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

Present:

SMT. SARVAMANGALA K.M.,
B.A. LL.B.,
I Additional Senior Civil Judge and JMFC.,
Hubballi.

O.S. No.442/2024

Dated this the 10th day of October, 2025

Plaintiff/s	:	*Jayashree W/o Chandrashekhar Naregal.*

.Vs.

Defendant/s	:	*Shri. Rudrappa S/o Veerabhadrappa Gangannavar and others.*

PARTIES TO I.A. No.VII

Applicant/s	:	*IndusIand Bank represented by authorised Officer and others.*

.Vs.

Opponent/s	:	*Jayashree W/o Chandrashekhar Naregal.*

i.	*Provision under which application is filed*	:	*Under Order VII Rule 11(D) R/w Sec.151 of CPC*
ii.	*Relief sought for*	:	*Seeking for rejection of the plaint filed by the plaintiff.*
iii.	*The date on which application is filed*	:	*04.04.2025*

iv.	*Number of the application*	:	*VII*
v.	*The date on which objections are filed by different opponents*	:	*19.04.2025*
vi.	*The date on which orders were passed on the said application*	:	*10.10.2025*

ORDERS ON I.A. No.VII

The defendant No.3 has filed an I.A. No.VII under Order VII Rule 11(D) R/w Section 151 of C.P.C., seeking for rejection of the plaint filed by the plaintiff.

2. *The plaintiff has filed objections.*

3. *Heard arguments.*

4. *The points for consideration are as follows:*

   1. *Whether the defendant No.3 has made out grounds enunciated under order 7 Rule 11 (D) to reject the plaint filed by the present plaintiff?*
   2. *What order ?*

5. *My findings on the above points are as follows:*

Point No.1 : In the negative.
Point No.2 : As per final order, for the following;

REASONS

*6. **Point No.1:** This suit is filed by the plaintiff for the relief of declaration and injunction in concerned. The present application is supported by affidavit. It is stated by the defendant No.3 that the plaintiff No.1, in the capacity of wife of the defendant No.2, has filed this case. The defendant No.1 approached to defendant No.3 for financial assistance of 'Revised Credit facilities' as on 06.07.2024. The defendant No.1 and 2 are both businessman and best friends. The defendant No.2 has purchased the suit schedule property from one Shri. Shrinivas S/o Shankarsa Meharwade under and by virtue of Registered Sale deed dated:08.05.2009. It is further submitted that there onwards defendant No.2 mortgaged the suit property on 27.09.2018 by executing registered deposit of title deed for loan of Rs.38,50,000/- in favour of HDB Financial Services Limited Hubballi. There onwards suit property has been released by way of registered reconveyance deed dated:02.06.2020 by HDB financial services limited Hubballi, in favour of defendant No.2. The defendant No.2 and his daughter Pooja Chandrashekar Naregal further took financial assistance of Rs.50,00,000/- from Cholamandalam investment finance company limited by executing deposit of title deed over the suit property, dated:23.06.2020. And again further took top-up loan* *of Rs.8,40,000/- by executing extended deposit of title deed over the suit property, dated:22.10.2020.*

