

KAHS710001772008



IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND J.M.F.C.
AT HOLENARASIPURA

PRESENT:- **Smt. Chethana.** B.A., L.L.B.,
Prl. Civil Judge & JMFC.
Holenarasipura.

Dated this the 23th day of March - 2026

O.S.No:134/2008

Plaintiff/s

1. N. Rani,
W/o. Late. Umesha,
Aged about 35 years,
2. K.N.Nandini,
D/o. Late. Umesh,
Aged about 30 years,

Both are R/at:
Kamasamudra Village,
Halekote Hobli,
Holenarasipura Taluk

(By Sri. B.N.R, Adv.)

V/s.

Defendant/s

1. Chikkamallamma
Dead by Lr's,

2. Karthik.
S/o. Late Umesh,
Aged about 27 years,
R/at: Kamasamudra Village,
Halekote Hobli,
Holenarasipura Taluk.
3. M.Shivaraj,
S/o. Late Mylariah,
Aged about 75 years,
4. Janaki (Dead)
5. Shivappa,
S/o. M.Shivaraj,
Aged about 38 years,
6. Anusuya,
D/o. M.Shivaraj,
Aged about 35 years,

Defendant Nos.1 to 6 are R/at:
Kamasamudra Village,
Halekote Hobli,
Holenarasipura Taluk.

7. Bhagyamma,
W/o. Ananda,
Dead by Lr's
- 7(a) Latha K.A.,
W/o. Arun Kumar,
Aged about 38 years,
- 7(b) Divya K.A.,
W/o. Late. Sathyanarayana C.V.,
Aged about 35 years,

Defendant Nos.7(a) and (b) are R/at:

Near Panchramanna's house,
Near M.S.I.L Bar,
K.R.Nagar Road,
Kallukunike, Hunasuru Town.

8. Leelavathi,
W/o. Shivaram,
Aged about 48 years,
C/o. Chayadevi, Sunnada Beedi,
Channapattana,
Ramanagara District.
9. Virupakshamma,
W/o. Ashwatha,
Aged about 42 years,
R/at: Uppara Beedi,
Holenarasipura.
10. Dhanalakshmi,
W/o. Venkatesh,
Aged about 40 years,
R/at: Dodda Masidi Road,
Hunasuru, Mysore District.
11. Chayadevi @ Lakshmi,
W/o. Venkataramaswamy,
Aged about 38 years,
R/at: Sunnada Beedi, Channapattana,
Ramanagara District.
12. H.Ranganna @ Rangaswamy,
S/o. Sunnada Thimmaiah,
Aged about 70 years,
R/at: Hassan-Mysore Road,
Near Water Tank,
Holenarasipura.
13. Yogisha,
S/o. Nagaiah,
Aged about 35 years,

M.S. Kumara,
14. S/o. Seenaiiah,
Aged about 35 years,

Mamatha,
15. W/o. N.Ramachandra,
Aged about 30 years,

Defendant Nos.13 to 15 are R/at:
Mavinakere Village,
Halekote Hobli,
Holenarasipura Taluk.

Sujatha,
16. W/o. K.G.Shivanna,
Major,
R/at: Kamasamudra Village,
Halekote Hobli,
Holenarasipura Taluk.

**(Sri. P.D.D. Adv. for Def. Nos.1 &
2, Sri. H.S.A. Adv. for Def.
Nos.3,6,5,8 to 11, Sri. J.N. Adv.
for Def.No.4, Sri. R.S. Adv. For
Def. No.12, Sri. K.S.S. Adv. For
Defe. Nos.13 to 15)**

IA No. LII

Applicant/s : Rani

V/s

Opponent/s : Chikkamallamma and others

ORDER ON I.A.No.LII FILED UNDER ORDER VII RULE 11(a)
AND (d) READ WITH SECTION 151 OF CPC

The applicant/defendant No.12 has filed this I.A.No.VI under Order VII Rule 11(a) and (d) read with Section 151 of C.P.C. seeking to reject the plaint against him in respect of suit 'B' schedule property as there is no cause of action to this suit and as the suit is barred under law.

