

**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE AND
CJM, DHARWAD**

PRESENT

**Sri. Venkanna B. Hosamani,
B.Com., LL.B.,(Spl.)
Prl. Senior Civil Judge and
CJM., Dharwad.**

O.S. No.393/2024

Dated this 14th day of July, 2026

PLAINTIFF/S : 1. Sri. Kallappa S/o. Dyamappa Talawar
and others.

-Vs-

DEFENDANT/S : Smt. Fakkiravva W/o Mariyappa Talawar

Parties to I.A. No.5

Applicant : Smt. Fakkiravva W/o Mariyappa Talawar
(Ori.Def.)

(By Sri M.M. Korimath, Adv.,)

-Vs-

Opponent : 1. Sri. Kallappa S/o. Dyamappa Talawar
(Ori.Plths.) and others.

(By Sri. H.I. Tarihal, Adv.,)

ORDERS ON I.A. No.5

That the advocate for the defendant has filed I.A No.5 U/o 7
Rule 11(d) of CPC prayed that Hon'ble Court be pleased to pass

an order of rejection of the plaint filed by the plaintiffs as time barred in the interest of justice and equity.

2. In the annexed affidavit, the defendant has stated that the plaintiffs have averred in their pleading that during the life time of their father late Sri Dyamappa S/o Fakkirappa Talawar on 12/09/2011 entered into a registered agreement of sale without possession in respect of the suit property for valuable sale consideration of Rs.6,38,000/- and out of the total sale consideration an amount of Rs. 6,00,000/- has been paid on different dates to the defendant. But, the different dates have not been mentioned in the alleged agreement of sale nor in the plaint. It is further stated that during the life time of the father of the plaintiffs has not made any attempt to get execute the absolute sale deed in terms of agreement of sale. Now, the plaintiffs have filed the present suit after lapse of 13 years. Hence, the suit of the plaintiffs is barred by law of limitation. Hence, she pray for rejection of the plaint.

3. The counsel for the plaintiffs has filed written objections to the said application and opposed the application and contended that, the father of the plaintiffs has agreed to purchase the suit property and paid Rs.6,00,000/- as earnest money and the defendant has executed an agreement of sale dated 12/09/2011 before the Sub Registrar, Dharwad agreeing to execute the sale deed by receiving balance sale consideration amount of Rs.38,000/-. The defendant has postponed for executing the registered sale deed. After demise of their father, they have filed the present suit. The question of determination of limitation is mixed question of facts and law without full fledged trial only on the ground of limitation, the plaint cannot be rejected and only to harass the plaintiffs, the defendant has filed the present application. Hence, they pray for rejection of the application.

4. Heard the arguments on both the sides and examined the materials placed on record.

5. The following points have arisen for consideration,

1. Whether the applicant / defendant has made out sufficient grounds to allow her application ?

2. What order?

6. The points have been answered as under;

Point No.1 : In the Affirmative.

Point No.2 : As per the final order
for the following

: R E A S O N S :

7. **Point No. 1:** It is the specific case of the plaintiff is that the defendant had intend to sell the suit property for her family legal necessity. The father of the plaintiffs Sri. Dyamappa Talawar had agreed to purchase the property of the defendant for valuable sale consideration of Rs.6,38,000/- and paid Rs.6,00,000/- as an earnest money and the defendant has received the said earnest money and agreed to sell the suit property by receiving balance sale consideration of Rs.38,000/- and executed the registered agreement of sale on 12/09/2011.

The defendant has handed over the possession of the suit property in the compromise. Since then earlier the father of the plaintiffs and after demise of the father of the plaintiffs they are enjoying the suit property. The father of the plaintiffs was died on 27/01/2019. The plaintiffs are the legal heirs of Sri. Dyamappa. Hence, they are filed the present suit. Before filing of the suit, the plaintiffs have requested the defendant to execute the registered sale deed, but the defendant had postponed the same on one or the other reason. Finally, the plaintiffs got issued a legal notice through their advocate on 23/08/2024 and same was duly served on the defendant on 27/08/2024. In spite of that the defendant has not executed the registered sale deed. Hence, the plaintiffs filed the present suit.

8. The plaintiffs have furnished agreement of sale along with the plaint, the same was also marked as Ex.P1. On perusal of the Ex.P1 agreement of sale the following conditions have been mentioned as follows:

“1).....

2).....

