

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

PRESENT

Sri. Venkatesha Naika V, **B.Com., LL.B.**
Prl. Senior Civil Judge & CJM,
Dharwad

O.S. No.276/2021

Dated this 22nd day of July, 2025

PLAINTIFF : Shivaprasad S/o Umashankar Lonikar
and others.

-Vs-

DEFENDANT : Raveendra S/o Vasantrya Bijapur
others.

Parties to I.A. No.VIII

Applicant : Arun S/o Rajashekhar Charantimath
(Ori.def.) and others
(By Sri S.V.K, Adv.,)

-Vs-

Opponent : Shivaprasad S/o Umashankar Lonikar
(Ori.plf.)
(By Sri. B.K.M Adv.,)

Contd....

ORDER ON I.A NO.VIII FILED U/O VII RULE 11 OF CPC

The applicant/ defendants through the present application prayed the court to reject the plaint by considering the grounds urged in the affidavit annexed with the application.

2. In the affidavit, an applicant/ defendant No.3 stated that the present suit has been instituted by the plaintiff against the defendants claiming relief of cancellation of registered GPA dtd. 05.02.1991, registered sale deed dtd.12.07.1999 and also sought for the relief of permanent injunction directing the defendants not to represent the plaintiffs with the respect to suit schedule property. The present suit has been instituted by the plaintiff in respect to land bearing R.S No.81/A/5/A measuring 14 acres 22 guntas situated at Attikolla village, Dharwad. The suit filed by one Shivaprasad S/o Umashankar Lonikar, Basavaraj S/o Umashankar Lonikar and Narashimrao S/o Krishna Gadagkar against the defendant No.1 to 4. GPA which is the subject matter of the suit property was executed by Umashankar and Krishnarao in favour of defendant No.1 on 05.02.1991. Pursuant to said GPA, defendant No.1 has executed a sale deed in

favour of defendant No.2 on 12.07.1999. Further contended that the original suit bearing O.S No.85/2001 on the file of Hon'ble II Addl. Sr. Civil Judge, Dharwad filed by Sushiladevi, Shivaprasad, Basavaraj and Krishnarao seeking the relief of declaration of sale deed dtd. 12.07.1999 as null and void and illegal and also sought for consequential relief of injunction. The said subject matter in previous suit is also the subject matter of present suit. Further contended that original suit was dismissed on 29.09.2005. After passing of order the Regular First Appeal No.136/2006 preferred before the Hon'ble High Court of Karnataka that came to be dismissed.

3. In view of aforementioned decision of Hon'ble High Court of Karnataka, the present suit is barred by the principles of res-judicata. The issues which was directly and substantially an issue in a former suit between the same parties and the parties under whom the present parties are claiming, litigating the same title has been heard and finally decided by the court. Thus the instant suit is not sustainable in view of principles of Res-judicata, thus, the suit deserve to be rejected on the said ground.

4. The plaintiff in the previous litigation are the plaintiffs in this suit also and thus they are have knowledge and information of sale deed dtd. 12.07.1999. It is to be clarified that the pleadings of the plaint which form the cause of action by itself clarifies and reveals the knowledge and information of the existence of the documents in respect of the reliefs as claimed. With this the suit is time barred.

5. The plaintiff has come up before this court seeking the relief of declaration and for cancellation of documents along with injunction. But the suit claiming such reliefs cannot be permissible to file before the court of law without payment of proper court fee. The valuation so valued and paid by the plaintiffs is improper. On this count, the present suit is not tenable and accordingly deserve to be dismissed.

6. Further contended that the cause of action as pleaded in the plaint in para No.24 is vague and baseless and has not arisen for the plaintiff to file the suit before the court and plaintiff has come up submitting with the wrong cause of action suppressing the true facts. Absolutely there is no cause of action for the

plaintiff as stated in the plaint by the plaintiff and therefore the cause of action as mentioned in the plaint in respect to one and cannot be appreciated and accepted for the purpose of filing of this suit. It is to be clarified as to prove the cause of action is bundle of facts and hence it is to be submitted by the applicant that the suit of the plaintiff is not sustainable in the eye of law and requires to be rejected. Considering aforementioned grounds, the present suit as instituted by the plaintiff is not sustainable thus the applicant/ defendant No.3 prays to reject the plaint.