2. In the affidavit annexed to the application it is stated that, the Plaintiffs have sought for declaration by way of cancellation of the Sale Deed dated: 26.12.2007. Similarly they have sought for declaration by way of cancellation. Those prayers of the Plaintiffs *prima-facie* indicate that, the suit is barred by time. The alleged claim of the Plaintiffs regarding knowledge about the same is false and incorrect. The revenue documents came to be changed pursuant to the registered documents and as such the presumption of Plaintiffs regarding lack of knowledge about the registered documents from the day one cannot be believed or accepted. The alleged allegations of the Plaintiffs as narrated in the paragraph No.9 of the plaint clearly demonstrates the personal knowledge of the Plaintiffs regarding the documents. In the written statement, he has clearly taken up the defence that, the suit is barred by time as the plaintiffs have come up with this suit after lapse

of more than 17 years from execution and registration of absolute Sale Deed. The plaintiffs intentionally have not included all the joint family properties and they have intentionally included his lawful 'B' schedule property in the suit only to grab the same. He had acquired the suit 'B' schedule property measuring to an extent of 1 acre 7 guntas in Survey No.63/1 by way of Judgment in O.S.No.170/1995 filed by him against husband of defendant No.4. The defendant had been directed to execute the regular Sale Deed in terms of Ex.P1 by receiving balance sale consideration of Rs.14,000/-. As per the said order, he had filed Ex.631/2006 against husband of defendant No.4. In the said execution petition court commissioner was appointed and he had executed Sale Deed on 26.12.2007. He is in possession of the suit 'B' schedule property and all the revenue documents stands in his name in respect of 0.31 guntas in that survey number. Remaining portion of land measuring 0.16 guntas in that survey number also in his possession and enjoyment as per the Agreement dated 06.09.1992 executed by husband of defendant No.1 and husband of defendant No.4 in his favour. He had also filed a suit in O.S.No.199/2010 against defendant Nos.1, 4 and plaintiff herein for the relief of permanent injunction and the same is pending consideration. Though, the issue of limitation is a mixed question of law and fact, It can be presumed that the plaintiff

had the knowledge about the documents, especially about the Agreement and Sale Deed. The said legal presumption cannot be overlooked. That apart as stated above there are change of revenue records pursuant to the registered documents in respect of suit 'B' schedule property. Therefore, ignorance of the plaintiffs regarding existence of the registered document prior to the filing of the suit cannot be accepted. The intention of the plaintiff is to harass the *bonafide* purchaser. On these grounds, it is prayed to allow the application.

3. The plaintiff has filed objections to this application by contending that, the defendant No.12 is not the member of family of plaintiff. The defendant No.12 has been arrayed as party only in relation to suit 'B' schedule property. The defendant No.12 has already filed objection to the compromise petition filed by both the parties. Either in the said objection or during the trial, the applicant has not raised any objection as stated in the application. Only with the intention of avoiding passing of orders on the compromise petition this application has been filed. The relief sought to dismiss the suit against 'B' schedule property is against the law. The plaintiff and defendants except defendant No.12 have already compromised the matter and filed compromise petition.

Orders have to be passed on the said compromise petition. Hence, it is prayed to reject or dismiss the application.

4. The defendant Nos.3, 5, 6, 8 to 11 have filed objections to this application by contending that, after 18 years from the date of suit this application has been filed. Hence, there is delay in filing the application. No reason stated for said delay. These defendants do not know about the applicant filing suit in O.S.No.170/1995, R.A.No. 84/2000. Since this suit has been filed seeking the relief of partition and separate possession till the suit is finally adjudicated, this application cannot be considered. Till the joint family properties are divided, any suit filed against one or the other member of the family amount to non-joinder of necessary parties. Therefore, the suit filed by the applicant will not bind these defendants. Therefore, 'B' schedule property cannot be given up. Except the plaintiff and these defendants, the defendant No.12 has not got any complete right over the 'B' schedule property. Therefore, in suit filed as per O.S.No.199/2010 against defendant Nos.1 and 4 seeking Permanent Injunction, there is no decree against these defendants. The agreement entered into without any final adjudication will not bind the

family of these defendants. Hence, it is prayed to dismiss the application.