3) ಸದರ ಜಮೀನಿಯ ಪಕ್ಕಾ ಖರೀದಿ ಪತ್ರವನ್ನು ಪೋಡಿ ವೆಗ್ಗರೆ ಮಾಡಿಸಿ, ಸದರ ಜಮೀನಿಗೆ ಸಂಬಂಧಪಟ್ಟ ಅವಶ್ಯವಿರುವ ಯಾವತ್ತೂ ಕಾಗದ ಪತ್ರಗಳನ್ನು ಸರಿಪಡಿಸಿ ನೋಂದ ಮಾಡಿಕೊಳ್ಳುವ ಕರಾರು ಅದೆ.

4)

5)”

On perusal of the Ex.P1 agreement of sale, it discloses that the defendant has agreed to sell her property for Rs.6,38,000/- and Rs.6,00,000/- has been paid by Sri. Dyamappa from time to time and balance of Rs.38,000/- has to be paid as on the date of execution of registered sale deed. The above quoted condition No.3 discloses that after phody of the said suit survey number, registered sale deed has to be executed. But the same is not clarified that who has to get corrected the documents of the suit property whether the plaintiffs or the defendant is not mentioned. When the father of the plaintiffs has paid huge amount of Rs.6,00,000/- only the balance consideration is of Rs.38,000/-, he has to take necessary steps to get the registered sale deed at earliest. But on perusal of the plaint averments, it

is not disclosed that the father of the plaintiffs has put an effort to get the registered absolute sale deed.

9. As per Article 58 of the Limitation Act, suit for declaratory decree as a limitation period of 3 years. This 3 three clock begins ticking exacting when the right to sue first accrues. The right to sue first accrues when a clear, unequivocal, threat or infringement to the plaintiff's right is made, when their entitlement is first denied. The Hon'ble Supreme Court of India clarified that the Limitation Clocks starts when the cause of action first arises. It does not wait for the plaintiff to acquire full knowledge of the legal dispute or every detail of the infringement. As per Section 3 of the Limitation Act, if a suit under this Article is filed after the 3 years period the Court must dismiss it even if the defendant does not explicitly rise limitation as a defence.

10. Admittedly, this suit is filed for specific performance of contract. The plaintiffs ought to have ready and willing to perform their part of contract at earliest point of time. They have to show their ever ready and willingness to perform their part of

contract with balance sale consideration and also they have to take necessary steps voluntarily to get registered the sale deed.

11. Admittedly, the agreement of sale executed on 12/09/2011. It is also admitted fact that, the father of the plaintiffs died on 27/01/2019. There is no material before this Court to show that the father of the plaintiffs was ever ready and willing to perform his part of contract. The plaintiffs have also not filed this suit within 3 years from the date of demise of their father. But this suit has been filed in the year 2024 i.e., after lapse of one decade i.e., the suit has been filed on 20/09/2024. Hence, I am of the opinion that the suit of the plaintiff is not filed within time prescribed by the law.

12. The Hon'ble Apex Court in its reportable Judgment in ***Civil Appeal No. 7370/2024 (Arising out of SLP (C) No. 7924/2024) dated 08/05/2026*** held that order 7 Rule 11 of CPC can be invoked where the plaint itself shows a legal bar if from the plaint averments alone the suit appears barred by law, the Court must reject the plaint without conducting full trial. The relevant portion of the said Judgment quoted as below:

“(C) INTERPLAY BETWEEN ORDER VII RULE 11 AND ORDER XIV RULE 2 CPC

10. An application under Order VII Rule 11 can be filed at any stage of the suit. The Court is bound to look into the averments in the plaint, the documents filed therewith, and the law under which the bar is claimed. Once an application under Order VII Rule 11 CPC is filed, the trial Court is first bound to decide the same before proceeding with the suit. In this regard, reference may be made to the judgment of this Court in R.K. Roja v. U.S. Rayudu and another³⁰, wherein it was held as follows:

“4. We are afraid that the stand taken by the High Court in the impugned order cannot be appreciated. An application under Order 7 Rule 11 CPC can be filed at any stage, as held by this Court in Sopan Sukhdeo Sable v. Charity Commr [(2004) 3 SCC

137] : (SCC p. 146, para 10) “10... The trial court can exercise the power at any stage of the suit – before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial.” The only restriction is that the consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The court has to

consider only the plaint as a whole, and in case, the entire plaint comes under the situations covered by Order 7 Rules 11(a) to (f) CPC, the same has to be rejected.

5. Once an application is filed under Order 7 Rule 11 CPC, the court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case, in case the plaint (election petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is entitled to file the application for rejection before filing his written statement.

