

**IN THE COURT OF THE I ADDL CIVIL JUDGE & JMFC.,**  
**NELAMANGALA**

**PRESENT: Smt Chinmayee.R.H.,** B.A.L. LL.B.,  
I Addl. Civil Judge & JMFC,  
Nelamangala.

**Dated this the 19<sup>th</sup> day of February 2020**

**O.S.No.266/2018**

- Plaintiff/s:** 1. Sri Hanumantharaju  
S/o late Govindappa,  
Aged about 45 years,
2. Sri Venkatesha  
S/o late Govindappa,  
Aged about 43 years,

Both are R/at. Mahimannapalya,  
Kadabagere Village,  
Dasanapura Hobli,  
Bengaluru North Taluk,  
Bengaluru Urban District.

**/Vs/**

- Defendant/s:** 1. Smt Savithramma  
W/o late Papachar,  
Aged about 62 years,  
R/at. Mahimannapalya village,  
Dasanapura Hobli,  
Kadabagere Dhakale,  
Bengaluru North Taluk,  
Bengaluru Urban District.

2. Smt Nagarathnamma  
W/o Satish(Gare)  
Aged about 34 years,

3. Smt Preema  
W/o late Lingaraju,  
Aged about 44 years,

Both of them are  
R/at. Channenahalli,  
Venkatahanumaiah Layout,  
Tavarekere Hobli,  
Kadabagere Post,  
Bengaluru South Taluk,  
Bengaluru – 562 130.

### **PARTIES IN IA NO.3**

**Defendants/Applicants:** Smt Savithamma & Others

**/Vs/**

**Plaintiffs/Opponents:** Sri Hanumantharaju & Another

### **ORDERS ON IA.NO.3**

The defendants have filed this application to reject the plaint for non-disclosure of cause of action and the same is barred by law.

2. In the accompanying affidavit the defendant No.1 submits that the plaintiffs have filed this suit for Specific Performance of Agreement dated:21.03.1997 alleged to have

been executed by the defendant's husband Late Papachar in favour of the father of plaintiffs Govindappa for a sale consideration amount of Rs.32,000/-. It is alleged that in pursuant to the said Agreement the plaintiffs paid a sum of Rs.12,000/- as an advance sale consideration amount and the balance sum of Rs.20,000/- was agreed to be paid at the time of registration. The contract was agreed to be concluded within 4 months subject to producing the remaining documents for registration. At para No.6 of the plaint the plaintiffs have stated that the said Papachar executed a shara dated:08.12.2008 and thereby provided time to enforce the agreement. It is submitted that the time provided for completion of the contract is three years under Article 54 of the Limitation Act and in this case it come to an end on 07.12.2011. The present suit is filed on 23.06.2018 which is much beyond the period of three years. The averments at Para No.8 of the plaint establishes that there is novation of the contract. Sec.62 of the Indian Contract Act deals with the effect of Novation, rescission and alteration of contract. It is stated that pursuant to the agreement dated:21.03.1997 , second agreement in respect of the very same property came to be entered into on 18.02.2008 thereby novating the agreement dated:21.03.1997 which is sought to be enforced in this suit. Hence, the present suit does not give cause of

action for the plaintiffs to seek specific enforcement against the defendants and thus from the averments made in the plaint it is clear that the plaintiffs are seeking specific enforcement of agreement of sale dated:21.03.1997 alleged to have been ratified on 08.12.2008. The suit having been filed beyond 3 years from the said date is on the face of it barred by law of limitation. Further, in view of Sec.62 of the Indian Contract Act, the Agreement dated:21.03.1997 having been novated by the Agreement dated:18.02.2008, the original Agreement has become unenforceable, as such the plaintiffs have no cause of action to seek specific enforcement of Agreement dated:21.03.1997 and the plaint lacks cause of action and thereby prays to allow the application.