7. The application resisted by the plaintiff filing detailed counter/ statement of objection contending that the application as filed is frivolous thus deserve to be dismiss at threshold. The averments of the affidavit are all false and beyond the scope of Order VII Rule 11 of CPC. The application itself is vague and the applicant has not invoked specific provision under which the plaint has to be rejected. The entire averments made in the affidavit are on merits of the matter of trial. Hence at this junction, mere considering the grounds urged in the application, the suit cannot be rejected.

8. It is well settled principle of law that only the plaint averments has to be considered and not even the merits of the documents while rejecting the plaint. In the affidavit accompanied, the applicant/ defendant has taken up new contentions that have to be tested in the trial. Defendant cannot file application U/o 7 Rule 11 of CPC without submitting their written statement. Considering aforementioned grounds of objection, the plaintiff /opponent prays to reject the application.

9. Heard both the sides.

10. Perused the available materials.

11. The following points arising for my consideration are here under:

1) Whether the applicant/ defendant made out grounds that the plaint as filed by the plaintiff is deserve to be rejected in terms of grounds urged in the application?

2) What order?

12. My findings to the above points are here under ;

Point No.1 : In the Negative

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

: REASONS :

13. **Point No.1:** Admittedly the present suit has been instituted by the plaintiff against the defendants in respect to the land bearing R.S No.81A/1/2 measuring 17 acres 14 guntas situated at Attikolla village, Dharwad taluk. Perusal of the pleadings as well as the contention taken by the applicant in the application goes to show that the land as referred by the plaintiff is contrary to the land as contended by the defendants. The applicant though he has taken specific contention that the subject matter of the present suit is also the subject matter of previous suit, but there was no such material is forthcoming in the application to consider the grounds urged in the application.

14. It is the case of the plaintiff that their predecessor have executed registered GPA dtd. 05.02.1991 in favour of defendant No.1 with respect to land bearing R.S No.81/A/5 situated at Attikolla village, Dharwad measuring 14 acres 22 guntas. As per the plaint averments, it is abundantly clear that, the land bearing R.S No.81/A/5 is the subject matter of the present suit. Here the plaintiff also referred the earlier

suit bearing O.S No.85/2001 on the file of the Hon'ble II Addl. Sr. Civil Judge, Dharwad and also pleaded and admitted that the suit bearing O.S No.85/2001 was dismissed vide judgment and decree dtd. 29.09.2005. The appeal preferred by the aggrieved party bearing RFA No.136/2006 before the Hon'ble High Court of Karnataka wherein the Hon'ble High Court of Karnataka dismissed the appeal with certain observation that the plots would be allotted to the allottees since the plaintiff are also admitted the previous litigation in respect to same subject matter. But so far as application of the principle of Resjudicata concerned, the parties to the suit particularly, the defendants who has raised objection about maintainability of suit has not tried to produce any substantial piece of evidence to convince the court that the parties to the present litigation as well as the previous lis are one and the same. Further there was no material as forthcoming for the applicant to demonstrate that the subject matter of the present lis is also the subject matter of previous suit. Further there was no material on record to show that the parties to the present suit are also parties in previous suit. Further the plaintiff has not stated whether the order of

Hon'ble High Court of Karnataka in RFA No.136/2006 is attained finality or not. It is the duty of the applicant/ defendant to produce relevant piece of material before the court to convince the court that the present suit is hit by the principle of Res-judicata. To examine the facts and circumstances of the present suit concerned absolutely there was no material as forthcoming for both the plaintiff and defendants whether the order of RFA No.136/2006 is attained finality or it is questioned before appropriate forum. Hence, in my view the grounds urged for rejection of the plaint applying principle of Res-judicata does not arise.

15. Here the applicant/ defendant have taken another contention that the cause of action as averred in the plaint is vague and created. In support of the grounds urged by the applicant/ defendant further they are relied the following decisions:

1) 2021(5) K.L.J 497 between P.R Cheena Reddy V/s Smt. Parvathamma and others.

2) MANU/SC/0508/2020 arising out of SLP (Civil) No.11618/2017 between Dahiben V/s Arvindbhai Kalyanji Bhanusali (D) thr. Lrs and Ors.

