

KAMS510028822015



**IN THE COURT OF I ADDL. CIVIL JUDGE AND JMFC.,**  
**NANJANAGUDU**

**Present: Sri. Kishor Kumar M.,**  
*B.A. LL.B.,*  
I Addl. Civil Judge & JMFC., Nanjanagudu

**Dated this 14<sup>th</sup> day of August, 2023**

**O.S./477/2015**

**Between:**

Kumara & Others

**....plaintiffs**

**And:**

The Chief Secretary & Others

**.....Defendants**

**PARTIES TO I.A.No. XIII**

**Between:**

Panchayath development Officer & Others

**....Applicants/Defendant No.5 to 7**

**And:**

Sri. Kumara & Others

**.....Opponent/plaintiffs**

**ORDERS ON IA No. XIII**

The applicants/defendants No.1 to 5 have filed this application under Order VII Rule 11 of C.P.C. for rejection of plaint.

**2.** In support of the application, defendant No.7 has sworn to an affidavit stating that, defendant No.5 to 7 have not interfered/obstructed with the plaintiffs' possession and enjoyment of the suit schedule property. At that point of time, the plaintiffs were not in possession of suit survey number. The court in its order on I.A. bearing O.S.83/2013 clearly held that, the plaintiffs were not in possession of suit property. Likewise, the Hon'ble Senior Civil Judge, Nanjanagudu in MA No.29/2013 held that, the plaintiffs were not in possession of suit schedule property. The Hon'ble High Court of Karnataka in WP No.47850-551/2014 (GM – CPC) in its order dated: 30.06.2015 has passed an order in the same manner. In such a situation, the question of interfering with the possession and enjoyment of the plaintiffs over the suit property on 18.08.2015 by the defendants does not arise at all. Defendants No.5 to 7 are public servants and they have no individual interest over the matter. On perusal of documents produced by the defendants and written statement, makes it clear that, the plaint do not disclose a cause of action. The plaintiffs have not produced any documents to show that, as on the date of filing of O.S.No.83/2013, and present suit, they were in possession of suit property. On all these grounds, defendants No.5 to 7 pray for rejection of the plaint.

**3.** Per contra, the learned counsel for plaintiffs has filed objections to I.A.No.XIII contending that, the application is not maintainable either in law or on facts. The plaintiffs have denied the averments of the affidavit as false and incorrect. The plaintiffs contend that, this court has already framed an issue regarding maintainability of suit. After hearing both the parties, the court has given a finding that, the suit is not maintainable. In this regard, the plaintiffs preferred an appeal in RA No.27/2020 on the file of Senior Civil Judge, Nanjanagudu. After hearing both the parties, the said appeal came to be allowed. Thus, it is clear that, the arguments regarding the maintainability of suit was already heard and disposed of. Hence, the question of again filing an application for rejection of plaint u/Order VII Rule 11 of C.P.C. does not arise at all. The present application is filed in order to drag the proceedings.

**4.** The plaintiffs in their objections further contended that, the allegation that, there is no cause of action to file the above suit is not sustainable in the eye of law. Because, the cause of action is a bundle of facts. The entire plaint averments have to be looked into to decide, whether there is a cause of action or not. The denial of rights of the plaintiffs over the suit property is itself gives rise to cause of action. Accordingly, the plaintiffs pray for dismissal of I.A.No.XIII.

**5.** I have heard the arguments of learned counsel for defendant No.5 to 7 and plaintiffs. Perused the materials available on record.

6. The following points that arise for my consideration are:

**1. Whether the applicants/defendant No.5 to 7 proves that, the plaint is liable to be rejected u/Order-VII Rule-11 of C.P.C. ?**

**2. What order ?**

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

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

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

**REASONS**

8. **Point No.1:** Order VII Rule 11 of C.P.C. empowers the court to reject the plaint where it does not disclose a cause of action and where the suit appears from the statement in the plaint to be barred by any Law. It is settled that, only plaint averments can be examined while considering the application for rejection of plaint.

