

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE, HUBBALLI**

Present:

Sri. Yamanappa Karehanumanthappa,
Prl. Senior Civil Judge, Hubballi.

O.S. No. 150/2025

Dated this the 27th day of August - 2026

Plaintiffs : Mahammad Ismail S/o Khashim Saunshi
and others

.Vs.

Defendants : Revanasiddappa S/o Gadigeppa Humbi
and others

PARTIES TO IA No. III

Applicant / : Mallavva Rudrappa Gabbur
(Def. No. 7)

.Vs.

Opponent / : Mahammad Ismail S/o Khashim Saunshi
Plaintiff and others

ORDER ON IA NO. III

This I.A. is filed by the defendant No. 7 U/O. VII Rule 11(a & d) R/w 151 of CPC praying to reject the plaint as it is barred by law of limitation and it does not disclose cause of action to meet the ends of justice and equity.

2. In support of the application defendant No. 7 sworn affidavit and stated that, the plaintiffs have filed the present suit to harass the defendant who is in his peaceful possession and enjoyment of the suit schedule property and the suit is barred by limitation and also no any valid cause of

action and further it is pleaded in the plaint that, the father of plaintiff has purchased the suit property under agreement of sale on 30.06.2008 is false and for the prima-facie reason, the said should have been filed within 3 years from that date, but the suit is filed in the year 2025 which is barred by limitation. Further the property bearing Sy. No. 80 measuring 14 acres 4 guntas and Sy. No. 86 measuring 8 acres 13 guntas, out of these two properties 6 acres 33 guntas are the suit schedule properties and the said properties are not partitioned and the father of plaintiff has executed false agreement of sale for the said undivided properties. Since the said properties are not yet partitioned, no cause of action has arisen to the plaintiffs to file the suit. Hence, prays to allow the application.

3. The plaintiffs have filed objection by denying the averments of affidavit stated that, the application has been filed with the intention of delaying the trial and escaping the lawful contractual obligations inherited by the defendants. The suit is structurally founded upon a distinct, legally valid and registered agreement of sale executed on 30.06.2008. The applicant has intentionally introduced false dated and document to create confusion regarding the timeline of the suit. In plaint a valid contractual relationship was established when the predecessors in title of the defendants executed registered agreement of sale. The plaint discloses a clear, triable cause of action. The agreement of sale did

not fix a hard date, but rather conditioned the performance upon a specific event namely the defendants' predecessors separating their family share and securing a statutory 11E sketch. Because performance was contingent on this ongoing, unfulfilled obligation and because no explicit refusal was communicated until after the plaintiffs legal notice in 2025 the clock of limitation never commenced prior to that year. The plaintiffs are always been ready to perform their part of contract by keeping ready the balance amount. Conversely, the defendants having enjoyed the plaintiffs money for over a decade are now trying to utilize O. VII R. 11 as an unfair shortcut to dismiss the suit without a trial, so they can illicitly alienate the property to third parties behind the plaintiffs back. Hence, prays to dismiss the application.

4. I have heard both side on this I.A. Perused the rulings, pleadings of the parties, I.A. and affidavit. The following points arise for my consideration:

1. Whether the defendant No. 7 proves that the suit is barred by law U/O. VII Rule 11(d) of C.P.C. ?

2. What order?

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

Point No.1 : In the Affirmative.

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

REASONS

6. **Point No.1:** Admittedly, the suit is filed by the plaintiffs for specific performance of contract in respect of suit property. Smt. Yallavva and Mallavva have entered into an registered agreement of sale deed to sell the suit property in favour of Kashimsab S/o Hasansab Samshi on 30.06.2008 for valuable consideration amount of ₹ 1,37,35,828/-. As per terms of agreement the period of 6 months was fixed to complete the sale transaction. The suit was instituted on 19.03.2025. The plaintiffs claim that the cause of action arose on 30.06.2008 and also on the day when the defendants have fulfilled their part of contract and promised on 19.02.2025 the day when the notice were served to defendants. The plaintiffs have filed this suit after completion of more than 15 years after the stipulated period completing the sale transaction. The Hon'ble Supreme Court of India in **Usha Devi and others**, held that *when there is a specific date fixed for performance, the limitation period for filing a suit for specific performance would expire three years from the date. In that case, it was held that the period of limitation on 16.01.1993 and a suit filed after that date was barred by limitation.* The Hon'ble High Court of Karnataka in the judgment passed in **Civil Petition No. 85/2023 (IO)** in between **Sri. K.Hanumanthaiah Vs. Sri. Prakashchand and others** wherein in para No. 16 and 17 it is held as follows;

16. Upon reviewing the plaint and the agreement of sale dated 28.04.2008, it is clear that the sale transaction was to be completed within 11 months. No extension of time was stipulated, even for obtaining the necessary permissions. The sale deed in favor of Defendant No. 7 was executed on 16.06.2011, and the plaintiff claims that he became aware of it only in 2016. However, this purported cause of action appears to be an attempt to circumvent the provisions of the Limitation Act. The suit, having been filed 8 years after the 11-month period expired, is clearly barred by limitation under Article 54 of the Limitation Act.

