



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

Dated This 24th day of July 2023

PRESENT:

Sri. Mahesh B.T.,

B.Com., LL.M.,

1st Addl., Senior Civil Judge and JMFC,
Ramanagara.

OS.No.118/2021

Plaintiff :- H.R.Yashodha

V/s

Defendants :- Sri.Kamamma and Others

* * *

I.A

Applicant :- Sri.Rajesh

- - (Defendant No.8)

V/s

Opponent :- H.R.Yashodha

- - (Plaintiff)

* * * *

ORDER ON I.A FILED U/O VII RULE 11(a) of IPC.,

The applicants/defendant No.8 has filed the



application to reject the plaint in so far as Item No.1 to 4 of schedule property on the ground that there is no cause of action to file the above suit.

2. As per the affidavit of the applicant that, the Plaintiff has filed the above suit for partition and separate possession in respect of the suit schedule properties by metes and bounds and other consequential reliefs against the Defendants.

3. Further it is stated that, he is in physical and lawful possession of Items No.1 to 4 of the of the suit schedule properties as per the 3 registered sale deed dated:31-05-2018 & 21-08-2018. After purchasing the property, the revenue entries have been mutated in his favour. Admittedly, the first sale transaction had taken place in the year of 2004 and after that, 4 sale transactions have been completed in so far as Items No.1 to 4 schedule



properties and he was the bona-fide purchaser of the Items No. 1 to 4 of the schedule properties and invested hard earn money and also to obtain hand loans to purchase the properties. Hence, the sale deeds dated:10.06.2004, 21.07.2004, 19.11.2005, 30.08.2010 and 31.05.2018 and 21.18.2018 were all valid and from the year of 2004-2005, the revenue entries like mutation extract and RTC extracts were transferred to the prospective purchaser's name and moreover, presently, Katha in respect of Items No.1 to 4 of the suit schedule properties are standing in his name.

4. It is further stated that, after lapse of 17 years from the first transaction in 2004, without giving any valid grounds & bonafide reasons, the plaintiff has filed this false suit is not maintainable. Further, the plaintiff nor the defendants No.1 to 3 have not contacted approached him as alleged by plaintiff in the plaint. Hence, there is no



proper and specific cause of action shown in the plaint and the cause of action shown in the plaint is imaginary and created one to file the above suit. Hence, the defendant No.8 has prayed for rejection of the plaint.

5. In spite of giving sufficient opportunity the plaintiff has not filed her objection. Hence, objection of the plaintiff to the IA taken as nil.

6. The following points arise for my determination:

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

7. Heard written arguments filed by the defendant No.8.

6. 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

7. Point No.1 : The defendant No.8 has been in physical and lawful possession of Items No.1 to 4 of the of the suit schedule properties, the same was acquired through 3 registered sale deed dated:31-05-2018 & 21-08-2018 and he has bee in in lawful owners without any hindrance. After purchasing the property, the revenue entries have been mutated in his favour. It is further stated that, after lapse of 17 years from the first transaction 2004, without giving any valid grounds & bonafide reasons, the plaintiff has filed this false suit is not maintainable.

8. 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*

9. 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.

10. 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.**”*

11. 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.”

12. 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.

13. 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 discloses, it is barred by law of limitation and it does not disclose cause of action to file the suit.

14. Here this Court would also like to refer to decision rendered by Hon'ble Apex Court reported in 2019 (7) SCC



158 between Mahadevaprasad Agarval and another vs. Axis Bank Limited and another, the plaint can not be rejected in part. In this decision their lordship is held in para No.10 to 14 the same is reproduced as under:

“10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) of CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power Order 7 Rule 11 (d) of CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in the case of Sejal Glass Limited (supra) is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) of CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against



the director's defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against defendant No.1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) of CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 5 OS No.204/2021 11(d) of CPC will have no application at all, and the suit as a whole must then proceed to trial".

"11. In view of this settled legal position we may now turn to the nature of reliefs claimed by respondent No.1 in the notice of motion considered by the Single Judge in the first instance and then the Division Bench of the High Court of Bombay. The principal or singular substantive relief is to



reject the plaint only qua the applicant/respondent No.1 herein. No more and no less”.

“12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) of CPC on account of non compliance of mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 of CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part. In that sense, the relief claimed by respondent No.1 in the notice of motion(s) which commended to the High Court, is clearly a jurisdictional error. The fact that one or some of the reliefs claimed against respondent No.1 in the concerned suit is barred by Section 34 of 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 of CPC at the appropriate stage. That can be considered by the Court on its own merits and in accordance with law. Although, the High Court has examined those matters in the impugned judgment the same, in our opinion, should stand effaced and we order accordingly”.



“13. Resultantly, we do not wish to dilate on the argument of the appellant(s) about the inapplicability of the judgments taken into account by the Division Bench of the High Court or for that matter the correctness of the dictum in the concerned judgment on the principle underlying the exposition in Nahar Industrial Enterprises Limited Vs. Hong Kong and Shanghai Banking Corporation 7 to the effect that the DRT and also the appellate authority cannot pass a decree nor it is open to it to enter upon determination in respect of matters beyond the scope of power or jurisdiction endowed in terms of Section 17 of the 2002 Act. We leave all questions open to be decided afresh on its own merits in accordance with law”.

“14. A fortiori, these appeals must succeed on the sole ground that the principal relief claimed in the notice of motion filed by respondent No.1 to reject the plaint only qua the said respondent and which commended to the High Court, is replete with jurisdictional error. Such a relief “cannot be entertained” in exercise of power under Order 7 Rule 11(d) of CPC. That power is limited to rejection of the plaint as a whole or not at all”.



15. In view of the the decision rendered by Hon'ble Apex Court as stated supra the application filed by defendant No.8 seeking rejection of plaint against plaintiff in respect of suit schedule item No.1 to 4 properties are not maintainable. Hence, the application deserves to be dismissed. Hence, based on above said reasoning, **Point No.1 is answered in the Negative.**

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

ORDER

I.A filed by defendant No.8
under Order 7 Rule 11(a) 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 24th day of July 2023.)

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