



IN THE COURT OF THE CIVIL JUDGE AND
JMFC, AT: BYADGI

Present: **Sri Suresh Wagganavar,**
MA. LL.B., (Spl)

Civil Judge & JMFC, Byadgi.

Dated this the 01st day of October, 2024

Original Suit No.150/2022

1. Ningappa Adaveppa Harijan
R/o: Tadas and others.

(By Sri.B.G.H.,Advocate)

.....PLAINTIFFS:

V/S

1. Basavantappa Galeppa Harijan
R/o: Tadas and others.

(By Sri.M.M.P., Advocate)

.... DEFENDANTS:

PARTIES TO THE IA NO.I

1. Basavantappa S/o Galeppa Harijan
Age: 57 years, Occ: Agriculture,
R/o: Tadas, Tq: Byadgi and others.

.... Applicants/defendants



VS

1. Ningappa S/o Adaveppa Harijan
Age: 85 years, Occ: Agriculture,
R/o: Tadas, Tq: Byadgi and others.

.... Opponents/plaintiffs

ORDER ON IA NO.I

1. The defendants have filed application U/o VII Rule 11(A) and (D) R/w Sec.151 of CPC., by seeking prayer to reject the plaint in the interest of justice and equity.

2. In the accompanying affidavit of the interim application, defendant No.1 has averred that, there is no cause of action to file this suit. The ancestors of defendants have been use and enjoyment over the suit property since 1981-1982. As per ME.No.1244 there was a partition in between plaintiffs and defendants. Since 1981-82, the names of defendants were entered in the column No.9 and possessor column of the record of rights of suit



property. The suit of the plaintiff is barred by 42 years law of limitation. Hence, prays to reject the plaint.

3. Per contra, the counsel for plaintiff has filed objection to the IA.No.I. Wherein it is contented that the application filed by the defendant is not maintainable either under law or on facts. Recently the defendants have cause obstruction over the suit property, then the plaintiffs have filed this suit. The defendants have colluded with revenue authority and got created ME.No.1244. The names of defendants are illegal entry in the record of right of suit property. The plaintiffs have specifically contended in their plaint for cause of action. Hence, prays to reject the application.

4. The learned counsel for plaintiffs have relied on Judgment of Hon'ble High Court;

1) Civil Revision Petition No.117/2023.



The facts in the above said decision, which is relied by counsel for plaintiffs are not similar to the facts in this present case.

5. The learned counsel for defendants have relied on Judgment of Hon'ble High Court and Apex Court;

a) (2022) 18 S.C.R 221.

b) (2023) 5 S.C.R 589.

c) CRP No.100136/2022.

The facts in the above said decision, which is relied by counsel for defendants are not similar to the facts in this present case.

6. Heard, arguments from both side, in view of the material placed before me and the rival contention raised by the parties. The following points have arisen for my consideration;



P O I N T S

1. Whether the applicants/defendants have made out a sufficient and satisfactory grounds to allow the present application?
 2. What order ?
7. My answer to the above points are as under;
- Point No1 : In the Negative and
- Point No.2 : As per final order for the following;

R E A S O N S

8. **Point No.1:-** The defendants have specifically contended that, there is a barred by law of limitation and the suit is not maintainable. After lapse of 42 years, the plaintiffs have filed this suit. There is no cause of action arose to file the suit. It is pertinent to note here that as per settled law the limitation is a mixed question of law and facts. It will shed the said character and would get



confined to one of question of law when the foundational fact, determining the starting point of limitation is vividly and specifically made in the averments. On perusal of plaint averments it reveals that on 17.08.2022 the defendants have trying to interfere and obstruction over the suit property of the plaintiffs. Hence, at this stage the prima facie shows that there is a cause of action arose to file the suit. Therefore, the law of limitation is mixed question of law and fact and it requires full-pledged trial. That the cause of action shown in the plaint is sufficient to proceed the case. In this case the plaintiffs have not admitted the ME.No.1244. Hence, the defendants have no locus standy to file this application on the basis of ME.No.1244. On perusal of plaint averments this Court opinion that the suit appears from the statement in the plaint to be a not barred by limitation.

9. It is pertinent to note here that, the well settled law is that while considering the application under order 7 Rule



11 of CPC, court is not required to take into consideration the defence set of by the defendants in their written statement or other documents. The question whether plaint discloses any cause of action and whether it is bared by any law is to be decided by looking at the averments contained in the plaint itself and not the defence set up in the written statement. The plaintiff specifically contended that on 17.08.2022 the defendants have trying to interfere and obstruction over the suit property. The said averments is sufficient that the plaintiff has shown sufficient cause of action. The very contention raised by the defendants that the suit of the plaintiffs is barred by limitation is decided on merit. The defence taken by the defendants are adjudicated at the time of trial. The defence as to be decided by framing issue and adducing evidence. Hence, the defendants have utterly fails to make out sufficient grounds to allow the application.



10. From the above discussions, it is quite obvious that, the defendants have not made out a ground to allow the application. Accordingly, this court answered the **point No.1 in the negative.**

11. Point No.2:- For the aforesaid reasons, this court proceeds to pass the following;

ORDER

IA.No.I filed by the defendants U/o VII Rule
11(A) and (D) R/w Sec.151 of CPC, is hereby
rejected.

(Dictated to the Stenographer, directly on computer typed by her, corrected and then pronounced by me in the open court on this the **01st day of October, 2024**)

(SURESH WAGGANAVAR)
Civil Judge & JMFC,
Byadgi.

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