

IN THE COURT OF II ADDL. SR. CIVIL JUDGE & JMFC,

AT:RAICHUR

PRESENT: Sri. MAHAJAN RAMESH APPASAB,

B.A., LL.B.,(SPL)

II-Addl. Sr.Civil Judge, Raichur

OS.No.154/2018

DATED THIS THE 4th DAY OF JUNE 2022

PLAINTIFFS:- Dodda Kariyappa S/o Mobbu
Hanumayya, dead by Lrs and
others
All R/o H.No.1-3-573, Station
Area V.V. Giri Road, Raichur.

(By Sri. SGK, Advocate for Plaintiff)

- VERSUS -

DEFENDANT:- Samuelappa S/o Tukadayya,
Age:74yrs, Occ: RTD Railway
Employees & Agriculture, R/o
Ashapur village, Tq & Dist:Raichur.

(By Sri CP Advocate for Defendant)

I.A.No. III

Applicant/ : Samuelappa S/o Tukadayya
Defendant

- VERSUS -

Opponents/ : Dodda Kariyappa S/o Mobbu
Plaintiff Hanumayya

//ORDERS ON IA No.III//

Defendant has filed this application under order 7 rule 11(a) & (d) R/w section 151 of CPC and prayed for rejecting the plaint.

2. In the supporting affidavit, it is averred that the defendant/applicant is stranger to the family of plaintiffs hence the suit for partition against him is not maintainable. Further, it is averred that the applicant is purchaser of the suit property is in possession and enjoyment of suit land since the date of purchase and there is no cause of action against him to filed present IA. It is also averred that the suit filed after lapse of 44 years after execution of sale deed by late Dayanalappa and same is not maintainable as barred by law of limitation. He has also disputed the relationship of plaintiffs with late Dayanalappa. On these grounds the defendant prayed for rejection of plaint.

3. Plaintiff has filed objection contended that the application is devoid of merits and the plaint averments make out cause of action. Accordingly, plaintiff prayed for rejecting the application.

4. I have heard learned counsel for defendant and learned counsel for plaintiffs.

5. The following points would arise for my consideration;

1. Whether the defendant has made out grounds for rejection of plaint?
2. What order?

6. My answer to the above said points is 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 applicant/Defendant has sought for rejection of plaint mainly on three grounds; one he being the stranger, the suit for partition against him is not maintainable and it lacks cause of action. Secondly, the suit is filed after lapse of 44 years from date of execution of sale

deed by Dayanalappa hence, the suit is barred by law of limitation and thirdly without seeking relief of declaration the present suit is not maintainable.

8. In this background whether the plaint can be rejected on the above counts by exercising power under Order 7 Rule 11(a) and (d) of CPC needs consideration. Rejection of plaint is drastic power conferred upon the court to terminate a civil action at the threshold. As such the powers U/o.7 rule 11 of CPC has to be exercised sparingly abidingly the mandatory requirements of law.

9. It is settled law that in order to ascertain cause of action, only the plaint averments alone has to be looked into and not the defense of defendant. In this regard on perusal of plaint it clearly reveals assertion of her share in the suit property by the plaintiff. It is also pleaded that the sale transaction entered by the applicant/defendant is illegal and not binding on the plaintiff. On reading of plaint as a whole it do disclose the cause of action for the suit. Hence, the claim applicant/defendant on this ground is untenable. Applicant/defendant is the purchaser of suit property as such

even though he is a stranger to the family, he is necessary party to the suit. Consequently, on this count also plaintiff cannot be rejected.

10. It is averred in the plaint that the suit land was standing in the name of Dayanalappa up to the year 2018 and the sale deed allegedly executed by Dayanalappa is illegal and not binding on the plaintiff. The plaintiff claims to be in possession of suit property and pleaded attempt of defendant to interfere their possession on 29.09.2018. In view of the matter, in order to adjudicate the issue of limitation recording of evidence is necessary. As such, from the statement of the plaint, the same is not barred by any law in order to attract Rule 11(d) of C.P.C. Resultantly, the defendant/applicant has failed to make out grounds for rejecting the plaint. Hence, I answer point No.1 in the negative.

10. Point No.2: For the above said reasons on point No.1, I proceed to pass the following:

//O R D E R//

I.A.No.III filed by defendant No.3 U/o.7 Rule
11(a) and (d) R/w section 151 of CPC is hereby
rejected.

(Dictated to the Stenographer, Script corrected, signed and then pronounced in the
open court by me on this the 4th day of June- 2022).

SD/-
(Mahajan Ramesh Appasab)
II-Addl.Sr.Civil Judge and JMFC,
Raichur.