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**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND
J.M.F.C., AT TARIKERE**

Present: Sri Shivakumar.R. B.A.L., LL.B.,
Addl. Civil Judge & JMFC, Tarikere.

Dated: 13th Day of July 2022

ORIGINAL SUIT NO.294/2019

PLAINTIFF/s :

Puradappa S/o Karehanumanna, aged 62 years, Retired Teacher, R/o Naranapura Village, Shivani Hobli, Ajjampura Taluk.

(Reptd. By : Sri S.N.Mallegowda, Advocate.)

Vs.

DEFENDANT/s:

- 1) Rudrappa S/o late Rangappa, aged 67 years,
- 2) Shivamurthy S/o late Rangappa, aged 65 years,

Both are Merchants, R/o Nagarakallu Street, Ajjampura Town, Ajjampura Taluk.

(Reptd. By : Sri T.L.Prakash, Advocate.)

PARTIES TO I.A.NO.II

Applicant/s : Rudrappa and another

Vs.

Opponent/s : Puradappa

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**ORDER ON I.A.NO.II**

The defendants have filed the instant I.A. under Order VII Rule 11 of CPC and be pleased to reject the plaint as barred by article 54 of Limitation Act.

2. In the annexed affidavit, the 1st defendant has stated that, the plaintiff has filed the present suit against him and another for the relief of specific performance of the agreement of sale alleging that their father had executed agreement of sale on 16.07.1986 in respect of suit schedule property for sale consideration of Rs.20,000/- to discharge the loan borrowed and also to meet the marriage expenses of Smt.Laxmidevi and they have received the same in the presence of the witnesses and handed over the possession of the suit schedule property to the plaintiff agreeing to execute the registered sale deed on or before January 1988 in favour of the plaintiff and thereafter, in spite of oral requests, the defendants did not come forward to execute the sale deed. The plaintiff further alleged in para No.2 of the plaint that the defendants have issued a legal notice dated 20.09.2001 to the plaintiff to hand over the possession of the suit schedule property and the plaintiff gave reply notice dated 11.10.2001. It is further stated that the plaintiff has filed the present suit

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on 08.08.2019 seeking the relief of specific performance of agreement of sale dated 16.07.1986 agreeing to execute the sale deed on or before January 1988. Hence, the suit is patently barred by law of limitation. It is further stated that another circumstance would like to be pointed out to prove the laches on part of the plaintiff that the defendants have issued legal notice on 20.09.2001 to the plaintiff to hand over the possession of the suit schedule property and the plaintiff gave reply notice on 11.10.2001 and even after knowing the contents of the legal notice dated 20.09.2011, the plaintiff did not takes steps to file a suit for specific performance within three years from the date of said legal notice. Hence, the defendants pray for to allow the application.

3. The copy of the I.A., was served to the other side, the plaintiff has filed detailed objections and resisted the I.A., filed by the defendants and interalia contended that, the I.A., filed by the defendants is not maintainable either in law or on facts. The plaintiff has filed present suit for the relief of specific performance of contract directing the defendants to execute the registered sale deed as per agreement of sale dated 16.07.1986 and as the plaintiff is in possession of the suit schedule property, the plaint cannot be rejected at this stage. The contention taken by the defendants can be looked

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after completion of evidence of both parties. At this stage, if the plaint is rejected, the plaintiff will be put to irreparable loss. For all theses grounds, the plaintiff prays for to reject the I.A., with exemplary cost.

4. Heard arguments on both sides. The learned counsel for the defendants relied upon the decision reported in AIR 2015 Supreme Court 2301 between Fatehji and company and another Vs. L.M.Nagpal and others.

5. On perusal of the materials placed on record, the following points would arise for my consideration are :

- 1) Whether the defendants have made out sufficient ground allow the I.A.?
- 2) What order?

6. My findings on the above points are as follows :

Point No.1 : In the Negative,

Point No.2 : As per the Order,

for the following:

REASONS

7. **POINT NO.1:** On perusal of the materials available on record, admittedly the plaintiff has filed present suit against the defendants for the relief of specific performance of

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contract dated 16.07.1986 in respect of suit schedule property.

8. Before advertng to the factual matrix of the interim application, it is just and necessary to keep in mind the law laid down regarding Order VII Rule 11 of CPC, which reads as follows :

11. Rejection of plaint.- The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed 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 comply with the provision of Rule 9.

