

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE
& J.M.F.C., HUBBALLI

Present:
Sri. Ganapathi Prashanth M.,
B.A.LL.B.,
I Addl. Senior Civil Judge & J.M.F.C., Hubballi.

O.S. No.119/2021

Dated this the 10th day of November, 2022

Plaintiff/s : Smt. Nagaratna W/o Prakash Billur.

.Vs.

Defendant/s : 1. Smt. Shashikala W/o chandrashekar
Vastakar and others.

PARTIES TO I.A.

Applicant/s : Sanganna @ Sangappa S/o
Chanabasappa Belagavi.

.Vs.

Opponent/s : Smt. Nagaratna W/o Prakash Billur.

**ORDERS ON I.A. No. IV UNDER ORDER 7 RULE 11 (d) OF
C.P.C.**

The defendants No.5 to 7 are seeking to reject the plaint by filing this application under Order 7 rule 11(d) of C.P.C. .

2. The plaintiff has filed objections.
3. Heard, perused the pleadings and materials placed on record.

4. The points for consideration are;
 1. Whether the plaintiff liable to be rejected as prayed for ?
 2. What order ?

5. The above point No.1 is answered in the negative and point No.2 is as per final order, for the following;

REASONS

6. **Point No.1:** The defendant No.5 to 7 are seeking to reject the plaint on the ground that suit is barred by limitation, in view of Will dated:25.08.1988 and Relinquishment Deed dated:07.03.1963 and in view of decision in O.S. No.45/2004 disposed by II Addl. Sr. Civil Judge dated:27.06.2005. It is stated that the great grandfather of defendant No.7 and his wife and children entered into partition dated:21.11.1962 and defendants No.1 to 5 derived absolute title to 'B' schedule properties and the line of succession to that property came to an end and they became independent holders and those properties. The propositus executed Relinquishment deed dated:07.03.1963 in respect of his share and executed Will on 25.08.1988 bequeathing his properties in favour of the mother of defendant No.5. The mother of defendant No.5 executed Will dated:18.08.1988 in favour of defendant No.5 to 7. The said documents are public documents more than 12 years old and suit is barred under article 110 of Limitation Act. Even otherwise in view of compromise in O.S. No.45/2004 the suit is defective and liable to be rejected. The suit is also hit by under Sec.6-A(d) of Hindu Succession Act as amended in the 2005 and hence

disposition made prayer to the year 2005 cannot be claimed as joint properties and prayed to reject the plaint.

7. The objection of the plaintiff is that the purported Will dated:18.08.1988 does not bind the share of the plaintiff and Will is not document of title and it is not probated and the limitation is not pure question of law and cause of action is suit as arose in the year 2020 and hence the claim of the plaintiff has to be adjudicated and prayed to dismiss the I.A.

8. It is relevant to note that for rejection of plaint under Order 7 Rule 11(d), only the plaint averments are germane. Any amount of defence cannot be considered to reject the plaint. Therefore, it is relevant to note that the plaint averments when read in isolation, do not make out grounds for rejection of plaint. The learned counsel for the defendant No.5 to 7 has vehemently argued that the plaintiff, by clever pleadings, made out illusion of cause of action and by suppression of material facts has avoided the law of limitation and therefore the plaint has to be nipped at the bud. No doubt it is true that an illusion of cause of action if made out by clever pleadings, the Court can reject the plaint. However, there is a line of distinction between an illusion of cause of action vis-a-vis a disputed fact that requires trial. Keeping in mind the said distinction between the two, it is relevant to note that when plaint averments do not make out valid grounds for rejection of plaint, but the right asserted by the plaintiff in the suit requires trial, under the present set of facts it does not seem to be a case made out for rejection of plaint. Per contra, it is a case which requires trial. Therefore, when fact affirmed in the plaint is denied by the defendant, it is proper to frame an issue regarding

all material aspects and proceed to trial and disposed of the dispute on merits.

9. This is a second application for rejection of plaint. Already this Court had passed Order on I.A. No.II on 24.06.2022 on the application filed by defendant No.8 under Order 7 Rule 11 of C.P.C. Hence, for the same reasons and for the reasons supra, the plaint cannot be rejected at this juncture as prayed for. Hence, the above point No.1 is answered in the negative.

10. **Point No.2:** In view of finding on point No.1, this court proceeds to pass the following;

ORDER

I.A. No. IV filed by the defendant No.5 to 7
under Order 7 rule 11 of CPC is hereby dismissed.

No order as to costs.

(Dictated to the Stenographer, transcribed and computerized by her, script corrected directly on computer and then pronounced by me in the Open Court on this the **10th day of November, 2022**)

(Ganapathi Prashanth M.,)
I Addl. Senior Civil Judge & J.M.F.C.
Hubballi.