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I.A. No.	V
I.A. filed by the	Defendant
Date of filing of I.A.	05-04-2023
Date of filing of objections	13-06-2023
Date of Order	18-07-2025

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE AND C.J.M., AT RAMANAGARA.**

: PRESENT :

SRI.LOKESHA.,

B.A., LL.B.,

Prl. Senior Civil Judge and C.J.M.,
Ramanagara.

DATED THIS THE 18TH DAY OF JULY, 2025.

O.S. No.89/2021

Plaintiff : Sri.H.N.Ramesh

-V/s-

Defendant : Smt.Lakshamma

I.A. No.V

Applicant : Smt.Lakshamma

-(Defendant)

KARN020002632021



-V/s-

Opponent : Sri.H.N.Ramesh
-(Plaintiff)

* * *

ORDER ON I.A. No.V

This application is filed by the Defendant Smt.Lakshamma requesting the court to reject the plaint for want of cause of action and barred by limitation.

2. In the affidavit filed accompanying this application Defendant Smt.Lakshamma sates that this suit is filed by Plaintiff contending that this Defendant has executed sale agreement dated 27.02.2012 with respect to suit property. But the Plaintiff did not come forward to pay the balance sale consideration amount hence, this Defendant had issued notice dated 18.01.2013 to the Plaintiff to get the sale deed registered

KARN020002632021



in his favour by paying balance sale consideration failing which advance amount would be forfeited. On 23.01.2013 Plaintiff had replied to the said notice stating that he is not interested to purchase the property and demanded her to refund the advance amount. Thereafter Plaintiff has not taken any steps. All of a sudden on 17.02.2021 Plaintiff has issued to notice to this Defendant demanding her to execute the sale deed by receiving balance sale consideration and this Defendant has replied to the said notice. As the suit is filed after lapse of 8 years from the date of agreement suit is barred by limitation. That there is no cause of action for the Plaintiff to file this suit. Hence, Hence, she prays to reject the plaint by allowing this application.

3. On the other hand the learned counsel for the Plaintiff has filed objections to this application

KARN020002632021



contending that application is not maintainable either in law or on facts. It is further contended that the grounds urged in the application are pre-mature stage and same may not be answered without leading evidence. Hence, he prays to reject the application.

4. I have heard the arguments of the learned counsel for the Defendant and Plaintiff. I have perused case records.

5. The following Points arise for my consideration:-

1. *Whether plaint does not disclose cause of action and whether statement made in the plaint itself appears to be barred by law of limitation?*

2. *If so, what order?*

6. My answers to the above points are as under:-

Point No.1 : In the Negative;

KARN020002632021



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

REASONS

7. **Point No.1:-** Admittedly, present suit filed by the Plaintiff against the Defendant for the relief of specific performance of contract based on agreement of sale dated 27.02.2012. I have carefully perused entire plaint averements. In para No.4 and 5 the Plaintiff has pleaded as follows:-

“4. The plaintiff submits that, when the defendant did not come forward to executed an absolute sale deed the plaintiff by taking all necessary steps but all the efforts made by the plaintiff's her left in vain and the plaintiff requested the defendants for several times to come and execute absolute sale deed, but the defendants keep on postponing the issue for one or other pretext

KARN020002632021



the plaintiff even though he is ready and willing to perform his part of contract by having ready cash of the balance sale consideration and on verification he came to know that, some of the persons have filed a case against the family members of defendants in respect of the suit schedule property and other properties in O.S. 416/2013 and hence the plaintiff being a registered agreement holder moved an application for impleading him as the defendant but, the Hon'ble Senior Civil Judge, at Ramanagara was dismissed the application of the plaintiff and directed to take appropriate action in respect of agreement of sale dated: 27-02-2012. It is further submitted that, the defendant herein knowingly about the pendency of the suit O.S. 416/2013 had issued notice to the plaintiff on 18-01-2013, calling upon the plaintiff to obtain the absolute sale deed by paying the balance sale consideration and hence the plaintiff issued reply notice to the

KARN020002632021



defendant on: 23-01-2013, later on the plaintiff approached before the civil court by filing impleading application as stated supra. The copy of the legal notice date: 18-01-2013 and copy of the reply notice dated: 23-01-2013 are herewith produced as Document No. to are herewith for kind perusal of this Hon'ble Court.

5. The plaintiff submits that, the defendant keep on dodging the issue for one are the other several years and hence in the month of February-2021, the plaintiff had requested the defendant to come and executed an absolute sale deed by furnishing all necessary documents for the purpose of registration but the defendant gave evasive answer, when all the efforts made by the plaintiff is left in vein having no other remedy and relief had issued legal notice to the defendant call upon her to come and execute an absolute sale deed within 7

KARN020002632021



days from the date of receipt of legal notice on 17-02-2021, the notice send by the plaintiff was served on the defendant. The copy of the legal notice, postal receipt, postal acknowledgment, return envelop and the reply notice is herewith produced as Document No. for kind perusable of this Hon'ble court."

