

KAMS500000222021



**IN THE COURT OF SENIOR CIVIL JUDGE & J.M.F.C.,
NANJANGUD**

Dated this the 28th day of July 2022

Present : **Smt. B. Anupama Lakshmi**, B.A., LL.B.,
Senior Civil Judge & JMFC,
Nanjangud.

O.S./9/2021

Plaintiff : Nagaraju since deceased by L.R.
Smt.Nagamma
(Sri. S.Venkatesha, Advocate)

-V/s-

Defendants : S. Saroja and others
(Sri. Puttarasa H.S., Adv. for D.2 to 21)

I.A.

Applicants : Suresh Babu and others
.... (Defendants 2 to 21)

-V/s-

Opponent : Nagaraju
... Plaintiff

ORDERS ON I.A. UNDER ORDER VII RULE 11(a, b, d)
R/w SECTION 151 OF CPC

The defendant Nos.2 to 21 have filed the present I.A. seeking for rejection of plaint.

2. The plaintiff has filed statement of objections.

3. Heard. Defendants have furnished written arguments.

4. The point that arises for consideration is as follows:-

Whether valid grounds are
made out to reject the
plaint as prayed for ?

5. The above point is answered in the **Negative** for the following:-

REASONS

6. The present suit is instituted for the relief of declaration and permanent injunction.

7. According to the defendants 2 to 21, there is no cause of action for the suit. That land bearing Sy.No.48/1

of Deveerammanahalli Village was converted for residential purpose on 16.03.1992. But, the plaintiff has undervalued the suit. That the defendant No.1 has formed a residential layout and the sites have been sold to various purchasers. That the defendant No.1 has also formed layout in land bearing Sy.No.48/2A and sold the sites to various purchasers who are not made parties to the suit. From the documents relied upon by the plaintiff, the plaintiff is not in possession of the suit property. Therefore, the plaintiff shall pay the advalorem court fee.

8. That the plaintiff has suppressed the truth and has sought the relief with respect to the very same property and the judgments and decrees he has suffered in O.S.No.13/1986 and before other courts in suits and appeals over decades ago, all of which have attained finality. Therefore, the suit is barred by the principles of resjudicata. That the relief claimed is not maintainable and is barred by law.

9. The suit is for declaration and injunction without challenging the registered sale deed dated 15.11.1907 and the settlement deed dated 19.11.1984 and also the sale deed in favour of the present defendants is not maintainable. The suit and the relief are barred by time. That the defendants are bonafide purchasers for value of various sites carved in Sy.No.48/1 of Deveerammanahalli and they are in peaceful possession and enjoyment of the said sites. Therefore, according to the plaintiff the suit is expressly barred by the principles of resjudicata, Order II Rule 2 of C.P.C. and provisions of Section 34 of Specific Relief Act.

10. Plaintiff has denied the entire contentions of the defendants and submitted that the present application is filed to drag on the proceedings.

11. Defendants have produced certified copy of Commissioner Report with sketches furnished in F.D.P.No.8/2016 which is continuation of O.S.No.4/2010

in support of his case. But it is trite law that, a plaint has to be rejected by considering only the plaint averments if the plaint averments disclose that there is no cause of action for the suit or that the suit is barred by any law.

12. According to the defendants there is no cause of action for the suit. But as per plaint cause of action for the suit arose on first week of September 2014 and on 15.09.2014 when the plaintiff came to know that name of the defendant has been found place in the revenue records. Therefore, there is cause of action for the suit.

13. As per Order 7 Rule 11(b) C.P.C. where the relief claimed is undervalued and the plaintiff fails to pay the court fee within a time fixed by the court, then the plaint has to be rejected. In this case, plaintiff has paid court fee of Rs.70/- by valuing the relief under Section 38 R/w Section 24(b) r/w Section 7(2)(b) of Karnataka Court Fee and Suit Valuation Act 1958. According to the defendants, the valuation made is not correct. But the plaintiff

contends that, the suit schedule property is the agricultural property. The plaint nowhere discloses that, the suit property has been converted and sites have been formed. Therefore, as per plaint averments the valuation made is correct.

14. As per Order 7 Rule 11(d) of C.P.C., the plaint is liable to be rejected when the suit appears from the statement in the plaint to be barred by any law. But a perusal of plaint does not reveal that, the suit is barred by any law. According to the defendants, the suit is barred by limitation and also the principles of resjudicata. But those aspects are mixed question of law and facts and require trial. When the plaint averments do not disclose that the plaint shall be rejected, as per law the plaint cannot be rejected. Therefore, the point for consideration is answered in the **Negative**. Hence, the following:-

ORDER

I.A. filed by the defendant Nos.2 to 21 under Order VII Rule 11(a), (b), (d) r/w Section 151 of C.P.C. is rejected.

(Dictated to the Stenographer directly on computer, revised, corrected and then pronounced by me in open Court on this the 28th day of July 2022).

(B.Anupama Lakshmi)
Senior Civil Judge & J.M.F.C.,
Nanjangud.