

**IN THE COURT OF SENIOR CIVIL JUDGE &
J. M. F. C., CHANNAPATTANA.**

**PRESENT : SRI. KIRAN KINI, B.A;LL.B;
SENIOR CIVIL JUDGE & JMFC,
CHANNAPATTANA,
RAMANAGAR DISTRICT.**

DATED THIS THE 23RD DAY OF OCTOBER 2014

O. S. NO. 5/2014

BETWEEN :

Abdul Mazid and others.....Plaintiffs.

AND

**Smt. Hayath Khatoon Bi and
others.....Defendants.**

I. A. NO. IV

BETWEEN :

**Smt. Hayath Khatoon Bi and
others.....Applicants/Defendants.**

AND

**Abdul Mazid Khan and
others.....Opponents/Plaintiffs.**

ORDERS

1. The above application has been wrongly numbered as IA no II. The same is rectified has IA no IV.

2. It is an application filed under Order VII Rule 11(b) r/w Section 151 of C. P. C. for rejection of plaint.

3. It is the contention of the applicants/defendants that the opponents/plaintiffs have filed the suit contained that the suit schedule property was originally belonged to their father Abdul Basheer and that the applicants/defendants are an possession of suit schedule property under permission where as they have contented that was purchased by their father from the father of opponents/plaintiffs and that they have put up construction the suit

schedule property investing about Rs. 18 to 20 lakhs by demolishing the existed tiled roof and as such the market value of the suit schedule property the more than Rs.25 lakhs and that the plaintiffs have estimated the same at Rs. 1,20,000/- and that the suit is under value and hence the suit deserves to be rejected and hence the application.

4. The opponents/plaintiffs have filed objections denying all the contentions of the applicants/defendant and have contended that the contention taken out by the applicants/defendants is barred by principles of res-judicata and has the same has been already decided by the junior Civil Judge, Channapatna and that the alleged construction making investment is false and that the opponents/plaintiffs have not given basis for the alleged valuation, in their written statement filed before the lower court in march 2010 and that the valuation made in the sale deed relied upon by the applicants/defendants is Rs. 2,50,000/- as an 03.02.2009 and as such the claim of the applicants/defendants is false and hence they applicants requires to be dismissed.

5. I have heard the arguments. The following points arise for my consideration.

1. Whether the applicants/defendants are entitled for the reliefs as sought for?

2. What order?

6. My findings on the above points are as follows for the following reasons.

Point No. 1 : In the Negative.

Point No. 2 : As per final order.

REASONS

7. Point No. 1 :

a. It is an application filed under Order VII Rule 11(b) r/w Section 151 of C. P. C. for rejection of plaint. It is the contention of the applicants/defendants that the opponents/plaintiffs have filed the

suit contained that the suit schedule property was originally belonged to their father Abdul Basheer and that the applicants/defendants are in possession of suit schedule property under permission whereas they have contended that it was purchased by their father from the father of opponents/plaintiffs and that they have put up construction on the suit schedule property investing about Rs. 18 to 20 lakhs by demolishing the existing tiled roof and as such the market value of the suit schedule property is more than Rs.25 lakhs and that the plaintiffs have estimated the same at Rs. 1,20,000/- and that the suit is under value and hence the suit deserves to be rejected and hence the application. The opponents/plaintiffs have filed objections denying all the contentions of the applicants/defendant and have contended that the contention taken out by the applicants/defendants is barred by principles of res-judicata and has the same has been already decided by the junior Civil

Judge, Channapatna and that the alleged construction making investment is false and that the applicants/defendants have not given basis for the alleged valuation, in their written statement filed before the lower court in march 2010 and that the valuation made in the sale deed relied upon by the applicants/defendants, is Rs. 2,50,000/- as an 03.02.2009 and as such the claim of the applicants/plaintiffs is false and hence they applicants requires to be dismissed.

b. Order VII Rule 11 reads as follows.

"11. The plaint shall be rejected in the following cases:-

(a) where he 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.

c. Now the question to be decided is whether the contention taken

out by the applicants/defendant Nos. 1(a) to 1(c) that the suit is barred by principles of res-judicata can take its shelter under Order VII Rule 11 (d) of C. P. C. for the relief.

d. The Order VII Rule 11(d) is specific to the effect that the plaint can be rejected if only the plaint averments show that the suit is barred by any law.

e. On perusal of order VII Rule 11 of C. P. C. it gets clear that the said provision of law does not authorise to look into the written statement or the documents produced by the defendants to reject the plaint.

f. Further the text of order VII Rule 11 of C. P. C. makes it mandatory that the plaint can be rejected only and only under the four cases mentioned therein.

g. On perusal of the plaint averments it gets clear that the plaint does not disclose anything to inform that the valuation of the suit schedule property is more than Rs. 25 lakhs. When the opponents/plaintiff have dined the construction, the same requires to be proved.

h. As such the contention of the applicants/plaintiffs will have to be decided by adducing evidence and as such the plaint cannot be rejected as sought for.

i. Hence I answer the above point accordingly.

8. Point No. 2 :

For the reasons discussed herein above I proceed to pass the following orders.

ORDER

1. I. A. No. IV is
dismissed.

(This Order dictated to the Stenographer directly on the computer, script revised, mistakes rectified by me and then pronounced in open Court on this the 23rd day of October 2014.)

Channapattana.

KIRAN KINI

23.10.2014.

Senior Civil Judge & JMFC,

Channapattana.