

KAMD510008912017



**IN THE COURT OF THE CIVIL JUDGE & JMFC.,
AT NAGAMANGALA.**

Dated on this 12th day of August, 2021.

PRESENT:

Sri. MANJUNATHA R. B.A.L. LL.B.,
Civil Judge & JMFC.,
Nagamangala.

O.S. No.290/2017

PLAINTIFF : Sri. Rajaram.

V/s

DEFENDANT : Sri. N.G.Girish.

IA No.VII

**APPLICANT/
defendant** : Sri. N.G.Girish.

V/s

**OPPONENT/
Plaintiff** : Sri. Rajaram.

* * *

ORDERS ON IA No-VII

This is an application filed by the defendant U/o VII Rule 11(a)(b) and(d) read with section 151 of CPC for rejection of the plaint on the ground that the plaint does not disclose cause of action and suit is undervalued and not paid proper court fee and barred by law of limitation.

2. It is contended in the affidavit filed in support of IA No.VII that, the plaintiff has filed the present suit against the defendants for the relief of Declaration in respect of 'B' schedule property and Mandatory injunction in respect of 'C' schedule property and also for the relief of Permanent injunction. The measurement given by the plaintiff in respect of 'A' schedule property is not correct. The defendant has purchased the old house and vacant site from one Suryanarayanachar under a registered sale deed dated 22.06.1994. After the sale deed he has been in possession and enjoyment of the said property by changing the khatha in his name. After demolishing the old house he had constructed new RCC building in the above said property in the year 1998 by obtaining the licence from the concerned authorities. At the time of construction the vendor of the plaintiff did not object for construction. The plaintiff sought to demolish the 'C' schedule property sajja measuring East-West : 19 feet and North-South : 2 feet and said sajja was constructed in the year 1998. After lapse of 19 years the

plaintiff filed present suit for demolition of 'C' schedule property. The plaintiff has no cause of action to file the present suit and the cause of action was arose in the year 1998. Further it is contended that, the plaintiff sought declaratory relief in respect of 'B' schedule property, but he has not paid the requisite court fee on the said relief. The defendant had constructed the 'C' schedule property in the year 1998 and after lapse of 19 years the plaintiff filed this suit seeking for the relief of mandatory injunction. The plaintiff had knowledge about construction of 'C' schedule property in the year 1998 and he kept quite all these years without asserting his rights. The plaintiff in order to prove the encroachment he has not produced any sketch and also he has not produced any licence or plan for construction of his house in the suit 'A' schedule property. The plaintiff did not left set back to his house at the time of construction. Hence, prays to allow the application.

3. Per contra the plaintiff has filed objection statement. In the objection it is contended that, the application filed by the defendant is not maintainable either in law or on facts and same is liable to be dismissed. The cause of action is a bundle of facts and the cause of action has been shown in the plaint. The plaintiff has shown the encroached area in the sketch. The plaintiff is in possession of the property since from the date of purchase and the defendant caused

interference to his possession then the cause of action arose for filing of this suit. The plaintiff has paid proper court fee and the suit filed by the plaintiff is within the limitation. Therefore, prays to dismiss the application.

4. Heard the arguments of both sides.

5. In view of the above, following points would arise for my consideration are;

1. Whether the defendant has made out ground to allow the IA No.VII U/o 7 Rule 11(a)(b) and (d) R/w Sec.151 of CPC?

2. 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:

REASONS

7. **Point No.1** : The learned counsel for the defendant as well as plaintiff have argued vehemently on IA No.VII by reiterating the contentions taken in the affidavit as well as statement of objection respectively.

8. Upon hearing the arguments advanced by the counsel for the plaintiff and defendant and on perusal of the records it reveals that, the present suit is filed by the plaintiff against

the defendant for the relief of Declaration in respect of 'B' schedule property, Mandatory injunction and recovery of possession in-respect of 'C' schedule property and for Permanent injunction in respect of the suit schedule properties. The specific assertion of the plaintiff is that, he is absolute owner in possession and enjoyment of suit 'A' schedule property acquired under sale deed dated 05.04.2014 and he is having galli measuring 19 x 3 feet towards the western side of the 'A' schedule property and it is part and parcel of 'A' schedule property and it belongs to plaintiff and it is only usage of the plaintiff and not to the defendant. The defendant is the adjacent owner of the suit 'A' schedule property and his house is situated towards the western side of the Galli property and he is causing interference to the galli. The defendant encroached 19 x 2 feet in the 'B' schedule property and constructed the Sajja it is cause difficult to enjoy the free light and air of the plaintiff. The specific contention of the defendant is that, the defendant had constructed the house in the year 1998 leading the set back as per the licence. At that time the vendor of the plaintiff did not objected and Sajja was constructed way back in the year 1998 and cause of action was arose in the year 1998 and plaintiff filed this suit now for demolition of 'C' schedule property. There is no cause of action to the suit and it filed after lapse of 19 years and court fee paid is not proper.

