

KAHS710004052017



Presented on : 18-02-2017
Registered on : 18-02-2017

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

DATED: This the 29th day of November 2021

PRESENT : SRI.ANIL PRAKASH M.P. M.BA, LL.B.,
Prl. Civil Judge & J.M.F.C,
Holenarasipura.

OS.No.59/2017

- Plaintiff/s:
1. M.Sudhamani W/o H.J.Shivaswamy
aged about 55 years,
 2. Priayanka D/o H.J.Shivaswamy,
aged about 24 years,
 3. Rajesh S/o H.J.Shivaswamy,
aged about 23 years,
 4. Rajeeva S/o H.J.Shivaswamy,
aged about 21 years,

All are R/at # No.301, Kukkatapalli
Rajunagara A.S. Hyderabad,
Andrapradesh.

GPA Holder by name
H.J.Kapilakumari
S/o Late K.Javaraiah,
aged about 48 years,
R/o Dr. Ambedkar Nagar,
Holenarasipura Town.
Hassan District.

(Rep. by Sri.S.H.M., Adv.,)

-VS-

- Defendant/s:
1. H.C.Rangamma W/o R.Rangaswamy,
aged about 55 years,
 2. Kamalamma W/o Rangaswamy,
aged about 43 years,
 3. Rangaswamy S/o Amasaiah,
aged about 69 years,

All are R/at Old Railway Station Road,
Dr.Ambedkar Nagar,
Holenarasipura Town.

**(D1 By Sri.K.R.J., Advocate
D2 & 3 By Sri. H.R.J., Advocate)**

ORDERS ON IA NO.I

Applicant/defendant No.1 : H.C.Rangamma
W/o R.Rangaswamy,
aged about 55 years,
R/at Old Railway
Station Road,

Dr.Ambedkar Nagar,
Holenarasipura Town.

V/s

Opponent/plaintiff : M.Sudhamani W/o H.J.Shivaswamy,
and others

ORDERS ON IA No.I U/O 7 RULE 11(d) OF CPC

The defendant No.1 has filed this application under Order 7 Rule 11(d) of CPC to reject the plaint as barred under law.

2. She has sworn to an affidavit, wherein she has stated that the plaintiff has filed this suit for the relief of specific performance of contract on the basis of unregistered agreement of sale dated 05.05.2008 and for that reason she has filed this application submitting that suit is barred by law of limitation and also have submitted that suit for specific performance of contract is 3 years and the suit is instituted in the year 2017 i.e. after lapse of 9 years and for that reason suit is barred by law of limitation.

3. Further the plaintiff has averred that the possession of suit schedule property was handed over, but agreement being unregistered and if possession of

immovable property is delivered through agreement then same shall be registered, but in this case agreement is unregistered and for that reason the agreement is created and accordingly submits to reject the plaint.

4. On the other hand, plaintiff has filed objection submitting that the plaintiff has already paid complete consideration amount and for that reason possession was delivered in favour of plaintiff and thereafter requested the defendants to execute sale deed, but the defendants have not executed any sale deed. Further the plaintiff is in peaceful possession and enjoyment over property and for that reason suit is within time and accordingly submits to dismiss the application.

5. Perused available materials on record, the points that arise for my consideration are;

1. Whether the defendant has made out sufficient grounds to reject the plaint under order 7 Rule 11(d) of CPC ?

2. What order?

6. Heard argument by learned counsel for plaintiff, I have answered the above points accordingly.

Point No.1 : In the Negative.

Point No.2 : As per order for the following;

REASONS

7. **Point No.1:** The plaintiff has filed this suit for relief of specific performance of contract. In para No.3 of the plaint it is averred that the defendants have executed agreement of sale in favour of Sri.H.J.Shivaswamy who is the husband of plaintiff No.1 and father of plaintiff No.2 to 4 for total sale consideration of 1,80,000/- on 10.04.2006 and has received Rs.20,000/- in cash and Rs.50,000/- through cheque bearing No.114771 and Rs.30,000/- through cheque bearing No.114772 of Karnataka Bank and totally received Rs.1,00,000/- towards advance amount and the agreement is signed by defendants No.1 and 2 and the very same day the said Shivaswamy was inducted into possession over suit schedule property with condition the execute sale deed by receiving balance amount of Rs.80,000/-.

