

**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, SAVANUR.**

PRESENT : **Sri. Shreyansh Doddamani,**
B.Com., LL.B.,(spl)
Civil Judge and JMFC.,
Savanur.

ORIGINAL SUIT NO. 283/2014
Dated this 19th day of September, 2022

PLAINTIFFS: Basavaraj S/o Channabasappa Havanagi,
Age : 60 years, Occ : Agriculture &
Business, R/o : Savanur, Tq : Savanur,
Dist : Haveri and others.

Vs

DEFENDANT: Shiddappa S/o Panchappa Havanagi,
Age : 54 years, Occ : Agriculture,
R/o : Savanu, Tq : Savanur, Dist : Haveri.

IA No.XII

Applicant: Shiddappa S/o Panchappa Havanagi.
(Defendant)

Vs

Opponent: Basavaraj S/o Channabasappa Havanagi,
(Plaintiff) and others

ORDER ON IA NO.12

The defendant has filed IA No.12 U/O.7 rule 11 of Code of Civil Procedure for rejection of plaint on the ground that suit is barred by limitation.

2. One Shiddappa S/o Pachappa Havanagi the defendant has sworn in an affidavit accompanying with IA No.12 wherein he stated that the plaintiffs have not filed this suit within the period of limitation. The plaintiffs have been seeking declaration based on the alleged gift deed dated : 14.04.1966. The names of ancestors of the defendant entered in the record of rights of the suit properties through ME No.3377 and which was certified by the revenue authorities dated : 06.09.1965. Till today the plaintiffs not challenged the said entries. The names of defendants entered in the record of rights from the year 1982. the plaintiffs not challenged the same. Hence, suit of the plaintiffs hopelessly barred by limitation. Hence, he prays to dismiss the suit.

3. The plaintiffs contested the IA No.12 by filing objections, wherein contended that the reasons stated in the IA and affidavit

are not relevant and sufficient to allow the IA. The ME No.3377 itself was the false entry and not binding to the plaintiffs. The said entry created without knowledge of the plaintiffs. Therefore said entries are illegal. The limitation of the suit is to be considered after full pledged trial. Hence, IA No.12 is not maintainable. Hence, they prayed to dismiss the IA.

4. Heard both the sides and perused materials on record.

5. The following points arise for my consideration:

POINTS

1) **Whether the application made out grounds to reject the plaint?**

2) **What order ?**

6. My answers to the above points are as follows:

Point No.1 : In the Negative.

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

:-REASONS:-

7. **Point No.1 :-** The defendant has filed this application on 01.09.2021 when it was posted for cross of PW.1 and 2 as finally.

8. The plaintiffs have filed this suit for declaration of title and consequential relief of permanent injunction based on the

registered gift deed dated : 14.04.1966 which was executed by Nigappa S/o Shivappa Havanagi.

9. *Per contra*, the defendants contended that the said Ningappa S/o Shivappa Havanagi relinquished his rights over the suit property in favour of Panchappa S/o Ningappa Havanagi in the year 1965.

10. The defendant filed this application for rejection of plaint under Order 7 Rule 11 on the ground that suit is hopelessly barred by limitation.

11. In this regard the defendant has relied on following decisions;-

1. ***(2020) 16 SC 601 in between Raghavendra Sharan Singh Vs. Ram Prasanna Singh (dead) by Legal representatives. In the said decision Hon'ble Apex Court held as under,***

Civil Procedure Code,1908- Or.7 R.11 (d)- Application for rejection of plaint-Plaint whether barred by any law, in present case,

by limitation law-Principles to be followed in considering application, reiterated.

Plaint liable to be rejected if on entire and meaningful (not formal) reading of averments of plaint, it is found to be not disclosing a cause of action and clear right to sue or is found to be barred by law of limitation, hence vexatious and meritless - Perusal of records and other documents, averments in written statement or contentions of defendant, immaterial- Considering averments of plaint as a whole, if suit found to be barred under Art.59 of the Limitation Act (in present case), plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances by which suit stood barred by limitation - Specific relief Act, 1963 - S.31 - Property

***Law – Cancellation/Challenge to /Validity of
Transfer- Transfer of Property Act, 1882 –
Ss.122 and 123 – Limitation Act, 1963,
Art.59.***

12. I have gone through the above decision, in the said decision the respondent/plaintiff and his brother executed registered gift deed in the name of appellant/defendant on 06.03.1981. Thereafter, filed suit for alleged gift deed not binding to them as it was created in the year 2000 and it is sham document. The plaintiff was not denied the execution of gift deed dated 06.03.1981. Therefore, on careful perusal of the plaint itself it clearly reveals that it was barred by law of limitation. The plaintiff ought to have filed suit within 3 years from 06.03.1981 filed this suit in the year 2001. Therefore, the Hon'ble Apex Court held that the suit was clearly barred by limitation as per article 59. Hence, allowed the application filed by the defendants under Order.7 Rule 11 of CPC.

13. But in the present case the plaintiff has filed suit for declaration of title based on the registered gift deed dated : 14.04.1966. On the contrary the defendants relied on records of

rights and mutation entires. It is well settled principle of law that entries in record of rights and mutation entries are not created any right title or interest over the suit property unless it was coupled with title documents or succession entries etc. The plaintiff clearly stated that when the defendants interfering to their possession then, the illegal activities of defendant came to know on 01.11.2014. Therefore they filed this suit. Therefore, the ratio laid down in the decision of Supreme court **Raghavendra Sharan Singh Vs. Ram Prasanna Singh** is not applicable to the case on hand.