3. The plaintiffs have filed objection stating that the allegation that the suit of the plaintiffs does not disclose cause of action, barred by law is incorrect and baseless. The father of defendants had executed the agreement and the present defendants are lying before this court to trouble the plaintiff. It is clear that when possession is delivered, the claim of the defendants cannot be made as it is barred by time. When the defendants have caused the reply to the notice given by the plaintiffs on 12.04.2018, these defendants did not whisper anything with regard the existence of transaction dated:25.05.2018. It is clear that the transaction made in

favour of one Ravikumar on 25.05.2018 is an after thought of the defendants in receipt of the cause of notice by the plaintiffs. As the defendants have executed the Deed in favour of Ravikumar on 25.05.2018 , the claim of the defendants is seized to question the claim of the plaintiffs. The provisions of the Article 54 of the Limitation Act is used to suit the intention of the defendants and not as it is laid and thereby prays to dismiss the application with exemplary costs.

4. The following points arise for my consideration:
  1. Whether the plaint is liable to be rejected under Order 7 Rule 11(a) and (d) of CPC?
  2. What order?
5. Considering the plaint averments and allied documents my answer to the above points is as follows:

- |            |   |   |
|------------|---|---|
| Point No.1 | - | In the Negative                           |
| Point No.2 | - | As per the final order for the following: |

### **REASONS**

**Point No.1:** The defendants have filed this application to reject the plaint as the same does not disclose cause of action and is barred by law on the ground that the alleged

Agreement was barred by time as under the said Agreement the time was made as the essence of contract and 6 months time was stipulated for the performance of contract. It is also urged by the defendants that the Agreement dated:21.03.1997 was for a period of 4 months but the plaintiff or his father had made no such attempt to execute the Sale Deed and hence, relying on Article, 54 of the Limitation Act the defendants pray to reject the plaint.

7. In order to consider and adjudicate the application under Order 7 Rule 11 the court has to confine its examination only with respect to the plaint averments and the attached documents. The plain reading of the plaint has to patently disclose that there is no cause of action and the same is barred by law. The thorough reading of the plaint discloses that the defendants' father Papachar executed an Agreement of Sale in favour of the plaintiffs' father Govindachar on 21.03.1997 with a Sale consideration of Rs.32,000/- and in this regard, the plaintiffs' father had paid Rs.12,000/- and the remaining balance of Rs.20,000/- was to be paid at the time of registration and the father of defendant delivered vacant possession in favour of plaintiff's father and also agreed to conclude the sale transaction within 4 months subject to production of remaining documents by the father of defendants Sri Papachar. It is also submitted by the plaintiffs

that the defendants represented by Papachar approached the plaintiff on 08.12.2008 and demanded for the remaining sale consideration of Rs.20,000/- without producing the documents as agreed with an undertaking to execute Sale Deed as promised on Agreement dated:21.03.1997 and thereby effected a shara dated:08.12.2008 thereby agreeing to execute the Sale Deed without fixing the time. By virtue of shara the Agreement entered into on 21.03.1997 is continued.

8. The contention of the defendants that the plaintiffs seeking specific enforcement of Agreement of Sale dated:21.03.1997 alleged to have been ratified on 08.12.2008 and that the suit having been filed beyond three years from the said date is on the face of it is not barred by law of limitation as the plaint does not disclose the same. The reading of the plaint discloses a cause of action and the question of limitation as pleaded by the defendants is a mixed question of fact and law and is a triable issue. At this stage, the plaint does disclose the cause of action and apparently the plaint does not seem to be barred by law.

9. The learned Advocate for the defendants has relied on 2015 AIAR (Civil) 541 and (2007) 10 Supreme Court Cases 59. These dictums do not apply to the case on hand as there is no mention of date or time for the performance of

Agreement of Sale dated:08.12.2008 and furthermore the legal notice dated:21.03.2018 and the reply to the said notice dated:12.04.2018 indicates the fact of refusal on the defendants starts from the date of refusal. Therefore, the limitation as urged by the defendants is a matter of trial, this court at this stage cannot reject the plaint as prayed by the defendants and accordingly, this Point is answered in the Negative.

**Point No.2:** For the reasons discussed supra, I proceed to pass the following:

**ORDER**

IA.No.3 filed by the  
defendants under Order 7 Rule  
11(a) & (d) R/w 151 CPC is hereby  
rejected.

(Directly dictated to Stenographer through computer, revised and corrected by  
me and then pronounced in the Open Court, on this, the 19<sup>th</sup> day of February 2020)

**(Chinmayee.R.H.)**  
I Addl. Civil Judge & JMFC.,  
NELAMANGALA