3) MANU/KA/2593/2021 Civil Revision Petition No.253/2015 between Manipal University V/s Ramanjinappa H. and ors.

16. The contention / assertion of the applicant / defendant examined in the light of aforementioned proposition of law as relied and referred by the applicant. So far as cause of action concerned, here the plaintiff though he has averred in respect to previous suit and in respect to execution of disputed GPA as well as sale deeds and there was previous suit was disposed on merits, but itself cannot be construed as there was no cause of action to file the present suit. Unless the applicant has to convince the court placing reliable materials that the cause of action as relied and referred in previous suit as well as present suit are one and the same. Since the cause of action it is a bundle of facts. Hence, it require supportive materials, but in the absence of clear and cogent material the contention of the defendants may not holds water. Hence in my view it can be considered at the time of trial on merits. Hence, the grounds urged for rejection of plaint in respect to cause of action is absolutely not attracted to the facts and circumstances of the present case.

17. Another contention of the applicant for rejection of plaint that the court fee paid there on as well as the valuation made by the plaintiff in respect to subject matter of the suit is not proper and insufficient. Perusal of Order VII Rule 11(b) of CPC, it appears that the court have such a power to reject the plaint where relief as claimed is under valued and plaintiff on being require by the court to correct the valuation within a time to be fixed by the court, fails to do so. So far as an application of an aforementioned provision of law concerned, the applicant has not produced any substantial material to show that the relief as claimed by the plaintiff in present suit are under valued. Even there was no any materials as forthcoming for the applicant to show that the court has corrected the valuation and accordingly time fixed for the payment of court fee and even if the time has been fixed by the court, the plaintiff has not complied the same by making payment of deficit court fee. However, the grounds urged in the present application, absolutely not fallen within the purview of Order VII Rule 11(b) of CPC.

18. So far as rejection of plaint concerned, the applicant further contended that the present suit is barred by law of limitation. In support of their contention, the applicant mainly relied on the date of execution of GPA as well as a disputed sale deed. It is undisputed fact that the sale deed as well as the GPA as relied and referred for both the parties to the suit are appears to be pertaining to year 1991 as well as 1999. The suit filed in the year 2021. Mere on the contention of the applicant/defendant it is not proper to arrive conclusion by referring the date of execution of disputed document as well as date of filing of suit, unless and until the applicant has convinced the court that there was substantial piece of evidence for the defendants to show that the present suit is hopelessly barred by law of limitation. Perusal of plaint averments it is specific allegation against the defendants that, the persons who are executed a disputed GPA in favour of defendant No.1 is fraudulent document. No documents/ material as forthcoming for the defendants to convince the court that the plaintiffs have no right, title and interest over the subject matter of the suit and the person who has executed the GPA in favour of

defendant No.1 alone was having his absolute right, title and interest over the subject matter of the suit. I am of the view that it is not appropriate to conclude that the present suit is hopelessly barred by time mere referring the date of execution of disputed documents. As per the allegations made in plaint it is the case of the plaintiff that, they are not parties to the disputed documents and even without their authority disputed documents are executed by defendant No.1. Such being the case, mere referring the date apparent on pleadings that itself is not suffice to arrive conclusion that the suit is hopelessly barred by time. Since the question of limitation is mixed question of law and facts. To record proper findings in respect to question of law of limitation concerned, in my view it is not appropriate stage to arrive conclusion that the suit is time barred mere referring the pleadings.

19. From over all consideration of the materials on record, in my considered view the applicant has filed present application for rejection of plaint on several grounds but the applicant has not made any efforts to convince the court placing reliable materials. Hence, to

invoke Order VII Rule 11 of CPC concerned the grounds urged in the application are not clearly attracted for want of substantial piece of evidence. Hence in my view the application filed by the applicant/ defendant is deserve to be rejected. Hence, the point No.1 is answered in ***Negative.***

20. **Point No. 2:** That for the reasons discussed supra, the following

: O R D E R :

**The I.A No.VIII filed U/o VII
Rule 11 of CPC by the applicant/
defendant is hereby rejected.**

(Dictated to the stenographer, transcription typed by her; corrected by me and order is pronounced in the open court on the 22nd day of July, 2025).

(Venkatesha Naika V.)
Prl. Senior Civil Judge & CJM.,
Dharwad