9. The court while dealing with the application under order VII Rule 11 of CPC, it has to be determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint. At this stage it is just and necessary to know what is cause of action. The Cause of Action means, the whole of the material facts which it is necessary for the plaintiff to prove in order to support his right to a judgment of the court. Cause of Action must be antecedent to the institution of the suit. The court has to read the plaint in conjunction with the documents relied upon. While making such a determination, courts would have to disregard the pleas taken by the defendant in the written statement and application for rejection of the plaint on merit. The court while determining the application the court should restrict itself to the plaint averments and should not go into the detail facts as provided under the written statement or even the averments of the application.

10. In this prelude let us discuss whether in the instant case on hand the plaint discloses the cause of action or not. In this regard this court has perused the plaint averments and Para No.6 of the Plaint. As per the plaint averments on 20-11-2017 the defendant has caused interference to the 'B' schedule galli of the plaintiff by parking his vehicles and obstruct the plaintiff to enter his house through the same. Thereafter, the plaintiff has noticed the defendant had

constructed the Sajja an extent of 19 x 2 feet encroaching the 'B' schedule property. The defendant has disputed the alleged encroachment. The plain reading of the plaint averments clearly reveals that, the plaint discloses a cause of action. The above said pleadings pleaded by the plaintiff is triable issue and same is not rejected at the threshold. The cause of action is a bundle of facts which will be necessary for the plaintiff to prove in order to get a relief from the court. The facts narrated in the plaint is to be proved by the plaintiff in order to succeed the suit. The facts narrated by the Plaintiff comprehensively suggests a bundle of facts. Hence, contention urged by the defendant is not sustainable in the eye of law.

11. The next limb of the defendant contention that, the suit filed by the plaintiff is barred by law of Limitation Act, as such the suit filed by the Plaintiff is not maintainable. In this regard this court has perused the Plaint averments. As per the Plaintiff he has purchased the suit 'A' schedule property on 05-04-2014 and there is no whisper about construction of the house by the defendant in the 'B' Schedule property as pleaded by the defendant in his objection. As per the Plaint averments the plaint is not barred under the law of limitation. It is not the case of the Plaintiff that, the defendant had constructed the sajja prior to purchase of 'A' schedule property. In the absence of such a pleadings the contention of

the defendant is not tenable in the eye of law. The Plea of a limitation is a mixed question of law and fact, cannot be decided as an abstract principle of law divorced from facts in every case. The starting point of limitation has to be ascertained which is entirely a question of fact. A plea of limitation is a mixed question of law and fact. On plaintiff reading of the plaint averments cannot be held that, the suit is barred by time.

12. The next limb of the defendant contention that, the plaintiff has to pay the court fee on the market value for the first relief and without paying the court fee the plaintiff cannot seek relief by valuing under Section 24(b) of KCF & SV Act. At this stage it is better to extract Section 24 of KCF & SV Act.

Section 24. Suits for declaration :- In a suit for a declaratory decree or order, whether with or without consequential relief, not falling under Section 25,

a. where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the property or on (rupees one thousand) whichever is higher.

b. where the prayer is for a declaration and for consequential injunction and the relief sought

is with reference to any immovable property, fee shall be computed on one-half of the market value of the property or on rupees one thousand, whichever is higher.

13. On bare reading of the above said provision it is very clear that, if the suit filed for the relief of Declaration and for Possession of the property fee shall be computed on the market value of the property or one thousand whichever is higher. The plaintiff sought for the relief of declaration and possession and computed the court fee in accordance with law and paid proper court fee. Hence, contention urged by the defendant is not sustainable in the eye of law. On the above discussion it is very clear that, the application filed by the defendant devoid of merits. In the touchstone of the reasons above and discussions engulfed, this court answer **Point No.1 in the Negative.**

14. **Point No.2** : In view of findings on Point No.1, this court proceed to pass the following:

ORDER

The IA No-VII filed by the defendant under Order 7 Rule 11(a), (b) and (d) r/w Sec.151 of CPC is hereby dismissed.

*[Dictated to the stenographer through on-line computer, typed by her, corrected and then pronounced by me in the open court on this day of **12th August, 2021**]*

(Manjunatha R.)
Civil Judge & JMFC.,
Nagamangala.

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