



**IN THE COURT OF THE 1st ADDITIONAL SENIOR CIVIL
JUDGE AND JMFC, RAMANAGARA**

Dated This 09th day of August 2023

PRESENT:

Sri. Mahesh B.T.,
B.Com., LL.M.,
1st Addl., Senior Civil Judge and JMFC,
Ramanagara.

OS.No.360/2020

Plaintiffs :- Smt.Mahadevamma and Another

V/s

Defendants :- Sri.Channappa and Another

* * *

I.A.No.III

Applicant :- Sri.Channappa
- - (Defendant No.1)

V/s

Opponents :- Smt.Mahadevamma and Another
- - (Plaintiffs)

* * * *

**ORDER ON I.A No.3 FILED U/O VII RULE 11 (a) and (d)
R/w SEC.151 of CPC.,**

The applicant/defendant No.1 has filed the



application to reject the plaint.

2. As per the affidavit of the applicant that, the plaintiffs have filed the above suit for declaration and permanent injunction and other reliefs against defendants and others in respect of the suit schedule property and it is further contended that, the suit is not maintainable and have suppressing the true material facts and created and concocted the documents only purpose of illegal gain.

3. Further it is stated that, the plaintiff was a objector in LAC No.62/2013, LAC No.63/2013, LAC No.64/2013, and LAC No.65/2013. The above said LAC petition of 62/2013 was ordered and awarded on 21.7.2016 in favour of claimant No.2 Madaiah, claimant No.3 Nanjundaiah, claimant No.4 Chikanna that the claimant No.2 to 4 have proved their right, title and interest over the property to an extent of 02 Acres 28 guntas described



in this reference. It is further stated that, the plaintiff was a objector in LAC No.62/2013, LAC No.63/2013, LAC No.64/2013 and LAC No.65/2013. The above said LAC 63/2013 and LAC 65/2013 was ordered and awarded on 03.03.2016 in favour of claimant No.2 Madaiah, claimant No.3 Nanjundaiah, claimant No.4 Chikanna that the claimant No.2, 3 and 4 have proved their right, title and interest over the property to an extent of 02 Acres 28 Guntas described in this reference. In this case the plaintiff has filed a memo dated:03.08.2015 stating that they would not claim any award from Housing Board Authority in future. Further it is stated that, in LAC 64/2013 was hotly contested by the plaintiffs against the defendant No.1 since from 2013 to 27.11.2020. The Court was passed an order in favour of Defendant No.1 as follows:

“The reference under Sections 30 and 31 of Land



Acquisition Act is allowed. The claimant No. The claimant No.1 has proved his right, title and interest over the property in Sy No.76/1A, to an extent of 2 acres which is described in this reference. The claimant No.1 shall execute an indemnity bond to the compensation amount he is entitled to. Draw decree accordingly.”, Hence on this ground also the plaint is liable to be dismissed.

4. Further it is stated that, the well settled position is that while considering the application under Order VII Rule 11 CPC, Court is not required to take into consideration the defense set up by the defendant in his written statement or other documents. The question whether plaint discloses cause of action and whether it is barred by any law is to be decided by looking at the averments contained in the plaint itself defense set up in the written statement (Saleem Bhai V/s State of Maharashtra, (2003) 1 SCC 557), that the suit filed by the



plaintiff is not bonafide to assert rights in Law, there is no valid cause of action for the suit the plaint shall be rejected (Munilakshmama Vs Venkatamma 2017 AIR Civil cases 3057 Kar). Further it is stated that, the LAC No.64/2013 was pending before the Court between the same parties and decreed in the favour of Defendant No.01 on 27/11/2020 the plaintiff should have preferred appeal before the appropriate Court of Law. On the other hand the plaintiffs have filed frivolous case to play the mischief with the Court even though the plaintiffs have filed RA.No.06/2021 they have suppressed the fact before Judgment dated: 21.10.2021 by this Court. Therefore, he has prayed for rejection of the plaint with exemplary costs.

