

IN THE COURT OF THE II ADDITIONAL SENIOR CIVIL JUDGE
AND J.M.F.C. HUBBALLI

Present:- Smt. Deepa G Manerkar,
B.Com. L.L.B, (Spl.)
II Addl. Senior Civil Judge & J.M.F.C.,
Hubballi.

Dated this the 17th day of November 2025

O.S. No.365/2023

Sri. Chandrakanth S/o Shamappa Konth
of Bhavani Nagara, Hubballi and another

...Plaintiff/s

-Versus -

Sri. Jagadish S/o Chandrashekharappa Mattikoppa
of Mangalawarpeth, Hubballi

.....Defendants

:: IA.No.I ::

Sri. Jagadish S/o Chandrashekharappa Mattikoppa
of Mangalawarpeth, Hubballi

APPLICANT/ DEFT. NO.1

Versus -

Sri. Chandrakanth S/o Shamappa Konth
of Bhavani Nagara, Hubballi and another

OPPONENT/ PLFF.

ORDERS ON I.A.NO.I FILED UNDER ORDER VII**RULE 11(a) and (d) R/w Sec.151 OF CPC**

The present I.A. is filed by the counsel for the defendant to reject the plaint.

2. In the affidavit annexed to the IA it is sworn by the defendant that on the basis of agreement of sale dated 08.01.2016 the present suit is filed. The plaintiff has not shown the cause of action in the plaint and the suit is not fair and well and time barred as such the cause of action does not survive. As per the plaintiff he entered into agreement of sale dated 08.01.2016 with the defendant. However, the plaintiff has not given any notice to show that he was ready to purchase the suit property or given any notice before suit for recovery of money. That the agreement of sale is dated 08.01.2016 and matter was settled in 2016 itself. Now the plaintiff filed the present suit for recovery of money only to harass and create nuisance to the defendant. If at all the claim of the plaintiff was genuine he ought to have

issued legal notice on the very next day after lapse of three years of agreement of sale i.e., within 08.01.2019. The plaintiff has not at all issued any notice to the defendant nor filed any suit against him within 3 years from the date of lapse of agreement of sale. The plaintiff has to send notice within three years from the date of agreement of sale. The contents in para No.6 of the plaint are all bogus facts and all created story. The plaintiff ought to have given notice to the defendant within 3 years from the date of agreement but he issued legal notice in the year 2023 and same is not maintainable in the eyes of law.

3. The plaintiff is habitual dealer and money lender he has no license to lend money. Though the matter is settled in the year 2016 itself, the plaintiff has not issued notice within stipulated period of limitation and filed suit for recovery of money after lapse of time. As such the suit is not maintainable and plaint is liable to be rejected. Hence prayed to allow the application.

4. The plaintiff counsel has filed objection to the present I.A. contending that the question of limitation is mixed question of law and facts. In the plaint, the plaintiff has shown cause of action in para No.10 of the plaint. There is the existence of registered agreement of sale dated 08.01.2016 executed by the defendant in favour of the plaintiff, the plaintiff has sought for refund of earnest money paid under the agreement of sale for the reasons set out in the plaint. The plaintiff has issued legal notice on 26.03.2023 calling upon the defendant to pay back earnest money and same was refused by the defendant. This being the case, cause of action set out for the plaintiff is unambiguously indicates the right to sue and same cannot be said that the plaintiff has no cause of action to file the suit. The cause of action for the plaintiff to file the suit arose against the defendant as and when the defendant refused to accept legal notice and same is continuous in nature. The question of limitation or the suit is lacking

cause of action does not survive when the plaint is read in entirety. The defendant having decree against him has come up with the present application. The application is abuse of the process of law and hence, prayed for dismissal of the application.

5. On the basis of rival contentions following the points that would arise for my consideration is:

POINTS:

1. Whether the plaint is liable to be rejected as barred by law?

2. What order?

6. Heard the arguments from both sides, perused the records, my answer to the above points is as follows:

Point No.1 : In the Negative.

