

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

Present:

**Sri. Yamanappa Karehanumantappa,**  
Prl. Senior Civil Judge, Hubballi.

**O.S. No.415/2023**

**Dated this the 12<sup>th</sup> day of November - 2024**

**Plaintiffs** : Smt. Goura W/o. Gopal Belagavi and  
another.

**.Vs.**

**Defendant** : Tulasidas S/o. Parashuram Kabadi.

**PARTIES TO I.A. No.IV**

**Applicant** : Tulasidas S/o. Parashuram Kabadi.

**.Vs.**

**Opponents** : Smt. Goura W/o. Gopal Belagavi and  
another.

**ORDER ON IA No.IV**

The Advocate for defendant has filed application U/o.VII Rule 11 r/w. Section 151 of C.P.C. praying this Court to reject the plaint for want of cause of action and also suit is barred by law upon the statements made in the plaint itself in the interest of justice and equity.

2. Along with the application the defendant has filed affidavit stating that the plaintiffs have filed the false and frivolous case against him without there being any justifiable

and reasonable grounds. Though there is no cause of action accrued to the plaintiffs to file this suit and only to harass him and to give trouble by hook or crook the plaintiffs have filed this suit. The contents of the plaint itself shows about the non-maintainability of the suit. The plaintiffs have not produced documents to show their possession over the suit property. The termination notice dated 14.08.2022 is not served on this defendant. Even during pandemic Covid-19 this defendant has made payments of more than the agreed rent. The Hon'ble Apex Court has extended the limitation for the period 15.03.2020 to 28.02.2022 for filing the petitions, suit, etc. For any action the period between 15.03.2020 to 28.02.2022 shall have to be exempted. The ratio laid down shall have to be applied to the present case and tenancy automatically gets extended by one and eleven months. This suit is filed much before expiry of tenancy, there is no cause of action. Hence, prayed to reject the plaint.

3. The Advocate for plaintiffs has filed objection to the application and denied the entire averments made in the affidavit of defendant. Further he contended that the defendant cannot legally seek for rejection of the plaint. The plaintiff has specifically pleaded in the plaint regarding the accrual of cause of action. The defendant has taken up several contentions about pandemic Covid-19 and observation of Hon'ble Apex Court regarding limitation and said facts are not at all applicable to the present case. The

ratio laid down by Hon'ble Supreme Court is totally unconnected to the present case. There is no rule of law or ratio laid down regarding extension of tenancy. The plaintiff has filed this suit only after accrual of cause of action. The present application is filed with an intention to torture the plaintiffs and to harass by protracting the proceedings. Hence, prayed to reject the application.

4. Heard both side. The counsel for defendant has also filed written argument. Perused the same and perused the materials on record. The following points arise for my consideration:

1. Whether defendant has made out a ground that there is no cause of action to file this suit and barred by law?

2. What order?

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

**Point No.1 : In the Negative.**

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

### **REASONS**

6. **Point No.1:** It is well settled law that while passing order on I.A. U/o.7 Rule 11 of C.P.C. court has looked into the averments of plaint only, not the contents of written statement.

7. According to defendant suit of the plaintiffs is barred by law. The termination notice dated 14.08.2022 is

not served on this defendant. Even during pandemic Covid-19 this defendant has made payments of more than the agreed rent. The Hon'ble Apex Court has extended the limitation for the period 15.03.2020 to 28.02.2022 for filing the petitions, suit, etc. For any action the period between 15.03.2020 to 28.02.2022 shall have to be exempted. The ratio laid down shall have to be applied to the present case and tenancy automatically gets extended by one and eleven months. This suit is filed much before expiry of tenancy, there is no cause of action. According to plaintiff the contentions about pandemic Covid-19 and observation of Hon'ble Apex Court regarding limitation are not at all applicable to the present case. The ratio laid down by Hon'ble Supreme Court is totally unconnected to the present case. There is no rule of law or ratio laid down regarding extension of tenancy.