5. The plaintiffs have filed their statement of objection to the above application and contended that, the application filed by the defendant No.1 is not



maintainable. Further it is contended that, in the instant suit they have filed against the defendant for the relief of declaration and for injunction. They have not filed any suit with respect to the rights against the defendants. Further no suits were filed with respect to the rights and it is decided in the courts. Further contended that, plaintiff is also having the right over the suit schedule property since suit schedule property is their ancestral property. Hence, on the other ground prays to dismiss the application filed by the defendant No.1.

6. The following points arise for my determination:

- (1) *Whether the plaint averment reveal that the plaint has to be rejected ?*
- (2) *What order ?*

7. Heard the Counsel for defendant No.1 and the plaintiff.



8. My findings on the above points are as under:

Point No.1 : In the Negative;

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

REASONS

9. **Point No.1 :** The plaintiffs have filed the above suit for declaration and permanent injunction and other reliefs against defendants and others in respect of the suit schedule property. It is stated that, the plaintiff was a objector in LAC No.62/2013, LAC No.63/2013, LAC No.64/2013, and LAC No.65/2013. The above said LAC petition of 62/2013 was ordered and awarded on 21.7.2016 in favour of claimant No.2 Madaiah, claimant No.3 Nanjundaiah, claimant No.4 Chikanna that the claimant No.2 to 4 have proved their right, title and interest over the property to an extent of 02 Acres 28 guntas described in



this reference. It is further stated that, the plaintiff was a objector in LAC No.62/2013, LAC No.63/2013, LAC No.64/2013 and LAC No.65/2013. The above said LAC 63/2013 and LAC 65/2013 was ordered and awarded on 03.03.2016 in favour of claimant No.2 Madaiah, claimant No.3 Nanjundaiah, claimant No.4 Chikanna that the claimant No.2, 3 and 4 have proved their right, title and interest over the property to an extent of 02 Acres 28 Guntas described in this reference. In this case the plaintiff has filed a memo dated:03.08.2015 stating that they would not claim any award from Housing Board Authority in future. Further it is stated that, in LAC 64/2013 was hotly contested by the plaintiffs against the defendant No.1 since from 2013 to 27.11.2020. The Court was passed an order in favour of Defendant No.1 inspite of that without having any right filed false suit to harass the defendants. Therefore, he has prayed for reject the plaint with



exemplary costs.

10. The plaintiffs have filed their statement of objection to the above application and contended that, the application filed by the defendant No.1 is not maintainable. Further it is contended that, in the instant suit they have filed against the defendant for the relief of declaration and for injunction. They have not filed any suit with respect to the rights against the defendants. Further no suits were filed with respect to the rights and it is decided in the courts. Further contended that, plaintiff is also having the right over the suit schedule property since suit schedule property is their ancestral property.

11. So far as rejection of plaint is concerned, it is dealt under Order 7 Rule 11 of CPC. Order 7 Rule 11 of CPC is reproduced for better understanding.

“11.Rejection of plaint – The plaint shall be rejected in the following cases:



- (a) Where it does not disclose a cause of action;*
- (b) Where the relief claimed is under valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) Where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped and the plaintiff on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;*
- (d) Where the suit appears from the statement in the plaint to be barred by any law;*
- (e) Where it is not filed in duplicate;*
- (f) Where the plaintiff fails comply with the provisions of Rule 9*

12. In the above said provision it states that, if the plaint does not disclose a cause of action and if it appears that the statement in the plaint is barred by any law and for that matter barred by limitation then, the plaint has to be rejected.

13. This Court would rely on the decision of Apex Court in



(2004) 9 SCC 512 (DB) in Liverpool & London S.P. & I Association Ltd., -V/s- M.V.Sea Success I and another.

