

IN THE COURT OF THE CIVIL JUDGE CHITTAPUR

Present

Subhashchandra Rathod

B.A. LL.M.

Civil Judge & JMFC. Chittapur

O. S. No. 10/2009

DATED ON THIS THE 28th DAY OF MARCH - 2019

Shyam Sunder S/o Bhimanna Bombai,
Aged about 45 years, Occ: Agriculture,
Resident of Sugur N, Nalwar,
Tq: Chittapur Dist. Gulbarga.

(By. Smt. V.R.K. Advocate)

.....Plaintiff

V/S

Bheemraya S/o Ishwarappa Kambar,
Aged about 50 years, Occ: Agriculture
Resident of Nalwar, Tq: Chittapur
Dist. Gulbarga.

(By Sri V.R.P. Advocate)

... Defendant

ORDER ON I.A. No. XIII

The defendant has filed I.A. No. XIII U/O VII Rule 11 (d) of CPC requesting to reject the plaint.

2. In the accompanying affidavit, the defendant / applicant has stated that, plaintiff has filed the suit seeking the relief of declaration of ownership, perpetual injunction and rectification of revenue records. The claim of the plaintiff is that he is the absolute owner of land Sy.No.418 measuring 02 acres 07 Gts. situated at

village Nalwar, further plaintiff asserts that the defendant is in no way concerned to the suit land and the defendant has got entered his name in ROR of the suit land behind and back without the knowledge of the plaintiff. Further it is contended that, the Land Acquisition officer, Sedam acquired land to the extent of 0.35 gts. for the formation of Yadgir-Chittapur road, and issued 4(1), 6(1) & 9(1) 10 notices but the illiterate plaintiff was not aware that the name of defendant is also appearing in the notices along with him, it is only when 12(2) notice is issued in the year 1999 he made enquiry & came to know that since 1993-94 the same of defendant is appearing in the ROR. That, at para - 4, page 4 of the plaint the plaintiff has clearly stated that award for acquisition of land was pronounced in the year 1999 and 12(2) notice under L.A. Act was issued to the plaintiff and he came to know about mischief played by the defendant, the plaintiff clearly and in unequivocal words admitted that in the year 1999 he came to know about the entries in the ROR. That, since the plaintiff admitted that he came to know about mischief played by the defendant in the year 1999, so the cause of action arose in 1999 which is the starting point of limitation but where as the suit is filed in the year 2009 i.e., after lapse of 10 years, the declaratory decree can not be claimed after such long lapse of time. There is no need of ascertain the date and

time of accrual of cause of action as the same is clearly stated in the plaint, hence the same is purely a question of law does not couple with facts of law. Therefore in view of the above facts it is just and proper to reject the plaint as the statement made in the plaint itself proves as the suit is barred by law of limitation. .Hence, prays to reject the plaint.

3. On the other hand the plaintiff has filed objection to present application and in the objection it is contented that, the I is based on miss conception of law and facts as such petition under order 7 rule 11 r/w Sec. 151 of CPC is not enable hence liable to be rejected. The plaintiff has filed suit for declaration of title of ownership of suit land to the extent of 2 acres 7 guntas and other consequential relief. The defendant has filed written statement denying case of the plaintiff and also contended that suit is bard by limitation. This Hon'ble court framed the additional issues with regard the limitation the plaintiff already examined as PW-1 and documents are marked. Thereafter the present petition is filed for amendment of plaint with regard to the boundories of the suit property and said application is pending for consideration. It is submitted that there is already additional issue with regard limitation and requires oral and documentary evidence to decide the issue regarding limitation. Limitation is mixed with fact and

law and cannot be decided on the basis of contention of the written statement the present application is filed to delay the proceeding
Hence prays to reject the application.