8. 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- Arvinbhai 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.”

9. The said ruling is recently considered by Hon'ble Apex Court in **Geeta -vs- Nanjundaswamy, 2023 SCC Online SC 1407, decided on 31.10.2023**. So, this Court has to keep in mind the said settled position of law.

10. The main contention of the defendant is that the suit is without cause of action. But in the plaint plaintiffs have specifically pleaded that they have demanded for possession and it is denied by defendant. So, the para No.8 is shown as cause of action for filing of the suit. Entire averments of the plaint are read as it is, it appears that there is a cause of action to file the suit. This suit is filed much before expiry of tenancy, there is no cause of action. According to plaintiff the contentions about pandemic Covid-19 and observation of Hon'ble Apex Court regarding limitation are not at all applicable to the present case. The ratio laid down by Hon'ble Supreme Court is totally unconnected to the present

case. There is no rule of law or ratio laid down regarding extension of tenancy. So, I hold that there is a cause of action to file the suit and at this stage it cannot be said that suit is without any cause of action.

11. The next contention of the defendant is that suit is barred by law of principles. It is well settled position of law that question of limitation is mixed question of law and fact. On this point I rely upon the citation reported in **(2018) 6 SCC 422, Chhotanben and another -vs- Kiritbhai Jalkrushnabhai Thakkar and others**, wherein Hon'ble Apex Court held as under:

“Civil Procedure Code, 1908 – Or.7 R.11(d) – Application for rejection of plait – Adjudication as to – Relevant considerations therein – Plea as to rejection of plaint on ground of suit being barred by limitation – Tenability – Existence of triable issue with respect to that plea – Effect.

As per plaint of present suit, (i) plaintiff's (appellants herein) and original defendants No.1 and 2 were in joint ownership and possession of ancestral property in question which was inherited by them from their predecessor (father), (ii) plaintiff's had half-share in that property, (iii) without knowledge of plaintiffs, defendants 1 and 2 transferred said property vide a registered sale deed dt. 18.10.1996 in favour of defendants 4 to

6 after forging signatures/ thumb impressions of plaintiffs as witnesses on that deed, (iv) plaintiffs got knowledge about that fraudulent deed when on getting information from their community members they immediately enquired about the mater and obtained a certified copy of registered sale deed from office of Sub-Registrar concerned, and (v) on getting knowledge about said fraudulent transaction, plaintiffs immediately filed instant civil suit (in year 2013) and that too within two days from refusal by original defendants 1 and 2 to refrain themselves from interfering with peaceful enjoyment of use and possession of ancestral property by plaintiffs.

In said suit, defendants 5 filing an application under Or.7 R.11(d) C.P.C. for rejection of plaint on ground that suit was barred by limitation having been of averments in plaint, held, which of the articles from amongst Arts.56, 68, 59, 65 or 110 or any other article of Limitation Act, 1963 will apply to present case was to be considered at appropriate stage – **Thus, issue regarding suit being barred by limitation was a triable issue in fact situation of present case – Consequently, plaint could not be rejected at the threshold in exercise of power under Or.7 R.11(d) CPC – Thus,**

affirming decision of trial Court in this regard, view taken by High Court to the contrary reversed.”

So, by considering the said citation and considering the averments of the plaint I hold that the question of limitation is mixed question of law and fact and only on the ground of limitation the plaint cannot be rejected. So, at this stage only on the basis of averments of the plaint it cannot be said that the suit is barred by law of limitation. The counsel for the defendant has relied upon the citation reported in **AIR 2021 (SC) 4594**, wherein it is held that when a plaint does not disclose a cause of action, the court would not permit the plaintiff to unnecessarily protract the proceedings. It has been held that in such case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted. He further relied upon judgment reported in **2917 AIAR (Civil) 93**, wherein it is held that according to the application the plaintiff having suppressed crucial facts in the plaint, which if seen, the suit is only to be dismissed at the threshold- Rejection of a plaint on institutional grounds is different from dismissal of a suit at pre-trial stage on the ground of maintainability.