8. Further in para No.5 of the plaint it is averred that defendant No.1 had executed another agreement on 29.01.2008 in favour of Sri.Shivaswamy to an extent of 8 guntas for total consideration of Rs.96,000/- and has

received Rs.66,000/- on 05.05.2008 and received remaining Rs.30,000/- through cheque.

9. Further in para No.5 of the plaint has averred that again on 29.01.2008 another agreement was executed to an extent of 7 guntas for consideration amount of Rs.84,000/-, wherein Rs.54,000/- is paid and accordingly said Shivaswamy was inducted possession over the same. Further in para No.7 it is averred that the remaining amount of Rs.25,000/- was paid through cheque and accordingly the defendants have received Rs.2,80,000/- towards sale consideration and there is no balance to be paid.

10. Further in para No.9 of the plaint it is averred that Shivaswamy died on 11.04.2010. Further the plaintiffs are residing separately and for that reason they do not have any knowledge of transaction, but while perusing the documents of Shivaswamy they found the agreement of sale and thereafter requested the defendants to execute sale deed, but they have not executed the sale deed and for that reason they got issued legal notice on 29.11.2016 and thereafter they have filed this suit.

11. Before discussing whether plaint is barred by law of limitation it is essential to rely on the judgment of Hon'ble Supreme Court reported in **2019 (3) SCC 372 BETWEEN URVASHIBEN AND ANOTHER VS. KRISHNAKANT MANUPRASAD**

B. Civil Procedure Code,1908- Or. 7 R.

11(d) Rejection of plaint due to alleged bar of limitation – Application for rejection of plaint on ground of suit for specific performance of contract being barred under Art. 54 of Limitation Act- For deciding whether plaint deserved to be rejected, only averments stated in plaint have to be considered- Merits and demerits of the case raised by parties would be adjudicated at trial.

When plaintiff filed suit 25 yrs after execution of contract by averring in plaint when he could notice defendant's refusal of performance of contract and only then he filed suit within 3 yrs, held, application for rejection of plaintiff cannot be allowed- Issue

as to when actually plaintiff had notice refusal of performance would be adjudicated at trial- Question of applicability of doctrine of delay/laches also to be explained at trial with reference to facts of the case and same cannot be a ground for rejection of plaint- Contract and Specific Relief- Specific Relief Act, 1963 Ss. 9 and 10- Limitation Act, 1963, S. 3 and Art. 54.

as per the above ratio in order to reject the plaint as barred under Article 54 of Limitation Act the court has to considered only plaint averments alone and also the time of three years of limitation has to be calculated from the date of notice of refusal by the defendants and in this case if we peruse the plaint averments, which is discussed in detail above, wherein as per the plaint averments there is no specific time fixed for performance of contract though the agreement is executed in the year 2006 and suit is filed in the year 2017 and no doubt the suit is filed after lapse of 9 years, but it is pertinent to note that after execution of agreement two other agreements were executed and also entire sale consideration is paid as per the averments and whether the said averments are true or not cannot be

decided at this stage and the same requires adjudication and also regarding delay the same has to be adjudicated after trail and accordingly I have answered **point No.1 in the Negative.**

12. **Point No.2:** In view of above discussion of point No.1, I proceed to pass the following:

ORDER

The application under Order 7 Rule 11(d) of CPC filed by the defendant is hereby dismissed.

No order as to costs.

(Dictated to the stenographer directly on computer, computerized by her, corrected and then pronounced in the open court on this the 29th **day of November 2021**)

(ANIL PRAKASH M.P.)
Prl.Civil Judge & JMFC,
Holenarasipua.