

KACM510003952021



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC AT N.R.PURA, ITINERATE AT KOPPA**

Present: Smt.B.S.Rayannawar, B.A., L.L.B,
Senior Civil Judge & JMFC.,
N.R.Pura, Itinerate at Koppa.

Dated this the 02nd day of February 2024

OS.No.13/2021

BETWEEN:

Sri.Shridhara Adiga and others ...Plaintiffs.

V/s.

AND:

Smt.Kamalakshi and others ...Defendants.

IA.NO.18 and 19

BETWEEN:

Sri.Lakshminarayana Bayari
...Applicant/Defendant No.13.

V/s.

AND:

Sri.Shridhara Adiga and others
...Opponent/Plaintiff.



ORDERS ON IA NO.18 and 19

Applicant/defendant no.13 filed present application under Order 7 Rule 11(a) and (d) and U/O 12 Rule 6 R/w section 151 of CPC to reject the plaint as against defendant no.13 and to strike out his property from the plaint schedule.

2. The application is supported with affidavit of applicant/ defendant no.13 stated that, he is defendant no.13 in the present case and well conversant with facts of the case, he purchased item no.4 property from defendant no.1 to 3 and 5 to 8 under register sale deed dated 27.07.2020 by availing loan from Gayatri Souharad Sahakari, Koppa the same is known to the plaintiff and defendants, colluding each other, by including the property of defendant no.13, he improved the land by spending Rs.50 lakh, the plaintiff or defendants not raised objections



at the time of purchasing the property, nor objected while changing khatha, now to harass this defendant have filed this suit against this defendant as he is not necessary party to the suit. He is a bonafide purchaser, he purchased property on 27.07.2020 under register sale deed by the defendant No.1 to 3 and 5 to 8 by paying valid consideration.

3. Further stated that the suit of the plaintiff is hit by law of limitation. As per the judgment and decree dated 12.04.2005 passed in O.S.No.20/2005 the defendant No.1 to 3 and 5 to 8 become the owner of suit schedule item No.4 property, hence without setting aside the said judgment and decree the plaintiffs have no right to file the present suit. The defendant No.8 was defendant No.4 in O.S.No.20/2005 and the fourth defendant was first defendant in that suit. The judgment and decree passed in



O.S.No.20/2005 is binding on plaintiff and defendant No.1 to 8, there is 18 years delay in filing the suit. Hence the present suit is barred under law of limitation.

4. The suit item No.4 property is the self acquired property of Tulasamma, she bequeathed her property infavour of J.T.Nagaraj by executing a will, hence as per the judgement and decree the J.T.Nagaraj become the owner of the property, and after his death his legal heirs defendants No.1 to 3 and 5 to 8 becomes the owner and khatha of the property changed into their names. The applicant/defendant No.13 purchased the item No.4 property from defendant No.1 to 3 and 5 to 8 under register sale deed dated 27.07.2020 for valuable consideration of Rs.88 lakhs. After purchasing the same he improved the land by spending huge amount, hence, now only to grab the money from this defendant the plaintiff filed this false



suit. This suit filed by the plaintiff by colluding with the other defendants. After filing of this suit colluding with defendant No.5 insisted him also to file written by seeking partition in item No.4 property. The 5th defendant is wife of Rangswami who has already taken consideration amount in O.S.No.20/2020. This defendant purchased the property from defendant No.1 to 3 and 5 to 8 before filing this suit. The plaintiffs have not filed suit for cancellation of sale deed, plaintiff not paid proper court fees. Hence the suit of the plaintiff is hereby liable to be dismissed. Though defendant No.1 to 3 and 5 to 8 appeared before the court but intentionally they have not filed their written statement. There is no cause of action arose on 01.12.2020. The caused of action shown started from the date of sale of property by defendant 10, 11 and 12 hence there is no cause of action against this defendant. Hence he is not necessary party to the suit, and the plaintiff wrongly



included his property to the suit, hence it is necessary to strike out item No.4 property, and dismiss the case against him. Hence prays to allow the applications.

5. I.A's opposed by plaintiffs by filing written objections contending that, the application has been filed to drag on the proceedings as it is clear that Defendant No.13 had not filed written statement earlier and the Court had taken his written statement as not filed. Thereafter the defendant No.13 filed written statement with an application which was allowed by this court. In paragraph No.27 of the plaint the Plaintiffs have clearly stated the fact of sale of the property in favour of Defendant No.13 by Defendant No.1 to 8 and clearly stated that on account of purchase of property, Defendant No.13 has been made as one of the Defendant. It is further stated in the said paragraph that said sale transaction is not binding on the plaintiffs. Even



in paragraph No.28 also facts are pleaded against Defendant No.13. Hence it is false to say that no cause of action is pleaded against Defendant No.13. Therefore the application is liable to be dismissed. The plaint paragraph No.16 to 19 clearly indicates that the Plaintiffs have pleaded ignorance of the transactions and Court proceedings. The Plaintiffs were not parties to any of the Court proceedings and transactions. It is clearly stated in plaint paragraph No.19 that they came to know the compromise decree passed in O.S.No.20/2005 only when they obtained and verified the certified copies. Further in paragraph No.19 of the plaint it was specifically stated that certified copies so obtained are produced with the plaint. As per certified copies of papers of O.S. No.20/2005, produced with the plaint, it is clear that application for certified copies was filed on 29.3.21 and the copies obtained on 31.3.2021. This suit has been filed in the year



2021 itself. Hence the suit is well within time from the date of knowledge. Hence it is false to say that plaint is liable to be rejected on the ground of limitation. Even otherwise, plea of limitation raised by the Defendant No.13 is not a pure question of law. Since it is a mixed question of law and facts, plaint cannot be rejected on the ground of limitation. The contents of written statement cannot be considered to decide the application filed under order 7 rule 11(a) and (d) of CPC.