On perusal of the said citation the Hon'ble Apex Court has held that:

*“Cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. The material facts required to be stated but, not the evidence. Whether a claim discloses a cause of action or not is essentially a question of fact. Whether it does or does not disclose cause of action must be found out from reading the plaint itself. The plaint averment has to be read in entirety. It is further held that, in ascertaining whether the plaint shows a cause of action, the Court is not required to make an elaborate enquiry into doubtful complications question of law or fact. So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge mere fact that, the case is weak and not likely to succeed is no ground for striking it out. It has further held that, if the averments made in the plaint or documents relied upon disclose a cause of action then, **the plaint should not be rejected merely on the ground that the averments are not sufficient to prove the facts stated therein.**”*

14. Here this Court would like to rely on the decision of ***the Hon'ble Apex Court in 2006 AIR (SC) 3672 (DB)***



(Ramesh B.Desai and others –V/s- Bipin Vadilal Mehta and others), wherein it has been held that,

“Rejection of plaint on ground of limitation – Held :

- (i) A plea of limitation is a mixed question of law and fact – Therefore unless it becomes apparent from the reading of the petition that the same is barred by limitation the petition cannot be rejected under Order 7 Rule 11(d) of Civil Procedure Code.*
- (ii) In order to examine whether the plaint is barred by any law, as contemplated by sub-rule (d) of Order 7 Rule 11 Civil Procedure Code, the averments made in the plaint alone have to be seen and they have to be assumed to be correct. It is not permissible to look into the pleas raised in the written statement or to any piece of evidence.”*

15. Here this Court would also like to refer to decision of

Hon’ble Karnataka High Court in ILR 2016 KAR 2429 in Smt.N.Triveni –V/s- G.T.Shankar.

In the said case it has been held that, *“while considering the application under Order 7 Rule 11 of CPC, the Court has to examine the averments in the plaint and the pleas taken by the defendant in the written statement are irrelevant. Further, it has held*



that, it is the averments made in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercising the power under Order 7 Rule 11 of CPC, the case of the defendant stated in the written statement or in the application filed for rejection of the plaint is immaterial. It is only if the averments in the plaint ex-facie do not disclose a cause of action or the suit appears to be barred under any law, the plaint can be rejected. Otherwise, the case of the parties has to be adjudicated by conducting the trial.”

16. In the above said citation it has been held that, so far as limitation is concerned, only if from the bare reading of the plaint if it is barred by limitation then, the plaint has to be rejected. On the other hand, if the limitation is a mixed question of law and fact then, it cannot be rejected under Order 7 Rule 11 of CPC. Further held, while considering application under Order 7 Rule 11 of CPC., only the plaint



averment has to be looked into and not the defence taken by the defendant in the written statement. Further, it has been held that, cause of action is a bundle of facts which gives right to a party to file a suit. On reading entire plaint, if there is a triable case even if it is a weak case then, it is said that, there is a cause of action to proceed with the suit.

17. By keeping the above principles in mind to the present case on hand, in the present case, it has to be looked into whether the plaint is barred by law of limitation and it does not disclose cause of action to file the suit.

18. On perusal of the plaint averments, it can be seen that, instant suit was filed for the declaration and injunction against the defendants. Further, they have taken the contention that, suit schedule property is their ancestral property and they having the right over the suit



schedule property. Further they also stated that, they have not filed any suit against the suit against the defendant with respect to the rights. Further defendant also stated with respected to the LAC cases which were pending between them. Further he also stated that, plaintiffs have given the affidavit stating that, they are not claiming any right over the suit schedule property. Hence, now this defendant come-up with the instant application. Further it is to be noted here that whether plaintiffs are having right over the suit schedule property or not which has to be dealt in the full fledged trial. Moreover, this plaintiff clearly stated about their rights over the suit schedule property and shown the cause of action. Hence, based on above said reasoning, **Point No.1 is answered in the Negative.**

19. **Point No.2:** Based on findings in Point No.1, proceed to pass the following:



ORDER

I.A.No.3 filed by defendants No.1
under Order 7 Rule 11(a) and (d) R/w
Sec.151 of C.P.C. is hereby rejected.

(Dictated to the Stenographer in part and dictated directly on the computer and computerized by him, corrected, signed and then pronounced by me in the Open Court on this the 09th day of August 2023.)

(Sri.Mahesh.B.T)
1st Addl. Senior Civil Judge and JMFC.,
Ramanagara.