7. It is further submitted that, when the defendant No.2 fail to pay the regular EMI's to Cholamandalam investment and finance company limited, decided to sell suit property. Hence defendant No.2 approached defendant No.1 for purchase of the suit property to escape from the legal proceedings against him. The defendant No.1 and defendant No.2 are well known to each other for long time, which is admitted by the plaintiff in the plaint. The defendant No.1 accepted the proposal of defendant No.2 and agrees to purchase the suit property. Out of that the said sale consideration amount was paid to the account of Cholamandalam investment and finance company limited by defendant No.1. Hence, after the payment of outstanding amount to Cholamandalam investment and finance company limited executed Discharge deed in favour of defendant No.2 and his daughter Pooja Naregal, the registered discharge deed dated:01.06.2024. On 01.06.2024 the defendant No.2 executed sale deed in favour of defendant No.1 for consideration of Rs.90,00,000/- the sale deed has been witnessed by defendant No.2's another daughter Aishwarya Naregal. The same consideration amount has been paid to the mortgage account of defendant No.2 at Cholamandalaum which *due. But the co-borrower Pooja Chandrashekar Naregal has not been discharged from the mortgage hence the finance company again executed rectification discharge deed dated:03.06.2024, at the time of execution of sale deed there was no Bank/defendant No.3 official present with Defendant No. 1 & 2 therefore there is no question of any suspicion for Defendant No.2 that he is mortgaging the property in favor of defendant No.3 at the time of execution of Sale Deed. Defendant No.1 is the customer of our bank i.e., defendant No.3 and he has already availed a working capital loan OD facility from our bank. Defendant No.1 has applied for additional funding and against which he has proposed to mortgage the property he has purchased from Defendant No.2. The defendant No.3 has verified the title of the Defendant No.1 and got the Title Search Report from its lawyer. The defendant No.3 sanctioned facility to the Defendant No.2 and according to the condition of the sanction, this property was mortgaged with the Bank by Defendant No.2. There onwards defendant No.1 entered into supplemental Master Facility Agreement as proprietor of Sri. Kottur Basaveshwar Trading Company with defendant No.3, for 1,99,00,000/-, out of the said loan amount disbursed to the account of defendant No.1. Which is a months later than the sale deed date executed by defendant No.1.*

8. It is further submitted that, on 01.06.2024 the alleged sale deed has been willfully and voluntarily executed by defendant No.2 along with his another daughter Aishwarya Naregal as witness to the sale in favour of defendant No.1. The defendant No.1 executed Memorandum of Entry Recording Extension of Mortgage by Deposit of Title Deeds by Way of Constructive Delivery and Creation Of Charge over New Immovable Properties, in favour defendant No.3 on 06.07.2024. It is further submitted that, by looking into plaint and document very clear that the suit scheduled property was absolute self-acquired property of defendant No.2, hence all the transactions of scheduled property were mad by defendant No.2 with voluntarily without any coercion, threat, or misunderstanding, hence plaintiff don't have any Locus Standi to file this suit. What are all measures taken by defendant No.2 for betterment of his family, in which 2 daughters are also witnessed and present, hence it is clear that plaintiff also aware of the transactions. Moreover there is no any Complaint regarding to the alleged fraud transaction against defendant No.1 and 2. All the averments made in plaint are itself very clear and she admitted herself. Plaintiff and defendant No.2 are colluded and very cleverly filed this suit as fraud transaction i.e. sale deed dated:01.06.2024. The Defendant No.1 have valid title over the schedule property and defendant No.3 is *having valid mortgage right or interest over the schedule property. Further, the plaintiff who is neither owner of the property, wherein they are (her family) only illegal possessors/occupiers of the schedule property. Defendant No.3 denies the allegation mentioned in the plaint. The plaintiff for the sake of blaming the Defendant No.1 and 3 drafted some flimsy grounds, which does not carry any legal sanctity. The defendant No.3 disbursed the loan in the account of the Defendant No.1 and not in the account of Defendant No.2. The defendant No.3 or any of its staff is no way connected or involved in any transactions with respect to the transactions in the account of the Defendant No.2. It is absolutely false and baseless to claim against them or its staff has colluded with or connived with Defendant No.1 to cheat or defraud the Defendant No.2. Further defendant No.3 is not aware of any dispute or differences if any between Plaintiff & Defendant No.2 with the Defendant No. 1 or any dispute between plaintiff and defendant No.2.*

9. *It is further submitted that W.A.No-367 of 2017 M. Lilly Vs District Collector it is a well settled principle of Law that, any party who had approached the court with misleading facts with an intention to mislead the Court, should not be given any relief sought by them. The above suit in turn also clearly*

demonstrates the connivance of the plaintiff with the ill intention of delay the recovery proceedings of the mortgage property. The plaintiffs have filed the frivolous suit against the future action may initiated by the Defendant No.3 under SARFAESI Act. It is further submitted that whereby clever drafting, the plaintiff have failed to mention that the alleged cause of action occurred with particular employee name of defendant No.3, and the entire sub register officers. The plaintiffs by clever draft in the name of declaration suit, has initiated to restrain the defendants No.1 and 3 from recovering the suit property in which they illegally occupied. All the allegations made are not fraud or misrepresentation or cheating but the plaintiffs having knowledge have deliberately suppressed the material fact before the Hon'ble Court and the present suit also not maintainable, as they made defendant no.3 as party present suit, which is Mis-joinder and non-joinder of necessary parties. Hence, this application under Order 7 Rule 11 of CPC for rejection of plaint.