(2016) 14 SCC 275 In case the application is rejected, the defendant is entitled to file his written statement thereafter (see Saleem Bhai v. State of Maharashtra [(2003) 1 SCC 557]). But once an application for rejection is filed, the court has to dispose of the same before proceeding with the trial court. To quote the relevant portion from para 20 of Sopan Sukhdeo Sable case [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137] : (SCC pp. 148-49) “20. ... Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does

not say in express terms about the filing of a written statement. Instead, the word “shall” is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant.”

6. In Saleem Bhai case, this Court has also held that: (SCC p. 560, para 9) “9. a direction to file the written statement without deciding the application under Order 7 Rule 11 cannot but procedural irregularity touching the exercise of jurisdiction by the trial Court,” However, we may hasten to add that the liberty to file an application for rejection under Order 7 Rule 11 CPC cannot be made as a ruse for retrieving the lost opportunity to file the written statement.”

13. Further, I relied Judgment of Hon'ble Supreme Court of India, reported in **2025 Live Law (SC) 428 in Civil Appeal No. of 2025 arising out of SLP (C) No.13459/2024** in the case of **Nikhila Divyang Mehta and another Vs. Hitesh P. Sanghvi and others** wherein it has been held that, Order VII Rule 11(d) of CPC – When the primary relief- the suit became

time barred then the ancillary relief claimed therein also becomes unenforceable.

14. The Division Bench of Hon'ble High Court of Karnataka in ***RFA No. 160/2017 (PAR) in the case of M.S. Jagadish and others Vs. B.J. Jayasantosh and others*** wherein it is held at para No.12 as below:

“12. In the case on hand, the rejection of plaint was not on the point of limitation, the trial court has held that the plaintiffs do not have right to sue. The question begging is if the plaintiffs do not have right to sue at all, can the plaint be rejected under Order VII Rule 11(a) of CPC. The answer must be in affirmative. The cause of action indicated in the plaint must be real in the sense on the day when the suit was filed the right to claim relief on the basis of bundle of facts pleaded must be available and must continue to be available to the plaintiffs till the suit is decided on merits. If the plaint averments clearly disclose that right to claim relief is not at all available, the invariable conclusion has to be that plaint does not disclose cause of action which attracts exercise of power under Order VII Rule 11(a) of CPC.

14. It is true that the trial court commenced recording of evidence and even without an application from the defendants, the trial Court rejected the plaint while deciding an application filed under Section 151 CPC. This exercise of power by the trial court cannot be said to be illegal. As has been clearly enunciated in the classical judgment of the Supreme Court in the case of Arivandandam vs. T.V.Satyapal and another, “Nip at the bud” is the rule. In the case on hand meaningful reading of the plaint discloses very clearly that the plaintiffs do not have right to sue which answers the requirement that the plaint does not disclose cause of action. Even though some cause of action is shown in para 23 of the plaint it is not real. Hence for all these reasons, the appeal is dismissed.

In the present case on hand, the plaintiffs have filed for specific performance of contract. The plaintiffs in plaint itself stated that on 12/09/2011 agreement of sale came into existence with regard to the suit property.

15. In another Judgment in ***RFA No. 862/2023 decided on 22/04/2026*** by Division Bench of Hon'ble High Court of Karnataka, wherein also it is upheld the rejection of plaint in similar cases.

16. The ***Hon'ble Supreme Court of India in Dahiben*** case held at where a suit appears from the averments of the plaint, to be barred by any law, it shall be rejected in terms of Order VII Rule 11(d) of CPC.

17. Admittedly, the plaintiffs father has not filed the suit within 3 years from the date of execution of agreement of sale and he has not taken any steps till his death. The plaintiffs also not initiated any legal action after demise of their father i.e., within 3 years.

18. In the light of the above quoted Judgments of Hon'ble Apex court of India, I am of the opinion that, Order 7 Rule 11 of CPC can be invoked where the plaint itself shows a legal bar, if from the plaint averments alone the suit appears barred by law the Court must reject the plaint without conducting a full trial.

In the present case on hand, on plain reading of the plaint it discloses that, plaintiffs have not taken appropriate steps to file the suit at the earliest point of time. Accordingly, I answered point No.1 in **Affirmative**.

19. **Point No.2:** That for the reasons discussed supra and my answer to the point No.1 in the Affirmative, I proceed to pass the following :

: O R D E R :

The I.A. No.5 filed U/o 7 Rule 11 (d) of CPC by the defendant is hereby allowed.

Accordingly, plaint is rejected.

Draw decree Accordingly.

(Dictated to the Stenographer, computerized by him, script corrected and then pronounced by me in the Open Court on this the 14th day of July, 2026)

(Venkanna B. Hosamani)
Prl. Senior Civil Judge & CJM.,
Dharwad.