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IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR

PRESENT

Sri. Chandan S, B.Com., LL.B
Prl. Civil Judge & JMFC, Krishnarajanagara.

Dated 02nd day of June 2025

O.S./409/2023

Plaintiff : **Shruthi**

-V/s-

Defendants : **Kamala and another**

I.A. No.4

Applicants : **Kamala**

---1st defendant

-V/s-

Opponent : **Shruthi**

--- Plaintiff

ORDER ON I.A NO.3 FILED U/O 7 R-11(a & b) R/W SEC. 151
OF C.P.C.

This application being supplied and the same is came to be filed before this court by the defendant No.1 through his advocate, wherein it has been requested, prayed and appealed to reject the plaint on the ground, the suit of the plaintiff is barred under law of limitation.

2. Further an affidavit is also filed along with the said application, wherein in the said affidavit, it has been stated

postulated averred before this court that, the suit has been filed by the plaintiff against the defendants for the specific enforcement of the agreement. Now the matter is set up adjourned and it is posted for cross-examination of the PW-1.

3. According to the applicant/defendant herein, the suit of the plaintiff is not maintainable, since the agreement of sale dated is 01.12.2018, but the suit is filed after completion, lapse and time bared. According to the applicant, the suit is instituted and the same is installed after the mandatory period of 3 years. Hence, it is as per the applicant/defendant No.1 the suit is to be rejected on the ground of limitation and cause of action.

4. On the other side, declining, defying, rejecting and refuting the said application and also disagreeing with the statements and allegations contemplated in the application in the form of counter and to rebut the said pleadings, the objections is submitted. Wherein according to the plaintiff/opponent, the suit has been filed within the mandate and required stipulated period of 3 years. Therefore according to the plaintiff, immediately within 3 years of time from the date of issuance of notice through the advocate in favour of the defendants, the suit has been empanaled, registered and filed before this court. Therefore, the application which is filed is false, frivolous, untenable. Further the grounds, reasons assigned in the application do not sustain and the suit is very much maintainable and valid. Hence, prays for dismissal of the application.

5. Heard the counsel for the applicant and also the learned counsel appearing for the plaintiff in respect of the averments stated in the affidavit and also objections and also verified the pleadings of the affidavit and objection produced before this court.

6. The following points arise for this court's consideration.

1)Whether the applicant/1st defendant has made out sufficient grounds to allow the present application?

2) What order?

7. This court findings on the above points for consideration are as under:

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

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

REASONS

8. POINT NO.1:

The suit has been filed before this court, wherein it has been prayed and sought for an order to direct the defendants to execute and to enforce the deed of agreement of sale dated 01.12.2018. Wherein according to the plaintiff, the defendants agreed to execute the sale deed pertaining to the schedule property in favour of the plaintiff for total sale consideration of Rs.2,75,000/-. Thereby the defendants collected, obtained and received Rs.2,50,000/- towards advance and earnest, the part payment and also agreed to execute the absolute regular sale deed towards the plaintiff within 3 years from the date of

agreement and despite the agreement being executed the defendants failed to execute perform and enforce the contractual obligations as per the agreement. Admittedly, the deed of agreement of sale is on 01.12.2018 and the said deed of agreement is registered document and the time, tenure and duration fixed for enforcement of the agreement is 3 years, where it is seen specifically noticed and observed from the agreement at page No.2. Further the defendants are the owners of the properties. Now the application being presented, when the matter was listed for the purpose of cross-examination of PW-1 and according to the applicant/defendant, the suit is not maintainable and the same is liable to be rejected. Since the suit is filed after the mandate requisite and beyond the limitation period of 3 years from the date of execution of the sale agreement.

9. On the contrary the objections and the defence which was professed, contemplated and submitted before this court by the opponent/plaintiff is that, the suit has been filed within the period of limitation. Further according to the opponent/plaintiff herein, the suit has been instituted much earlier or even before completion of the requisite mandatory period. Further according to the plaintiff, the suit is instituted and the same has been laid before this court after issuing the notice in favour of the defendants on 04.11.2021. Therefore, it is according to the plaintiff, the suit is filed and preferred within the mandatory period prescribed under the limitation act. Therefore, it is warranted and necessary to refer the provision which speaks,

postulates and deals with the limitation in preferring the suits for enforcement of agreement.

10. Further as per Sec. 54 of the Limitation Act, as per the said provision, under article 54 of the limitation act, the period of limitation prescribed and fixed to prefer the suit in the case of specific performance of contract is 3 years, from the date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

11. Admittedly, the date of agreement fixed for the purpose of performance and enforcement of the agreement of sale is 3 years. In the present case on hand, as per the provisions invoked, dealt and prescribed, the period of limitations to launch the suit will commence and starts from the date of 3 years which it was provided for execution of the agreement of sale. Accordingly, the suit has been filed within the statutory period of 3 years. Even otherwise, it is well settled and established principle and process of law that, the question of limitation is the mixed question of law and facts, the same has to be dealt during the course of further proceedings of the suit and full fledged trial.

12. Therefore, according to this court and in its considered view opinion and attention of this court, the suit is maintainable and it cannot be rejected on the ground of limitation at this juncture. Therefore, the application is limine, premature, callow and nascent at this stage and juncture. Hence at this juncture, this court strongly feels and it is of the opinion that, the said

application is sans merit and without meritorious and the same is liable to be dismissed. Hence, this court without further discussion proceeds to answer **point No.1** in the **Negative**.

13. POINT NO.2:

In view of the above discussion and reasons mentioned therein this court proceeds to pass the following:

ORDER

I.A No.3 which is filed by the applicant/1st defendant U/o 7 R-11(a & b) of C.P.C. is hereby dismissed as sans merit.

[Dictated to the Steno, transcribed by her. Corrected and then pronounced by me in the Open Court on this the 02nd day of June 2025]

(Chandan.S)
Prl. Civil Judge & JMFC.,
K.R.Nagar.