10. The objections of the plaintiff is that question of law on pleading of plaint should only be considered for dismissal of the plaint. If it is question of fact and law then plaint cannot be dismissed. The Hon'ble court that in very application of defendant No.3 mentioned in application that under law or facts application should be *dismissed. That means Defendant No.3 access it is not only question of law, but facts are to be proved by bundle of evidence by plaintiff as well as defendants. The Defendant No.2 had filed Written Statement and nowhere it is mentioned about SARFAESI Act 2002. Either Defendant No.2 or Defendant No.3 are no were concerned for SARFAESI Act. Plaintiff came to court that he has been cheated by Defendant No.1 and Defendant No.3 in hand and glow and deceive plaintiff's husband i.e., Defendant No.2 for that reason Sale-Deed executed on 1-6-2024 to be declared as nullity, when such being the situation question of SARFAESI Act does not arose either to the plaintiff or to the defendants. It is defeat the legitimate rights of the plaintiff stody as a SARFAESI Act has been canvance the same Act is nothing to do with a present case. It is well planned by defendant No.1 and 3 created a bogus story to shelter their owner defaulters. Hence, prayed to dismiss the I.A.*

11. *Before discussing merits of the application it is discussed regarding on what grounds plaint can be rejected.*

12. *Under Order 7 Rule 11 of CPC rejection of plaint is permissible only on limited legal grounds, such as:*

1. *No cause of action disclosed (Order 7 Rule 11(a).*

2. Relief claimed is under value and not corrected (Order 7 Rule 11(b).

3. Insufficient stamp paper (Order 7 Rule 11(c).

4. Suit barred by law on the face of plaint averments (Order 7 Rule 11(d).

5. Non compliance with statutory requirements (Order 7 Rule 11(e & f).

13. While deciding an application for rejection of plaint, the Court has to look only at the averments in the plaint and not at the written statement or defense. If from the plaint itself it appears that the suit is barred by law, only then it can be rejected and it is settled principles of law in 'N' number of decisions the Hon'ble Supreme Court held that frivolous or vexatious plaint can be rejected, plaint cannot be rejected on the basis of defence or disputed questions of fact and only plaint averments are relevant not defence.

14. On perusal of the entire materials available on record as well as the affidavit of the present applicant it is noticed to the Court that the matter which have taken by the present defendant is requires evidence, appreciation of facts or disputed factual adjudication. When the present plaintiff seeking the relief of declaration regarding sale deed dated:01.06.2024 in respect of the suit property allegedly executed by the defendant No.2 in favour of *the defendant No.1 is nullity and also seeking direction to order for enquiry against officials of the defendant No.3 and seeking reimbursement of loss and damages incurred by the defendant No.2 by way of mandatory injunction it requires evidence and appreciation of facts regarding adjudication of the disputed facts. Therefore, when the evidence is required and appreciation of the facts is to be adjudicated plaint cannot be rejected. In the present suit on hand there is no legal grounds apparent from the plaint comes under the purview of Order 7 Rule 11 of CPC. When the facts are available and disputed, disputed question of fact cannot be gone into at the stage. When the facts require evidence are adjudication, the plaint cannot be rejected and the matter was must go for trial. Therefore, in this stage this Court is of the opinion that the application filed by the defendant No.3 is not maintainable. Hence, this court has answered* ***point No.1 in the negative.***

15. ***Point No.2 :-*** *On the basis of my reasons on point No.1. I proceed to pass the following :*

ORDER

The I.A. No.VII filed by the defendant No.3 under Order VII Rule 11(D) R/w Section 151 of CPC praying *for reject the plaint filed by the plaintiff is here dismissed.*

No order as to costs.

(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the ***10th day of October, 2025****)*

(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge and JMFC.,
Hubballi.