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9. At this juncture, I would like to refer the decision of the Hon'ble Apex Court of Indian between **Salim Bai and others Vs. State of Maharashtra and others**, the same is reported in **(2003) 1 SCC 557**, wherein the Apex Court pleased to held that :

For the purpose of constituting under Order VII Rule 11 of CPC, the averments made out in the plaint alone should be germane and plea taken in the written statement or in the I.A., would be wholly irrelevant.

10. It is urge of the defendants that the defendants and their father have executed agreement of sale on 16.07.1986 in favour of plaintiff in respect of the suit schedule property by receiving sale consideration of Rs.20,000/- and thereon delivered the possession the suit schedule property in favour of the plaintiff. At the time of execution of sale agreement as stated supra, the plaintiff has agreed to get the registered sale deed on or before in the month of January 1998. The present suit filed by the plaintiff on 08.08.2019 before this court. Therefore, the suit of the plaintiff is barred by limitation as per Article 54 of the Limitation Act. Therefore, he prays for to reject the plaint. Per contra, it is the urge of the plaintiff that the plaintiff has filed this suit for the relief of specific

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performance of contract dated 16.07.1986 against the defendants in respect of the suit schedule property. It is further urge of the plaintiff that he is in possession of the suit schedule property as per the agreement of sale as stated supra. Therefore, the plaint cannot be rejected on the ground of limitation at this stage, the said aspects has to be considered at the time of final adjudication of the matter.

11. On perusal of the plaint averments, the plaintiff has filed present suit for the relief of specific performance of contract against the defendants in respect of the suit schedule property. According to the plaintiff, the father of the defendants namely Rangappa in order to repay the loan amount, he has agreed to sell the suit schedule property in favour of the plaintiff, the sale consideration was fixed for a sum of Rs.20,000/- and the father of the defendants had executed the agreement of sale on 16.07.1986 by receiving the sale consideration amount of Rs.20,000/- from the plaintiff and handed over the possession of the suit schedule property to the plaintiff. As per the plaint pleadings, the plaintiff has to get the registered sale deed in respect of the suit schedule property within January 1998. Thereafter, the plaintiff has orally demanded the defendants to execute the sale deed as per the sale agreement, but the defendants have

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refused to execute the registered sale deed in favour of the plaintiff. It is further pleaded by the plaintiff in his plaint that, the defendants have issued legal notice on 11.10.2001 to the plaintiff, calling upon the plaintiff to deliver the vacant possession of the suit schedule property in favour of the defendants, the plaintiff has issued reply notice to the defendants. Thereafter also the plaintiff has demanded the defendants to execute the absolute sale deed in favour of the plaintiff as per terms and conditions of the sale agreement dated 16.07.1986, but they have postponed the same on one or other reasons best known to them.

12. The Hon'ble Apex Court of India, time and again in catena of judgment held that, "the plaint cannot be rejected under Order VII Rule 11(d) of Code of Civil Procedure, if the issue of limitation is a mixed question of law and fact, the same has to be considered at the time of final adjudication of the matter. At this juncture, I would like to refer the decision rendered by the Hon'ble Apex Court of India between **Urvashiben & another Vs. Krishnakant Manuprasad Trivedi**, the same is reported in **2019(1) Kar.LR. 228 (SC)**, wherein the Hon'ble Apex Court of India pleased to held that in para No.15 of the aforesaid judgment that :

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“While deciding an application filed under O.VII R.11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under O.VII R.11(d) of CPC.

On perusal of the dictum laid down in the aforesaid decision, the same is aptly applicable to the present case on hand. While deciding the application under Order VII Rule 11 of CPC, the plaint cannot be rejected on the ground that the suit of the plaintiff is barred by limitation. The issue of limitation is a mixed question of law and fact, the same has to be considered at the time of final adjudication of the matter. On perusal of the decision relied by the counsel for the defendants, the same is not applicable to the present case on hand. Therefore, at this stage, the defendants have not made out any valid grounds to reject the plaint filed by the plaintiff. For considering all these reasons, I answer Point No.1 in the Negative.

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13. **POINT NO.2** : In view of my findings on Point No.1, I proceed to pass the following :

ORDER

I.A.No.II filed by the defendants under
Order VII Rule 11 of CPC is hereby rejected on
cost of Rs.200/-.

(Dictated to the Stenographer on computer, computerized by her, corrected by me and then pronounced in the open Court, on this the day of 13th day of July 2022.)

sd/-
(SHIVAKUMAR.R)
ADDL.CIVIL JUDGE &
J.M.F.C., TARIKERE.