

KAKL400012072022



IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.

AT : MULBAGAL

DATED THIS THE 26TH DAY OF JUNE, 2024

:PRESENT:

SRI.NARASIMHA MURTHY M.

B.A.LLM., UGC – NET, JRF,
PRL. CIVIL JUDGE & JMFC, MULBAGAL

ORIGINAL SUIT No.259/2022

PLAINTIFF/s : **Sri. R.Srinivas** S/o late Venkatappa,
Aged about 62 years,
R/at Palligarapalya,
Mulbagal Town,
Kolar District.

(By Shri. **K.V.Shankarappa.**,
Advocate)

Vs

DEFENDANT/s : **1. Sri. C.Venkateshappa** S/o late Siddappa,
Aged About 69 years,

2. Sri. V.Srinivas S/o late Siddappa,
Aged About 55 years,

D1 & D2 are R/at Kadiripura Village
Kasaba Hobli, Mulbagal Taluk.

3. **Sri. M.Venkatesh** S/o Muniswamy,
Aged About 60 years,
R/at Basavanapalya,
Mulbagal Town.
4. **Smt. Lakshmamma** W/o Srinivasappa,
Aged About 56 years,
R/at Kurubarapalya,
Mulbagal Taluk, Kolar District.
5. **Sri. Krishnappa** S/o Chikkavenkatappa,
Aged About 52 years,
R/at Kurubarapalya,
Mulbagal Taluk, Kolar District.
6. **Sri. V.Venkataramana** S/o V.Krishnaiah,
Aged About 58 years,
R/at Muthyalpete,
Mulbagal Town, Kolar District.
7. **Sri. H.B.Musheer Ahamed**
S/o late Sheik Baba Sab,
Aged About 66 years,
R/at Hebbaata Village,
Kasaba Hobli,
Srinivasapura Taluk,
8. **Sri. Sheik Ahamed**
S/o Mohammed Kasim,
Aged About 74 years,
R/at Jahangir Mohalla,
Mulbagal Town, Kolar District.
9. **Sri. Bashu Khan** S/o Ibrahim Khan,
Aged About 46 years,
R/at Rehamath Nagar,
Mekka Masjid Road,
Mulbagal Town, Kolar District.

10. Sri. Varalakshamma W/o Krishnappa,
Aged About 47 years,
R/at Kadripura Village,
Kasaba Hobli,
Mulbagal Taluk, Kolar District.

11. Sri. Sampoorna W/o Nagendra Babu,
Aged About 33 years,
R/at Kadripura Village,
Kasaba Hobli,
Mulbagal Taluk, Kolar District.

(D1 & D2 By Shri. **C.V.Srinivasappa.,**
Advocate)

(D4 By Shri. **C.S. Nagaraja.,**
Advocate)

(D5 By Shri. **N.Shekar.,**
Advocate)

(D6 By Shri. **N.Prabhakar.,**
Advocate)

(D3, D7, D8, D9 By Shri. **S.Basheer Ahamed.,**
Advocate)

(D10 & D11 - In-Persons)

PARTIES TO THE I.A. NO.I

BETWEEN : SRI. HB MUSHEER AHAMED

.....APPLICANT/DEFENDANT NO.7.

Vs

AND : SRI. R.SRINIVA

....RESPONDENTS/PLAINTIFF.

ORDERS ON I.A.NO.I

The defendant no.7 has filed present I.A. No.I under order 7 Rule 11(d) read with Section 151 of *Civil Procedure Code.*, seeking to reject the plaint as it is barred under law of limitation and lack of cause of action.

2. The defendant no.7 averred in the affidavit annexed to the application that, the plaintiff has filed the present suit against the defendants for the relief of Specific performance of contract with respect of the suit schedule property for execution of the registered sale deed by the defendant no.1 & 2 after receiving the balance sale consideration amount of Rs.1,85,000/- from the plaintiff as per the alleged agreement of sale dated 21.01.1993. The defendant no.7 submits that, the plaintiff created the alleged agreement of sale dated 21.01.1993 with a malafide intention to knock off the suit schedule property. The defendant no.7 is the absolute owner in possession and enjoyment of the suit schedule property as per the registered sale deed dated 24.06.2019. The present suit filed by the plaintiff is barred by law of limitation and there is no cause of action for the plaintiff

to file the above suit. Hence, the the defendant no.7 prays to reject the plaint.