8. Now the questioned to be decided whether plaint averments clears that suit is barred by law of limitation or whether it discloses cause of action. Cause of action is defined in law lexicon by P.Ramanath Iyer as follows. "The element of cause of action are first breach of duty owing by one person to another, second the damage, resulting to the other from breach. The commission or the commission of an act by the defendant and damage to the plaintiff in consequence there of must be unite to give a good cause of action. The cause of action is a

KARN020002632021



bundle of fact which is necessary for the plaintiff to prove in order to succeed the suit. The cause of action is a set of allegations or facts that makeup the basis for filing a civil suit in the court and it must include some act done by the Defendant.

9. The learned counsel for the Defendant would submits that as in the year 2013 itself the Plaintiff had issued notice to the Defendant for which this Defendant replied that she is ready to execute the sale deed. But since 2013 till 2021 the Plaintiff kept quite without taking any steps to file a suit for specific performance of contract. As such suit is barred by limitation and there is no cause of action for the Plaintiff to file this suit.

10. In the present case on hand a meaningful reading of the plaint that to averments made in para

KARN020002632021



No.4 and 5 of the plaint, it is clear that a right is created for the Plaintiff to enforce an obligation as against Defendant. In other words plaint clearly discloses cause of action as against the Defendant. With respect of dealing with an application filed for rejection of the plaint, it is necessary to refer the recent decision of Hon'ble Apex Court reported in **2021(4) KCCR 2769(SC) Sri.Hari Hanumandas Totala**. In this decision their Lordships have held that "On a perusal of the above authorities, the guiding principles for deciding an application under Order 7, Rule 11(d) can be summarized as follows:-

- (i). *To reject a plaint on the ground that the suit is barred by any law, only the averements in the plaint will have to be referred to;*
- (ii). *The defense made by the defendant in the suit must not be considered*

KARN020002632021



while deciding the merits of the application;

- (iii). To determine whether a suit is barred by resjudicata, it is necessary that (i) the 'previous suit' is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and*
- (iv). Since an adjudication of the plea of resjudicata requires consideration of the pleadings, issues and decision in the 'previous suit', such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused.*

KARN020002632021



11. As per dictum of the above decision to reject the plaint on the ground that suit is barred by any law or limitation, the plaint averments will have to be looked into but not the written statement averments. Moreover the issue of limitation is mixed question of law and fact which cannot be decided at this stage. Whether suit is barred by limitation or not has to be decided only after recording evidence on fact. As per the dictum of the Hon'ble Apex Court, a plaint cannot be rejected as barred by limitation unless the averments of the plaint itself is clear that suit is not filed in time. A perusal of the plaint averments it does not discloses that suit is barred by any law or barred by limitation. Moreover even as per the averments of para No.5 of the plaint on 17.02.2021 the Plaintiff has also issued a notice to the Defendant calling upon her to execute the sale deed. The suit is filed on 02.03.2021. The averments of para No.5

KARN020002632021



of the plaint is very clear that at this stage plaint cannot be rejected on the ground that suit is barred by limitation. The facts stated in para No.5 of the plaint has to be established during trial.

12. In the case on hand plaint discloses clear cause of action. It is well recognized principle of law that while deciding application for rejection of the plaint under Order VII Rule 11 of CPC., court cannot go into disputed question of fact. It is also well settled that Order VII Rule 11(d) of CPC., applies only where the statement as made in the plaint without any doubt or dispute shows that the suit is barred by any law in force. It does not apply in case of any disputed question. From careful perusal of the plaint averements it becomes clear that the right is accrued for the Plaintiff to enforce an obligation against the Defendant in this

KARN020002632021



case. The averements of the plaint clearly discloses the cause of action. The suit not appears from the statement in the plaint that suit is barred by any law. With these reasons, **I answer Point No.1 in the “Negative”**.

13. **Point No.2:-** In view of my answer to Point No.1, I proceed to pass the following:-

ORDER

I.A.No.V filed by the Defendant under Order VII Rule 11(a) and (d) R/w Sec.151 of the CPC is hereby dismissed on costs of Rs.500/- payable to Plaintiff.

*(Dictated to the Typist, typed by him, typed script corrected, signed and then pronounced by me in the open court on this **18th day of July, 2025.**)*

(LOKESHA)
PRL. SENIOR CIVIL JUDGE & C.J.M.,
RAMANAGARA.