could be filed when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded "first" become known to him. The court opined that the knowledge mentioned in the concerned plaint could not be termed as

inadequate and incomplete. The Court reversed the judgment of the Civil Judge and the High Court rejecting the plaint. This Court also noted that while deciding the application under Order VII Rule 11 of the C.P.C., few lines or passage from the plaint should not be read in isolation and the pleadings ought to be read as a whole to ascertain its true import. Even in that case, the trial Court and the High Court had failed to advert to the relevant averments, as stated in the plaint, which approach was disapproved by this Court. In the present case, as noticed earlier, the trial Court had failed to advert to and analyze the averments in the plaint, but selectively took notice of the assertion in the plaint in question that the appellant became aware about the discrepancies in July, 2000, and then proceeded to reject the plaint being barred by law of limitation having been filed in February, 2005.

Therefore, on the discussion made above, I am of the opinion that, there is no provision is bar to filing this suit, further at this court can't ascertain suit is barred under law without trial. Hence, the application filed by the defendants is deserves to be dismissed. **Accordingly, I answer point No.1 and 2 in the Negative.**

13. Point No.3: In view of the above discussion, this court proceeds to pass the following:

ORDER

I.A.No.V filed by defendant U/o 7
Rule 11 R/w 151 of CPC is hereby
rejected with cost.

(Dictated to Stenographer directly on computer by him, then same is corrected and pronounced by me in the open court on this the 13th day of March 2023.)

(Sri. Prathap Kumar. N)
Prl. Civil Judge and JMFC.,
Devanahalli.