5. Other defendants have not filed any objections to this application.

6. Perused the pleadings, documents on record, contents of application and objections and heard arguments of both the counsel on this application.

7. The following points arise for the consideration of this Court:-

- 1. Whether the application deserves to be Allowed?*
- 2. What order?*

8. On the basis of the pleadings and arguments, this Court answer the above points as under:

Point No.1 : In the Negative

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

REASONS

9. Point No.1: The plaintiff has filed the suit against the defendants seeking the relief of partition and separate possession over the suit schedule properties along with other reliefs.

10. It is well settled principles of law that, while deciding an application under Order VII Rule 11 of C.P.C., only the averments in the plaint has to be looked into and the plea taken by the defendants in the written statement would be irrelevant. The Hon'ble Supreme Court of India in the case of **Church of Christ Charitable Trust & Educational Charitable Society V. Panniamman Educational Trust** reported in **(2012) 8 SCC 706** at paragraph No.11, it has been held as under:

11. This position was explained by this Court in Saleem Bhai v. State of Maharashtra [(2003) 1 SCC 557] , in which, while considering Order 7 Rule 11 of the Code, it was held as under: (SCC p. 560, para 9)

"9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit—before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the

defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot be procedural irregularity touching the exercise of jurisdiction by the trial court.”

It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinise the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. v. Ganesh Property [(1998) 7 SCC 184] and Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express [(2006) 3 SCC 100] .

In another decision of Hon'ble Apex Court in the case of **P.V.Guru Raj Reddy v. P. Neeradha Reddy** reported in **(2015) 8 SCC 331** at paragraph No.5, it has been observed as under:-

5. *Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.*

11. In this case, it is the assertion of the applicant that, there is no cause of action to this suit and the same is barred by law. However, it is to be noted that whether there was a cause of action to file the suit is an aspect that has to be decided during the trial. At this stage, it is not appropriate to reject the plaint outrightly on the ground that there is no cause of action for the suit. The applicant has taken the stand that, he is in possession and enjoyment of the suit 'B' schedule property and there was a suit filed by him pertaining to 0.31 guntas of land in 'B' schedule property; the plaintiff has filed this suit after lapse of around 17 years and execution of agreement and Sale Deed in relation to suit 'B' schedule property is well within the knowledge of plaintiff much earlier. Hence, the suit is barred by limitation. Though, the applicant has contended that, though, the issue of limitation is a mixed question of law and fact, It can be presumed that the plaintiff had the knowledge about the documents, especially about the Agreement and Sale Deed, it cannot be concluded at this stage only based on the application contents that, the plaintiff had knowledge about the documents as contended by the applicant and therefore, the suit is barred by limitation. When such being the case, without holding any inquiry or trial it cannot be said at this stage that, there is no cause of action to this suit and the suit is barred by limitation. Hence,

this court is of the view that, all the contention of the applicant in the application are the matters to be adjudicated only after full-fledged trial. If at this stage, by considering only the contents of application and the documents produced, the court opines that, there is no cause of action to file this suit and the suit is barred by law, the plaintiff would be put to hardship for the reason that, the plaintiff would be deprived of her right to prove the case by producing substantial evidence. Moreso, as stated earlier, while considering this application, only the plaint averments are relevant and the contents of application filed under Order VII Rule 11 of C.P.C. or in the Written Statement are not. Therefore, by looking into the plaint averments, at this juncture it does not disclose anything so as to reject the plaint. Therefore, for all these reasons, at this stage, this court finds no grounds to allow the application. Accordingly, point No.1 is answered in the **Negative**.

12. Point No. 2: For the reasons stated while discussing point No.1, this Court proceed to pass the following;

ORDER

I.A.No.LII filed under Order VII Rule
11(a) and (d) Read with Section 151
of C.P.C. is hereby dismissed.

No order as to costs.

(Dictated to the stenographer directly on to the computer typed by her, transcript revised, corrected and then pronounced by me in the open court on this the **23th day of March - 2026**)

(Smt.Chethana)
Prl. Civil Judge & JMFC
Holenarasipura

