



I.A.No.	6
I.A filed by the	Defendant No.5
Date of filing of I.A	19.06.2024
Date of filing of Objections filed by the Plaintiffs	25.09.2024
Date of Order	04.12.2024

**IN THE COURT OF THE PRL.SENIOR CIVIL JUDGE AND
CJM., AT RAMANAGARA**

Dated : This the 4th Day of December, 2024

Present:-

Sri. Loksha,
B.A., LL.B.,
Prl. Senior Civil Judge & CJM.,
Ramanagara.

O.S.No.249/2021

Plaintiff :- Sri. Vajrappa and others

V/s

Defendant :- Smt. Muniyamma and others

I.A.No.6

Applicant :- Sri. Ekoram
- (Authorized Agent of
Defendant No.5)



-V/s-

Opponents :- Sri. Vajrappa and others
- (Plaintiffs)

* * *

ORDER ON I.A.NO.6

This application has filed by the Defendant No.5 through his authorized agent Sri. Ekoram requesting the court to reject the plaint under Order VII Rule 11(a) and (d) of CPC.,

2. In the affidavit filed accompanying this application authorized agent Sri. Ekoram states that suit property has been sold by one Muniyappa and Muninarayanappa in favour of Defendant no.5 and 6 in the year 1995. That plaintiff and Defendant no.1 to 4 are not in possession and enjoyment of suit property. Since the date of sale deed Defendant no.5 and 6 have been in possession and enjoyment of suit property. That plaintiffs never challenged sale deed of the year 1995 and after



lapse of 26 years this present suit is filed which is barred by limitation. The plaintiffs have cleverly drafted the plaint which does not disclose cause of action. Hence, he prays to reject the plaint by allowing this application.

3. On the other hand the Plaintiffs have filed objections to this application contending that application is not maintainable either in law or on facts. It is further stated that alleged sale deed was not within the knowledge of these plaintiffs. That application is filed only to drag on the proceedings. That the suit is not barred by any law. Hence, they have sought for dismissal of application.

4. I have heard the arguments of the learned counsel for the Defendant no.5 and 6 and Plaintiffs. I have perused the case record.

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;

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

REASONS

7. Point No.1:- Admittedly, present suit filed by the Plaintiffs against the Defendants for the relief of partition and separate possession with respect to suit property bearing Sy.No.468/1 measuring 3 acres 2 guntas, contending that it is ancestral and joint family property of themselves and Defendant no.1 to 4. I have carefully scanned the averments of the plaint. In para 7 and 8 of the plaint the Plaintiffs pleaded as follows:



“7. The plaintiffs submit that, the plaintiffs in order o file suit for partition made fervent enquiries and were shocked to know that, late Muniyappa, late Muni Narayanappa and his children, have executed a fraudulent sale deed in favour of the 5th and 6th defendants under the sale deed dated 11.8.1995, registered as No. 2047/95-96, Book I, Volume 1711, pages 113 to 121, in the office of the Sub-Registrar, at Ramanagara, which is not binding on the plaintiffs.

8. The plaintiffs submit that, the plaintiffs have no knowledge about the execution of the sale deed, the plaintiffs have not affixed their signatures to the sale deed, the plaintiffs have not given their consent for sale of the schedule property and no consideration has been passed on to the plaintiffs. Just by mere execution of the sale deed, the right of the plaintiffs to claim share in the schedule property is not curtailed by any means and the right of the plaintiffs to claim share in the schedule property is subsisting. Adding insult to injury, the 5th and 6th defendants are now making speedy attempts to alienate the schedule property in favour of third parties and some strangers are inspecting the schedule property, hence, without any other alternate and efficacious remedy, the plaintiffs is constrained to file the above suit for partition.”



8. In para 9 of the plaint the Plaintiffs also pleads that cause of action arose on 15.01.2021 and on 20.02.2021 , the date on which panchayath was held for partition and was refused by the Defendant, subsequently within the jurisdiction of this court.

9. 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 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.

10. In the present case on hand a meaningful reading of the plaint that too averments made in para 6 to 9 of the plaint, it is clear that a right is created for the Plaintiff to enforce an obligation as against Defendants. In other words plaint clearly discloses cause of action as against the Defendants. 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



averments in the plaint will have to be referred to;

- (ii). The defense made by the defendant in the suit must not be considered while deciding the merits of the application;*
- (iii) To determine whether a suit is barred by res judicata, 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 res judicata 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.*

11. As per dictum of the above decision to reject the plaint on the ground that suit is barred by any law only



the plaint averments will have to be looked into but not the written statement averments. A perusal of the plaint averments it does not disclose that suit is barred by any law or barred by limitation. The 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 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.

12. From careful perusal of the plaint averments it becomes clear that the right is accrued for the Plaintiff to enforce an obligation against the Defendants in this case. The averments of the plaint clearly disclose the cause of action. The suit does not appear from the statement in the



plaint that suit is barred by any law. On meaningful reading of a plaint it is found that plaint averments clearly discloses cause of action. The plaint of suit could be rejected if the suit on the face of pleadings in the plaint itself appears to be barred by any law. Therefore, this court come to conclusion that plaint cannot be rejected under Order VII Rule 11 of CPC., as sought for by the Defendant. The Plaintiff has made out clear cause of action to file the suit and suit cannot be said to be barred by law of limitation, as pleaded by the Defendants and at this stage, suit cannot be said to be 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.6 filed by the
authorized agent of Defendant

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O.S.No.249/2021

No.5 under Order VII Rule 11(a)
and (d) R/w Sec.151 of the
CPC., is hereby dismissed with
cost of Rs.500/-.

(Dictated to the Stenographer, directly on computer typed by her, the corrected and then pronounced by me in the open Court on this the 4th day of December, 2024).

(LOKESHA)
Prl.Senior Civil Judge & CJM,
Ramanagara.