12. Further he relied upon the judgment reported in **2017 AIAR (Civil) 998**, wherein it is held that the Law includes not only legislative enactments but also judicial

precedents. An authoritative judgment of the courts including higher judiciary is also law. The work law as occurring in Order 7 Rule 11(d) would also mean judicial precedent. If the judicial precedent bars any action that would be the law. Further relied upon the judgment reported in **AIR 1941 (SC) Bom, 286**, wherein Hon'ble Bombay High Court held that onus is on defendant to prove non-disclosure of cause of action. Further he relied upon **AIR 1961 Madras 293**, wherein the Hon'ble Madras High Court held that erection of pucca superstructure on vacant site with consent of landlord, tenant is entitle to claim compensation for superstructure at the time of eviction. To apply this citation needs to be trial. Further he relied upon **AIR 1982 Gujarat 152**, wherein the Hon'ble High Court held that Section 106 notice for termination tenancy rights devolve all years. Notice served on some years. Lease cannot be terminated in accordance with law. Here in the present case the defendant himself enter his name in revenue records and he has paid rent also. Therefore, the judgment of Hon'ble High Court not applicable.

13. Further relied upon **CRP No.361/2022**, wherein the Hon'ble Madhya Pradesh High Court held that there is no cause of action as on date of suit to file the suit, because lease deed renewed. Here in the present case whether lease deed is renewed or not needs to be trial. He further relied upon **AIR 2017 Cul. 98**, wherein the Hon'ble High Court held

that the plaint as to read meaningful to ascertain cause of action. On perusal of entire plaint there is a cause of action to file the suit. Because defendant admitted the entry in revenue records as per Will deed the plaintiffs have filed against defendant only. Therefore, judgment of Hon'ble High Court is not applicable to this case. Further he relied upon **(2022) 3 SCC 117**, wherein the Hon'ble Supreme Court held that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation. This case is applicable to with regard to point of limitation pertaining to Covid period. Therefore, the judgment of Hon'ble Supreme Court is not applicable to this case. Further he relied upon **AIR 2019 (NOC) 577**, wherein the Hon'ble Delhi Court held that the court scrutinize the documents carefully to find out the factual ingredients of cause of action. In the present case there is a cause of action to file the suit on peusal of entire pleadings. Further he relied upon **(10) AIR 2020 (NOC) 29**, wherein the Hon'ble High Court held that plaintiff having no cause of action, hence plaint rejected proper. Herein in the present case there is a cause of action to file this suit when defendant has not paid rent to the plaintiff. Further he relied upon **AIR 1960 Allabad 420**, wherein the Hon'ble High Court held with regard to registration of lease deed. With regard to lease deed whether registration or not looked into at the time of final judgment. Therefore, judgment of Hon'ble High Court is not applicable. Further he relied upon **AIR 1977 Allabad 386**, wherein the Hon'ble High Court held that Section 106 of

T.P. Act if the lease deed renewed from year to year the suit is not maintainable. Here in the present case the lease deed is not renewed. Therefore, judgment of Hon'ble High Court is not applicable.

14. Further relied upon **AIR 1971 KAR 365**, wherein the Hon'ble High Court held that the lease property is manufacturing purpose that notice required was 6 months duration. Whether the plaintiff has given the suit property for manufacture purpose or not are yet to be decided by this court. Therefore, the judgment of Hon'ble High Court at this stage is not applicable. Further he relied upon **AIR 1974 Raj 178**, wherein the Hon'ble High Court held that exclude the all unregistered deeds which have been reducing into writing from evidence. Here in the present case there is unregistered lease deed, court will looked into those deeds at the time of final judgment. Hence, this judgment is not applicable. Further he relied upon **AIR 2019 (SC) 2664**, wherein the Hon'ble Supreme Court held that termination of lease under unregistered lease deed for the period of 15 years no necessity to notice for termination of lease. Further he relied upon **(2019) 3 (SCC) 191**, wherein the Hon'ble Supreme Court held that a revenue records neither created nor extinguished title over the property mutation entries do not have any presumptive value of title. In the present case in order to find out the ownership and tenancy the revenue records will be appreciated at the time of final judgment. At