6. The defendant No.13 has filed I.A. No.18 under Order 7 rule 11 of CPC seeking rejection of the plaint in so far as the defendant No.13 is concerned and now filed I.A.No.19 seeking deletion of item No.4 of the suit schedule property from the purview of suit. Order 7 rule 2 of CPC cannot be invoked against any one of the defendants and with regard to part of the plaint. Hence on this ground the



applications i.e. I.A. No.18 and 19 are liable to be rejected summarily. The plaint paragraph No.16 to 19 clearly indicates that the Plaintiffs have pleaded ignorance of the transactions and Court proceedings. The Plaintiffs were not parties to any of the Court proceedings and transactions. It is clearly stated in plaint paragraph No.19 that they came to know the compromise decree passed in O.S.No.20/2005 only when they obtained and verified the certified copies. Further in paragraph No.19 of the plaint it was specifically stated that certified copies so obtained are produced with the plaint. As per certified copies of papers of O.S.No.20/2005, produced with the plaint, it is clear that application for certified copies was filed on 29.3.21 and the copies obtained on 31.3.2021. This suit has been filed in the year 2021 itself. Hence the suit is well within time from the date of knowledge. Hence it is false to say that plaint is liable to be rejected on the ground of limitation. Even



otherwise, plea of limitation raised by the Defendant No.13 is not a pure question of law. Since it is a mixed question of law and facts, part of the property cannot be deleted on the ground of limitation. Section 151 of CPC cannot be invoked to seek deletion of any item of the suit property. On these grounds pleaded to dismiss the I.A's. with heavy costs.

7. Heard both respective counsels on I.A.No.XVIII and XIX.

8. The point that arise for my consideration are as under.

POINTS

1. Whether the applicants/defendant no.13 made out grounds to strike out item no.4 from the plaint schedule?
2. Whether the applicant/defendant no.13 made out grounds to reject the plaint?
3. What order?



9. My answer to the above points are as under.

Point No.1 & 2 : In the Negative
Point No.3: As per order for the
following;

REASONS

10. **Point No.1 & 2** : The plaintiffs filed present case against the defendants for partition and separate possession. The applicant/defendant no.13 filed present I.A.No.XVIII and XIX Under order 7 Rule 11 and U/s 151 of CPC prays to reject the plaint against him and to direct the plaintiff to strike out item no.4 property from the plaint.

11. Order 7 Rule 11 of CPC postulates for rejection of plaint in the circumstances given therein. In the instant case, defendant no.13 trying to invoke sub-rule (a) of Rule 11 of CPC. Sub Rule (a) states that, where there is no cause of action, under such circumstances the plaint shall be rejected. And while deciding the application under this



provision the court emphasized that the averments in the plaint should be the basis upon which it should be considered whether there is cause of action or not. It was also further observed that reference to any other materials such as written statements cannot be made to decide the issue.

12. In the present case the plaintiffs have filed this present suit against the defendants, for partition and separate possession. Learned counsel for plaintiff submits that the plaintiffs in their plaint clearly stated the fact of sale of the property in favour of Defendant No.13 by Defendant No.1 to 8 and on account of purchase of property defendant no.13 has been made as one of the defendant. The plaintiffs came to know the compromise decree passed in O.S.No.20/2005 only when they obtained and verified the certified copies. Plaintiffs filed application



for certified copies on 29.03.2021 and the copies obtained on 31.03.2021 and the suit has been filed in the year 2021. hence the suit is well within time.

13. Plaintiff filed the suit for partition, they are the legal heirs of Smt.Savitramma, claiming 1/3rd share in the suit schedule property. Plaintiffs in their plaint clearly mentioned that the defendant No.1 to 8 sold the property infavour of defendant No.13 on 27.07.2020 hence the plaintiffs impleaed defendant No.13 to the suit, plaintiffs also pleaded that the sale deed executed by defendant No.1 to 8 infavour of defendant no.13 is not binding on the plaintiff. The necessary party is one, without whose presence the suit cannot be effectively adjudicated. The defendant No.13 is purchase of item No.4 schedule property. Hence, it is considered opinion of this court that, applicant/defendant No.13 is the necessary party and his



presence is required for proper and effectual adjudication of this case. Hence the plaintiffs also shown the cause of action to file the suit. Moreover the law of limitation is mixed question of law and facts. Hence it is necessary to adjudicate the matter in presence of defendant No.13, if case against defendant No.13 is dismissed then the purpose of filing of present suit will not survive and it is also not proper that without giving opportunity to the plaintiff to prove his case if the application is allowed and if plaint is rejected injustice caused to the plaintiff. Further the striking out parties and cause of action are also two different matters and stand on different footing. And the point of limitation is involve question of law and facts. Hence at this juncture defendant No.13 cannot invoke Order VII Rule 11 (a) also. However it is made clear that, the cause of action, the limitation and whether the



defendants No.13 are necessary parties are not to the suit can very well be agitated at the time of final hearing. Under these observations this court answered **point No.1 and 2 in the Negative.**

14. **Point No.2:** For the foregoing reasons, I proceed to pass the following;

ORDER

I.A.No.18 and 19 filed by the D13 U/o. 7 Rule 11 (a) and (b) and U/Sec. 151 of CPC are hereby dismissed with costs of Rs.200.

(Dictated to the Stenographer directly on the computer, then corrected and pronounced by me in the open court on this date the 02nd day of February, 2024)

Sd/-

(B.S.Rayannawar)

Senior Civil Judge and JMFC.,
N.R.Pura.