9. The plaintiffs have filed this suit for the relief of declaration to declare that, the land acquisition proceedings in LAQ HSL SR 283/1978-79 published in Gazette dt: 02.07.1979 along with corrigendum published in Gazette dated: 04.08.1988 by defendant No.2 with respect to suit schedule 'A' and 'B' as lapsed, consequential relief of permanent injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of suit schedule 'A' and 'B' properties and for mandatory injunction directing defendant No.4 to

carryout necessary changes in the revenue records pertaining to the suit schedule properties.

**10.** The plaintiffs in their plaint at para No.10 pleaded that, after the withdrawal of O.S.No.83/2013, the defendant No.5 to 7 started interference with the plaintiffs' peaceful possession and enjoyment of suit 'A' and 'B' schedule properties. The defendants tried to encroach the said properties, which are in the possession of plaintiffs. The plaintiffs in their plaint further pleaded that, defendant No.5 to 7 trying to form a layout in the suit schedule properties. The defendant No.5 to 7 have no manner of right, title or interest over the property within the boundaries described in the suit 'A' and 'B' schedule property. But, they tried to encroach the property in possession of plaintiffs. In para No.22 of the plaint, it is averred that, the cause of action to file the suit arose in January, 2013, when defendant No.5 to 7 interfered with the plaintiffs' possession and enjoyment of the suit schedule properties by trying to form a residential layout in the suit schedule property. Subsequently, on 18.08.2015, when the defendants attempted to interfere with the plaintiffs' peaceful possession and enjoyment of the suit schedule property, after withdrawal of suit in O.S.No.83/2013.

**11.** Defendant No.5 to 7 in their application stated that, the plaintiffs were not in possession of suit properties as on the date of filing of O.S.No.83/2013. Hence, their interim application in the said suit was dismissed. In MA No.29/2013 and WP No.47850-551/2014(GM-CPC), the Hon'ble Senior Civil Judge and Hon'ble High Court of Karnataka respectively held that, the

plaintiffs are not in possession of suit property. When, the plaintiffs are not in possession of suit property, the question of making interference with the possession and enjoyment does not arise at all. The plaint does not disclose any cause of action. On all these grounds, defendants No.5 to 7 pray for rejection of the plaint.

**12.** But in order to reject the plaint, on the ground that, plaint does not disclose a cause of action, the court must look at the plaint and at nothing else. It is well settled that, while deciding an application u/Order VII Rule 11 of C.P.C., only the pleadings of the plaintiffs are looked into. Neither the written statement nor the averments made in the application can be considered for an enquiry under the said order. The Hon'ble Apex Court in **Mayar (H.K.) Limited & Others Vs. Owners & Parties, Vessel M.V. Fortune Express & Others** reported in **(2006) 3 SCC 100**, wherein it is held that,

12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation,

fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Judge the plaintiffs may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order VII Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiffs-appellants.

**(Emphasize supplied by me)**

In view of the above decision, the plaint cannot be rejected on the basis of the allegations made by the defendants in their written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then, the plaint cannot be rejected u/Order VII Rule 11 of C.P.C.

**13.** In this suit, the plaintiffs in their plaint pleaded that, the cause of action to file the suit arose in January, 2013, when defendant No.5 to 7 interfered with the plaintiffs' possession and enjoyment of the suit schedule properties by trying the form a residential layout in the suit schedule property. Subsequently, on 18.08.2015, when the defendants attempted to interfere with the plaintiffs' peaceful possession and enjoyment of the suit schedule property, after withdrawal of suit in O.S.No.83/2013. On the said fact/cause of action, they have maintained the present suit. In the present suit, the averments made in the plaint do disclose the cause of action. Hence, without much discussion, this court is of the opinion that, the application filed by defendant No.5 to 7 is

liable to be dismissed. Accordingly, I answer point No.1 in the 'Negative'.

**14. Point No.2:-** In view of my finding on the Point No.1, I proceed to pass the following:-

**ORDER**

I.A.No.XIII filed by the defendant No.5 to 7 u/Order VII Rule 11 of C.P.C. is hereby **dismissed**.

No order as to costs.

(Dictated to the stenographer directly on the computer, script revised, corrected and signed by me and then pronounced in the open court on this the **14<sup>th</sup> day of August, 2023**)

Sd/-

**(Sri. Kishor Kumar M.)**  
I Addl. Civil Judge & JMFC.,  
Nanjanagudu