

KAMS500000512021



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : **Sri. Kamalaksha D., B.A., LL.B.,**
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 21st day of September 2024

O.S./14/2021

Plaintiff:

Lakshmi D/o late M.H.Doddaiah,
W/o Nanjundegowda,
aged about 52 years,
residing at No.1275,
8th Cross, Nala Street, Sunnadakeri,
Mysuru.

-V/s-

Defendants:

1. Mallamma
First wife of late M.H.Doddaiah,
aged about 85 years,
2. Jayamma
D/o late M.H.Doddaiah,
aged about 50 years,

Defendants No.1 & 2 are
residing at No.1004, 2nd Main,

4th Cross, Vidyaranyapuram,
Mysuru.

3. Lalithamma
D/o late M.H.Doddaiah,
W/o K.Mahadevu,
aged about 48 years,
4. Kamala D/o late M.H.Doddaiah,
W/o M.S.Papanna,
aged about 46 years,

Defendants No.3 & 4 are
residing at No.245, Kanakagiri,
Sewage Farm Road,
Vidyaranyapuram, Mysuru.

5. Ravikumar S/o Krishnappa,
aged about 40 years,
residing at No.93, 16th cross,
'B' Block, J.P.Nagara,
Mysuru.

I.A. III

Applicant : Kamala
....defendant No.4
(By Sri. R.K., Adv.)

-V/s-

Opponent : Lakshmi
... plaintiff
(By Sri. N.V.K., Adv.)

ORDERS ON I.A. III UNDER ORDER VII
RULE 11(a) & (d) R/W SECTION 151 OF CPC

The defendant No.4 filed the said application to reject the plaint on the ground that the suit does not disclose cause of action and it is barred by principles of res-judicata, the matter is directly and substantially decided in earlier suits of O.S.No.108/2000, 109/2000, 110/2000 and 111/2000 on 13.09.2007.

2. It is explained that, the said suits were filed prior to this suit and the subject matter involved in the suit was already decided in the above referred suits. The 1st defendant Mallamma was the plaintiff in O.S.108/2000 on the file of this court. The said suit was decided on 13.09.2007. Against the said judgment R.A.No.116/2008 was preferred and decided. Similarly the suits of O.S.Nos.108/2000, 109/2000, 110/2000 and 111/2000 were filed on same subject matter before this court and all the suits were decided prior to this suit. Therefore, the suit of the plaintiff is not maintainable on the question of

limitation and principles of res-judicata. Hence, prays to dismiss the suit.

3. Per contra, the plaintiff filed objections stating that the application is to be dismissed in limine, because the applicant has not shown believable reason to allow the application. It is further submitted that, the settled principle of law of res-judicata is to be proved in the trial, but not on the mere averments of written statement. It is further submitted that the present suit is very much maintainable because the defendants have misconstrued and misunderstood the averments of the plaint. The earlier suits were filed for different reliefs and this suit is filed for the relief apart from other reliefs sought in the earlier suits. Therefore, the plaintiff prayed to dismiss the application.

4. Heard the arguments. Perused pleadings and materials placed on record. The points that arise for consideration are:

1. Whether the applicant/4th defendant made out sufficient grounds to dismiss the suit on the question of res-judicata and limitation?

2. What order ?

5. The above points are answered as follows :-

Point No.1 : In the negative

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

REASONS

6. **Point No.1:-** The defendant No.4 states that the suit of the plaintiff is not maintainable, because the dispute between the parties were already decided in earlier suits in the year of 2000. Hence, the suit of the plaintiff is to be dismissed on the question of res-judicata and it is hopelessly time barred one. For dealing with the application under Order VII Rule 11 of C.P.C., only the averments made in the plaint and the documents produced along with the plaint are required to be seen. The defence of the defendants cannot be even looked into. When the ground pleaded for rejection of the plaint is the absence of cause action, the Court has to examine the plaint and see whether any cause of action has been disclosed in the

plaint. Merely because there were some inconsistent averments in the plaint, that was not sufficient to come to a conclusion that the cause of action was not there to file the suit.

7. The question of limitation is mixed question of law and facts. Therefore, the question of limitation is to be decided in the trial, but not on the face of the averments of the written statement. The defendant wishes to dismiss the suit of the plaintiff on the question of limitation. But as discussed above, the question of limitation is a mixed question of law and facts. The Hon'ble High Court of Karnataka in the case of **Mohammed Fayaz Ali Vs. State of Karnataka through Tahsildar, Humnabad** reported in **2023(3) Kar.L.R. SN 60** held that, "for consideration of an application only the averments of the plaint are to be considered and not defence of the defendant." The same principle of law discussed by the Hon'ble High Court of Karnataka squarely applicable to the present application, because the plaintiff has not averred anything about the

decide of earlier suits. Therefore, the grounds urged in the application for dismissal of the suit are not maintainable.

8. The question of res-judicata is also to be decided in the trail. Mere submission of decide of some other cases prior to this case, is not sufficient to dismiss the suit of the plaintiff on the question of res-judicata. Therefore, at any angle, the grounds urged by the applicant to dismiss the suit are not believable. Hence, I answer point No. 1 in the negative.

9. **Point No.2:** In view of the findings on points, this Court proceeds to pass the following:

ORDER

I.A.III filed by the defendant No.4 under
Order VII Rule 11(a) & (d) r/w Section 151 of
CPC is rejected. No order as to cost.

(Dictated to the stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in open Court on this the 21st day of September 2024).

(Kamalaksha D.)
Senior Civil Judge & J.M.F.C.,
Nanjangud.