this stage the judgment of Hon'ble Supreme Court is not applicable. Further he relied upon **AIR 1936 Kal. 628**, wherein the Hon'ble High Court held that lease not registered, landlord cannot claim rent under Section 53 of T.P. Act, partition and Registration Act.

15. Further he relied upon **(18) AIR 2018 (NOC) 136**, wherein the Hon'ble High Court held that lease period of more than 1 year, the registration is compulsory. The above judgment are applicable at the time of final judgment. Further he relied upon **AIR 1980 Delhi 7, AIR 1982 (SC) 127 and AIR 2021 (SC) 1696**, wherein the Hon'ble Delhi High Court held that with regard to manufacture property, 6 months prior notice is necessary. Further he relied upon **AIR 1938 Kal. 724**, wherein the Hon'ble High Court held that notice period not given sufficient. It is invalid notice. He further relied upon **AIR 1959 AP 346**, wherein the Hon'ble High Court held that if the landlord accepts the rent subsequent to the expiration of period of tenancy, the fee of weiver. Landlord intended to be treated terminated tenancy as continuing. In the present case whether the owner of the property has taken rent subsequent to notice or not decided by this court. He produced other citations with regard to point of limitation held by Hon'ble Supreme Court at the time of impact of Covid-19. He further relied upon **AIR 1981 Kal. 413** wherein Hon'ble High Court held that when other co-owner have been left out, court would be incompetent to pass decree on the basis

of notice. In the present case whether all legal heirs of deceased filed suit or not and plaintiff having ownership yet to be decided by this court. Further he relied upon **AIR 1964 Allabad 323**, wherein Hon'ble High Court held that tenancy rights being heritable all defendants and not defendant No.1 alone becomes of tenant. Suit against some persons is not maintainable. In the present case in the preliminary stage whether suit filed all legal heirs or not cannot be looked into. This court will consider at the time of final judgment otherwise will direct if it is necessary. **Further he relied upon AIR 2021 (SC) held that** the averments of plaint not disclosing cause of action the relief sought in the plaint cannot be granted to the plaintiff, plaint can rejected. In the present case on perusal of averments of plaint there is a cause of action to file this suit. Therefore, the judgment of Hon'ble Supreme Court not applicable to this case. Whether notice is not proper or not court will be looked into at the time of evidence, because it needs to be trial. The grounds urged in the application at this stage not applicable. Whether all legal heirs are necessary parties in the suit proceedings and 6 months notice is mandatory these are the facts will be considered at the time of judgment.

16. At this stage though the plaintiffs suppressed the material facts, that material facts cannot be looked into at this stage, court can take into consideration only averments of plaint. The defendant has proceed to prove the case after

framing of issues and the maintainability of issues may be treated as preliminary issues U/s.11 of C.P.C.

17. So, considering the materials on record I hold that the application is filed by the defendant only in order to drag on the matter. Hence, the said application is devoid of merits and liable to be rejected. Accordingly, I answer point No.1 in **Negative**.

18. **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.IV filed by the defendant U/o.VII Rule 11 of C.P.C. is rejected.

The costs shall following the events.

(Dictated to the Stenographer directly on computer, computerized by her, script corrected directly on computer and then pronounced by me in the Open Court on this the **12<sup>th</sup> day of November - 2024**)

**(Yamanappa Karehanumantappa)**  
**Pri. Senior Civil Judge, Hubballi.**