17. Article 54 of the Limitation Act provides that a suit for specific performance must be filed within three years from the date fixed for performance, or if no such date is fixed, from the date when the plaintiff first becomes aware that performance has been refused.

7. Upon perusal of the plaint the agreement of sale deed dated 30.06.2008 it is clear that the sale transaction was to be completed within 6 months, no extension of time was stipulated . This suit was filed 15 years after 6 months period expired, is clearly barred by limitation under Article 54 of Limitation Act. As per Article 54 of Limitation Act that a suit for specific performance must be filed within three years

from the date fixed for performance, or if no such date is fixed, from the date when the plaintiffs first becomes aware that performance has been refused.

8. In the present case in order to specific performance of contract there is a period fixed for performance of contract within stipulated time the plaintiffs have not made efforts to get the Sale Deed from the defendants.

9. It is well settled position of law that while considering the application U/o.7 Rule 11 of C.P.C. the Court has to consider the averments of the plaint and plaint alone. Except the plaint the Court cannot consider the written statement or affidavit filed by the parties to reject the plaint. The Hon'ble Apex Court in **(2003) 1 SCC 557, between Saleem Bhai vs State of Maharashtra** and in landmark judgment **T. Arvindam vs T.V. Satyapal (1977) 4 SCC 467**, held that while deciding to accept or reject the plaint U/o.VII Rule 11 of CPC what can be seen by the court is only the averments made in the plaint. Defence in written statement of the defendant cannot be looked into. The Hon'ble Supreme Court recently in **(2020) 7 SCC 366, between Dahiben -vs- Arvindbhai Kalyanji Bansali**, explained relevant principles under VII Rule 11 and explained that "The true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint

discloses a cause of action, then the application U/o.VII Rue 11 of CPC must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected.”

10. in the present case also the plaintiffs have made payment to defendants from 07.10.2008 till 26.01.2025. The defendants have received amount of ₹ 30,40,800/-. Whether these amounts have been paid for the purpose of this sale transaction there is no document, there is no extension period document before this Court. According to agreement of sale deed the plaintiffs have not filed the suit within limitation.

11. The Advocate for plaintiffs relied the judgment of Hon'ble Supreme Court of India in **(2006) 5 Supreme Court 340** in between **Panchanan Dhara and others vs. Monmathanath Maity (dead) through legal heirs and others** wherein it is held that, *Limitation Act, 1963 – Art. 54 – suit for specific performance of contract – when barred by limitation – consideration involved – for performance of contract – effect – once it is proved that, time fixed for performance of the contract has been extended by the parties (as in present case), instead of the first part of Art. 54 the second part thereof would become applicable.*

12. In the present case there is no extension period by the defendants to perform the part of contract. Therefore,

the judgment of Hon'ble Supreme Court of India not applicable to the case on hand.

13. The plaintiffs have relied upon another judgment of Hon'ble High Court of Karnataka in **Civil Revision Petition No. 568/2024(IO)** in between **Puttagangaiah and others vs. G. Ravindrakumar and others** wherein the Hon'ble High Court of Karnataka in para No. 12 held that, *the fact that the appellant had eventually sent a legal notice on 28.11.2003 and again on 07.01.2005 and then filed the suit on 23.02.2005, is also invoked as giving rise to cause of action. Whether this plea taken by the appellant is genuine and legitimate, would be a mixed question of fact and law, depending on the response of the respondents.*

14. In the present case the plaintiffs have filed suit against the defendants for the relief of specific performance of contract based on the agreement of sale deed executed by defendants within stipulated time as per Article 54 of Limitation Act the plaintiffs have not filed the Suit. Therefore, the judgment relied by the Advocate for plaintiffs is not applicable to the case on hand.

15. So, considering the materials on record I hold that the application is filed by the defendants allowed. Accordingly, I answer point No.1 in **Affirmative**.

16. **Point No.2:** In view of my answer to point No.1 as stated above, I proceed to pass the following;

ORDER

The I.A. No. III filed by the defendant No. 7 U/o. VII Rule 11(a & d) R/w Section 151 of C.P.C. is allowed.

Plaint is rejected.

The costs shall following the events.

(Dictated to the Stenographer directly on computer, script corrected directly on computer and then pronounced by me in the Open Court on this the **27th day of August - 2026**)

Sd/-
(Yamanappa Karehanumanthappa)
Pri. Senior Civil Judge, Hubballi.