14. The defendants also relied on the decision of **Dahiben Vs. Arvindbhai Kalyanji Bhanusali dead by LRs and others reported in AIR 2020 Supreme Court 3310** in the said decision the **Hon'ble Supreme Court held as under;**

(A) Civil P.C. (5 of 1908), O.7, R.11 (a), (d)
-Limitation Act (36 of 1963) Arts.58, 59 –
Transfer of property Act (4 of 1882),
S.54-Rejection of plaint-Limitation-Suit
for cancellation of sale deed on ground

of alleged non-payment of part of sale consideration - Recitals in sale deed regarding receiving entire payment of consideration cannot be ground for cancellation of sale deed because of availability of other remedies for recovery of balance consideration - Plaintiff remaining silent for period of over 5 and ½ years with out even issuing legal notice for payment of unpaid sale consideration, or instituting any proceeding for recovery of amount -Suit filed after property was further sold by purchaser- Suit is vexatious, meritless, and does not disclose right to sue, and liable to be rejected under O.7, R.11(a) as barred by limitation.

On careful perusal of the said decision it appears that the plaintiffs filed suit for cancellation of sale deed on the ground of

non-payment of sale consideration after laps of 5 and ½ years without issuing legal notice for payment of un-paid sale consideration or institution of suit for recovery of amount. Therefore. it was coming under the article 58 and 59 of Limitation Act. Hence, the Hon'ble Apex Court rejected the plaint. But in the present case on hand the plaintiff filed suit for declaration that declared them as owners based on the gift deed and consequential relief of injunction. IN the present case the question of limitation is involved question of facts as well as question of law. The facts and circumstances of the present case and said decision are very different. Hence, the said decision is not applicable to the case on hand.

15. In 2010(3) KCCR 1638 in between B.C. Ravindra and Another Vs. Deviramma, Hon'ble High Court of Karnataka is held as under,

A. SPECIFIC RELIEF ACT, 1963-

Section 34- not necessary to seek relief of cancellation of gift deeds when the same are held to be void-

Plaintiff pleaded fraud- Defendant not taking plea as to not seeking consequential relief of cancellation of deeds.

The above decision is not concerned to the rejection of plaintiff. It was concerned to the cancellation of gift deed based on playing fraud. Therefore, at this stage the said decision is not applicable to the case on hand. It is not the case of the defendant that the plaintiffs by playing fraud got executed the gift deed by deceased Ningapp Panchappa Havanagi.

16. In AIR 2004 SC 3782 in between Amarendra Pratap Singh Vs Tej Bahadur Prajapati and others,
Hon'ble Supreme Court held as under;

**C) Limitation Act (36 of 1963), Arts
65,27 - Constitution of India, Sch.5,
Para 5(2)- Orissa scheduled Area**

Transfer of immovable property (by Scheduled Tribes) Regulations (1956), Regn.3 Para 7-D (as inserted by Orissa Regn, NO.1/1975) Acquisition of title by adverse possession - Non-tribal prohibited to acquire title over property belonging to tribal qua Orissa Regulations-General Law viz, Limitation Act cannot defeat Orissa Regulation which is special law. Maxim - *Specilia generalibus derogant*.

The above decision is in respect of title of adverse possession. Hence, facts of the said decision and present case on hand are very different. Hence, it is not applicable to the case on hand.

17. In *AIR 2007 Supreme Court 1753 in between Munichikkanna Reddy and others Vs. Revamma and others* is held as under,

(A) Limitation Act (36 of 1963), Arts, 64,65-Adverse possession -Proof- Intention to dispossess- is essential to prove adverse possession-Possession of adverse possessor must be hostile enough to give rise to reasonable notice and opportunity to paper owner.

This case is also regarding in respect of adverse possession. In the present case on hand the defendant has not taken plea of adverse possession. Therefore, ratio laid down in the said decision of Hon'ble Supreme court is not applicable to the case on hand.

18. Then plaintiffs have filed this suit based on the register gift deed. As per the provisions of Land Revenue Act it is the duty of the concerned authority to intimate the registration of documents to the revenue authority for making entries. But in the present case on hand the concerned authority has not intimated to the revenue authority for making entries of gift deed

in the record of rights as per the materials on record. Therefore, the mere entries on the record of rights based on the Varadi are not created any title to the defendants. If plaintiff able to prove his title as well as possession of the suit property as on the date of the register gift deed till today then he will succeed the suit. The heavy burden is lies on the plaintiffs to prove their case. This court has framed the issues regarding the limitation. Hence, the defendant can prove the same in the full pledged trial. The issue regarding limitation in the present case on hand is mixed question of facts as well as law. Hence, it requires full pledged trail to come to the conclusion. At this stage on careful perusal of the plaint suit is not barred by law. To reject the plaint as per provision under 7 Rule 11 the court cannot looked into the written statement and documents produced by the defendants. Therefore, the documents produced by defendants and averments in written statement or contentions of the defendants are immaterial to consider the rejection of plaint. Therefore, the attitude of the defendants is appearance that to drag the proceedings filed this application when it was posted for cross of PW.1 and 2. Hence, application is not maintainable.

Therefore with these observations this court has **answered point No.1 in the Negative.**

19. Point No.2:- In view of the above discussion, I proceed to pass the following,

ORDER

**The I.A. No.12 filed by defendant
U/o 7 Rule 11 of Code of Civil
Procedure is here by rejected with
cost of Rs.2,000/-**

(Dictated to the stenographer, transcribed and typed by her, corrected, signed and then pronounced by me in the Open Court on this the 19th day of September 2022)

CJ & JMFC., Savanur.