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

:: R E A S O N S ::

7. **POINT NO.1:-** The present application is filed by the defendants to reject the plaint when the matter was posted for plaintiff evidence.

I would like to rely upon decision of Honble Apex Court reported in **Civil Appeal No.2737/2023** in between **G. Nagaraj and another Vs. B.P. Mruthunjayanna and others** wherein it is held that, **Code of Civil Procedure, 1908; Order VII Rule 11 - For dealing with an application under Rule 11 of Order VII of CPC, only the averments made in the plaint and the documents produced along with the plaint are required to be seen. The defence of the defendants cannot be even looked into. When the ground pleaded for rejection of the plaint is the absence of cause of action, the Court has to examine the plaint and see whether any cause of action has been disclosed in the plaint. Merely because there were some inconsistent averments in the plaint, that**

was not sufficient to come to a conclusion that the cause of action was not disclosed in the plaint. The question was whether the plaint discloses cause of action.”

8. In view of the above decision, only avernments made in the plaint and documents produced by the plaintiff has to be looked into and contention in the written statement cannot be considered.

9. As per the defendant, the present suit is filed for recovery of money based on agreement of sale dated 08.01.2016. The plaintiff has not issued legal notice to the defendant within the period of 3 years from the agreement of sale and he ought to have issued notice prior to 08.01.2019 whereas he had issued notice after lapse of 4 years hence the present suit is barred. It is also the claim of defendant that there is no cause of action for the plaintiff to file the suit and it is filed only to harass the defendant.

10. On the contrary as per the plaintiff the plaint discloses cause of action for the suit and as per the plaintiff the cause of action to file the suit arose only after the refusal of notice issued by the plaintiff on 26.03.2023. So also the question of limitation is a mixed question of law and fact. As such plaint cannot be rejected.

11. The counsel for the defendant has filed written arguments contending that the suit is based on agreement of sale dated 08.01.2016 which was never executed by the defendant and defendant never executed any permanent leasehold rights in favour of the plaintiff and his signature is created and forged. As per Article 24 of the Limitation Act the present suit is barred by limitation as the plaintiff got issued notice on 26.03.2023 to the defendant after lapse of 3 years. Therefore the suit of the plaintiff is barred and there is no cause of action file the present suit.

12. In support of written arguments defendant has relied upon decision reported in **1) Civil Appeal**

No.9519/2019 (Arising out of SLP (Civil) No.11618/2017) dt:09-07-2020 in between Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) (D) their LR's and others.

2) Civil Appeal No.2717/2023 dt:28-04-2023 in between Ramisetty Venkatanna and another Vs. Nasyam Jamal Saheb and others.

13. On the contrary the counsel for the plaintiff argued that the present suit is filed by the plaintiff for recovery of money as he is having charge over suit property as per Sec.55 of Transfer of Property Act in respect of unpaid purchase money. As per Article 62 of the Indian Limitation Act, the limitation period is 12 years. Though the plaintiff is not having specific charge but he is having implied charge over the suit schedule property. That the personal limitation is an expression of law and fact and the plaintiff also disposes cause of action to file the suit and since the notice issued by the plaintiff has been refused by the

defendant, the present suit is filed and same is within the period of limitation. In support of his arguments he relied upon decision in **1) (2000) 10 SCC 130 in SLP(C) No.21000/1993 dt:17-12-1999 in between Delhi Development Authority Vs. Skipper Construction co. (P) Ltd.,**

2) 2013(6) CTC 28 in S.A.No.863/2008 and M.P. No.1/2008 dt:10-09-2013 in between K. Shanmugam and another Vs. C. Samiappan and others.