3. On the other hand, the plaintiff has filed objections to the present application, wherein, he has submits that, the plaintiff clearly stated the cause of action at para no.17 of the plaint. The point of limitation is mixed point of law and on facts, the said points needs to thrashed-out only after full-fledged trial. As such, it is necessary to permit the plaintiff to proceed the suit by adducing the oral and documentary evidence. Hence, the plaintiff pray to dismiss the application filed by the defendant no.7.

4. Heard and perused the materials available on record.

5. The following points arise for my consideration:

1. Whether the defendant no.7 has made out ground to allow I.A.No.I under order 7 Rule 11(d) read with Section 151 of Civil Procedure Code., to reject the plaint as it is barred by law of limitation and lack of cause of action ?

2. If so, what order ?

6. My answer to the above points are as under:

Point No.1 : In the **NEGATIVE**.

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

R E A S O N S

7. **POINT NO.1:**

The plaintiff has filed present suit against the defendants for the relief of Specific performance of contract with respect of suit schedule property. During proceedings of the case, the defendant no.7 has filed present application seeking to reject the plaint as it is barred by law of limitation and lack of cause of action.

The defendant no.7 submits that, he filed the present application to reject the plaint as it is barred by law of limitation and lack of cause of action. On the other hand the plaintiff submits that, the cause of action clearly stated in para no.17 of the plaint. The point of limitation is mixed point of law and on facts, the said points needs to thrashed-out only after full-fledged trial. As such, it is necessary to permit the plaintiff to

proceed the suit by adducing the oral and documentary evidence.

Order 7 Rule 11(d) of Civil Procedure Code., reproduced as under for better appreciation.

Rejection of plaint :- The plaint shall be rejected in the following cases.

(a)

(b)

(c)

(d) Where the suit appears from the statement in the plaint to be barred by any law.

8. At this stage, this Court has relied upon the decision passed in (2018) 6 SCC 422 (**Chotanben Vs Kiritbhai Jalkrushnabhai Thakkar & Others**), wherein, it is held in para no.19 & 20 that :

19. In the present case, we find that the appellants (plaintiffs) have asserted that the suit was filed immediately after getting knowledge about the fraudulent sale deed executed by original defendant Nos.1

& 2 by keeping them in the dark about such execution and within two days from the refusal by the original defendant Nos.1 & 2 to refrain from obstructing the peaceful enjoyment of use and possession of the ancestral property of the appellants. We affirm the view taken by the Trial Court that the issue regarding the suit being barred by limitation in the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of the power under Order VII Rule 11(d).

20. In the above conspectus, we have no hesitation in reversing the view taken by the High Court and restoring the order of the Trial Court rejecting the application (Exh.21) filed by respondent No.1 (defendant No.5) under Order VII Rule 11(d). Consequently, the plaint will get restored to its original number on the file of the IVth Additional Civil Judge, Anand, for being proceeded further in accordance with law. We may additionally clarify that the Trial Court shall give effect to the order passed below Exh.17 dated 20th January, 2016, reproduced in paragraph 5 above, and take it to its logical end, if the same has remained unchallenged at the instance of any one of the defendants. Subject to that, the said order must be taken to its logical end in accordance with law.

In view of the above said decision, wherein, it is clear that, issue regarding the suit being barred by limitation is the triable

issue and on this ground the plaint cannot be rejected at the threshold in exercise of the power under Order 7 Rule 11(d) of *Civil Procedure Code*. Further, at this stage, the defendant no.7 has not made out any grounds to allow the present application. Accordingly, I answer Point No.1 is in the **NEGATIVE**.

9. POINT NO.2: In view of the findings on Point No.1, I proceed to pass the following:-

ORDER

I.A.No.I filed by the defendant no.7
under Order VII Rule 11(d) read with Section
151 of *Civil Procedure Code*., is hereby
rejected.

No order as to costs.

*(Dictated to the Stenographer, transcribed by him, Order corrected and signed by me, then pronounced by me in the Open Court on this the **26TH day of June, 2024**).*

(NARASIMHA MURTHY. M)
PRL. CIVIL JUDGE & JMFC,
MULBAGAL.

ssm/*