4. I have heard both side and perused the materials placed on record.

5. The following points arise for my consideration.

P O I N T S

1. *Whether the plaint filed by the plaintiff deserves to be rejected as barred by limitation?*
2. *What order?*

6. My findings on the above points are as under;

Point No.1: In the affirmative

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

R E A S O N S

7. **Point No.1:** During the course of hearing the counsel for the defendant and plaintiff submits reiterating the facts stated in the affidavit of application and counter respectively. I have gone through the plaint averments, the contention taken by the defendant/applicant. The present suit is for the relief of declaration, injunction and rectification of ROR by the plaintiff

against the defendant. In the para No.4 of the plaint the plaintiff has specifically stated that there was proposal for acquisition lands fro the purpose of construction of road from Yadgiri via Wadi Nalwar and accordingly notification U/sec. 4(1)of L.A Act was issue from the office of A.C Sedam in its file No. REV.LAQ.SPL.14.1996-97 as per the said notification an area of 35 gunta out of suit land was propose to the acquired. The notification was issued showing the name of owner i.e., Shamsundar who is the plaintiff and one Bhimaraya S/o Ishwarappa who is the defendant. It is submitted that the plaintiff is illiterate person he was not having knowledge of notification showing his name along with the name of the defendant. Further it is also stated that the defendant got entered he is name in the ROR to the extent of 20 guntas without having any wright without sanction of any mutation in the year 1993-94 in column No. 9 and 12 of ROR in respect of the suit land. The acquisition proceedings continued in the name of plaintiff and defendant, the plaintiff being unaware about the said fact has not raised any objection. But came to know only in the year 1999, when the award was passed and LAO issued notice U/sec. 12 (2) to the plaintiff and also came to no about the mischief played by the defendant. Further it is also stated that thereafter panchayat was held between the plaintiff and defendant and plaintiff and

defendant agreed before the said panchayat that, sum amount is to be given to the defendant by plaintiff and the defendant should relinquish his claim of compensation when claim is before the Civil Judge Court and in this regard defendant has also executed agreement on stamp paper on 14.7.1999. Further in para No.6 it is stated that cause of action arose in the month of October 2008 when the plaintiff got the knowledge that the defendant has filed E.P No. 10/2008 before the Civil judge Chittapur and claimed half compensation.

8. On perusal of para No. 4 and 6 of the plaint the plaintiff specifically has stated that the plaintiff came to known about the entry of name of defendant in the ROR of the suit property in the year 1999 itself and even after knowing the fact that, the name of the defendant is appearing in the ROR he kept quit and has not taken any action against the defendant. The present suit is filed seeking the relief of declaration of title of ownership in respect of suit property and also sought the declaration that the entries made in the revenue records in respect of suit land in the name of defendant is wrong. In the para No. 6 of the plaint the plaintiff has stated that, the cause of action arose for the plaintiff to file the present suit in year 2008 when the he came to know about filing of E.P by the defendant. This contention is not reliable and

acceptable. Because in para No.4 of the plaint the plaintiff specifically has stated that, the plaintiff came to know about the entry of name of the defendant in the ROR of the suit property in the year 1999 itself. Therefore for filing of the suit for declaration, the cause of action arose for the plaintiff in the year 1999 itself when the plaintiff came to know about the entries of the name of the defendant in the ROR. As rightly contended by the counsel for defendant that the limitation for filing the suit for declaration is 3 years from the date of knowledge or when right to sue arises. This fact is not disputed by the plaintiff but the contention of the plaintiff counsel is that the question of limitation is mix fact and law. Further also contended that this court has framed additional issue on limitation and plaintiff also examined as PW-1 and got marked documentary evidence. Hence submits to reject the application and proceed with the case. The contention taken by the counsel for the plaintiff is not sustainable and there is no reason to proceed with the case. Because the averments of the plaint clearly discloses that, the plaintiff came to know about the entry of name of the defendant in ROR of the suit property in year 1999 itself and the cause of action for filing the suit for declaration arose to the plaintiff in the year 1999 and not in the year 2008. From the plaint averments it appears that the suit of the plaintiff is

bard bay law of limitation. Therefore this court of the opinion that the suit filed by the plaintiff is bard by limitation and this court can reject the plaint as provided under Order VII Rule 11(d) of CPC. Hence for the above said reasons point No.1 is held in the affirmative.

9. **Point No.2:** For above said reasons and finding on point No.1, I proceed to pass the following;

ORDER

I. A. No. XIII filed by the defendant U/O VII Rule 11 (d) of C.P.C. is hereby allowed.

The plaint filed by the plaintiff is hereby rejected as bard by limitation with cost of Rs. 5000/- payable to defendant.

(Dictated to the Stenographer, directly on computer, typed by him, revised and corrected by me and then pronounced in the open court on this the 28th day of March 2019)

(Subhashchandra Rathod)
Civil Judge, Chittapur