14. As per the plaint averments one Gurusiddappa Mahadevappa Wali was the owner of non-agricultural land bearing Plot No.8 in Block No.779, measuring 8 guntas, situated at Amargol Hubballi. As per the defendant on 15.07.1986, said person has sold his permanent lease hold rights in suit property in favour of one Veerabhadrappe S/o Sanganasappa Sunkad and defendant has purchased the permanent lease hold rights in the above property from said Veerabhadrappe through sale deed dated 02.05.1987. That according to defendant the owner of said property had sold

the same to third persons and said Veerabhadrappa Sunkad challenged the same and said suit was decreed. The defendant is permanent lessee of the above property and he represented the plaintiff that he is having absolute rights over the suit property and the permanent lessee and shown documents which at that time displayed his rights and accordingly the defendant has offered to sell the aforesaid property to the plaintiff and plaintiff agreed to purchase the same. Accordingly, they entered into registered agreement of sale dated 08.01.2016, in respect of suit property for total consideration of Rs.36,07,000/-. As on the date of agreement of sale, the defendant has received earnest money of Rs.9,37,000/- and acknowledged the same in the agreement itself. It was agreed between the plaintiff and defendant that the defendant shall call upon the plaintiff to execute sale deed within one month from date of execution of agreement sale as and when the defendant gets mutated his name in the record of rights of suit property. The plaintiff was ever ready and willing to perform his part of

contract and till date they awaited for the call from the end of defendant and they entered into the premises of property and called upon the defendant to present the court decree upon which he claiming the right of suit property. However, till today defendant has not furnished the same and not got mutated his name in the record of rights of suit property. Since the attitude of the defendant towards execution of sale deed seems to be negative and plaintiff smelled some foul in the execution of registered agreement of sale. Hence, the present suit for recovery of Rs.9,37,000/- with interest on the rate of 21% from 18.01.2016 till its realization.

15. Admittedly, the present suit is filed for the recovery of earnest money said to have been given by the plaintiff to the defendant under Agreement of Sale dated 08-01-2016. The said execution of agreement of sale has been denied by the defendant. However, as per the conditions stipulated in the agreement of sale which is marked as Ex.P1 there is a mention in page No.4 that defendant had agreed to execute sale deed after receipt of Rs.27,00,000/-

and by mutating his name in the record of rights as permanent lessee and inform the same to the plaintiff within a period of one month. Therefore at present as can be seen from the conditions of the agreement of sale, the defendant was required to get entered his name in the record of right as permanent lessee and said condition was precondition was for execution of registered sale deed. Under such a circumstances whether the suit of the plaintiff is filed within the period of limitation or not has to be decided during full-fledged trial and whether there was and is willingness or refusal on the part of the plaintiff and refusal on the part of defendant to execute sale deed and whether the cause of action for the plaintiff arose when the defendant had refused the notice issued by the plaintiff is also a matter of trial. On going through the entire plaint avernments on the face of it, if the suit does not appears to be barred by law of limitation suit can be dismissed. However, in the present case the plaint does not appear to be barred by limitation on the face of it. On the contrary full-fledged trial is required to

see whether the present suit is barred by law of limitation or not.

16. The counsel for plaintiff argued that plaintiff is having charge over suit property. As such the suit is filed within 12 years. However, in the present case the plaintiff has not pleaded about having charge over the suit schedule property in respect of unpaid sale amount of Rs.9,37,000/-. Hence, whether the plaintiff is having express or implied charge over suit property is also matter of trial.

17. Similarly in the cause of action column it is averred that the cause of action to file the suit arose on 26.03.2023 when the plaintiff got issued legal notice to the defendant and same was refused by the defendant. Therefore, in view of the above decision, on going through plaint avernments it disclosed cause of action to file present suit. So also the question of limitation being mixed question of law and facts plaint cannot be rejected as barred by time unless full-fledged trial is conducted. As the defendant

failed to prove above points. The present application is liable to be rejected. The above point is answered in the **negative**.

18. **Point No.2:** In view of findings on point No.1, this court proceed to pass the following:

:O R D E R:

I.A.No.I filed by the counsel for defendant under Order VII Rule 11(a) and (d) R/w Sec.151 of CPC is hereby rejected.

(Dictated on AI , corrected by stenographer, verified by me, and then pronounced in the open court on this the 17th day of November 2025.)

Sd/-
(Smt. Deepa G Manerkar)
II Addl. Civil Judge and JMFC.,
Hubballi