

KARN320009772016



**IN THE COURT OF THE I ADDL. CIVIL JUDGE & JMFC,  
AT KANAKAPURA**

Present: Smt. Savita Rudragouda  
Chikkanagoudar., *B.A., LL.B.*,  
I Addl. Civil Judge & JMFC.,  
Kanakapura.

**Dated: this 04<sup>th</sup> day of December 2023**

**O.S.No.238/2016**

**PLAINTIFF** : Smt. Shyamala  
D/o Thammannagowda  
W/o Nataraju  
Aged about 29 years  
R/a: Jakkasandra Village,  
Maralavadi Hobli,  
Kanakapura Taluk  
Ramanagara District.

**(By Sri. M.Mahadeva, Adv.)**

V/s.

**DEFENDANTS** : 1. Sri. Shivalingaiah @ Sannamri  
S/o late Basavegowda

**(Since died his LR's who are  
D2 to D4 only already  
on record)**

2. Smt. Rathnamma  
W/o Shivalingaiah @ Sannamari  
Aged about 49 years,
3. Smt. Pushpa  
W/o Srinivasa  
D/o Shivalingaiah @ Sannamari  
Aged about 27 years,
4. Sri. Basavaraju  
S/o Shivalingaiah @ Sannamari  
Aged about 23 years,

All are R/a:  
Nayakanahalli Village,  
Chikkalahalli Post,  
Uyyamballi Hobli,  
Kanakapura Taluk,  
Ramanagara District.

(By Sri. C.M.Jagadeesh, Adv.)

**I.A. No.II**

**Applicant/s**  
**Defendant/s** : Sri. Sri. Shivalingaiah @  
Sannamri and Others

V/s.

**Opponent/s**  
**Plaintiff/s** : Smt. Shyamala

**ORDER ON I.A. No.II**

The present I.A.No.II U/o VII Rule 11 of CPC has been filed by the defendant No. 1 to 4 with a prayer to reject

the plaint on the ground that plaintiff has not issued the legal notice within a stipulated period of 3 years, Hence, no cause of action arises.

2. In the affidavit accompanying the application sworn by the first defendant, it is stated that, plaintiff has filed the false suit against the defendants for the relief of Specific Performance of Contract and that the said suit filed by the plaintiff is baseless, vexatious suit. The defendants admit that they are the absolute owners in possession and enjoyment of suit schedule property but they deny the fact that they ever executed any sale agreement much less the one stated in the plaint dated 04.05.2012 in favour of the plaintiff. They deny even that they received any sale consideration amount from the plaintiff. According to defendants, they had no necessity to sell the suit schedule property in favour of the plaintiff and the plaintiff with an oblique motive to harass the defendants and to grab the suit schedule property from them created, concocted the alleged sale agreement dated 04.05.2012. The defendants also stated that, the market value of the suit schedule property is far more than the one shown in the alleged sale agreement and it is the only source of income for them hence, the question of selling the same does not arise at all. The defendants also state that, plaintiff falsely contends that she had issued legal notice to defendants but the defendants have not received any notice from the plaintiff or through her counsel, even if it is believed

as true, but not admitted, if at all the defendants had executed any sale agreement in favour of the plaintiff, the plaintiff has not issued the notice within a stipulated period of 3 years hence, the suit is barred by limitation and no cause of action arises. Further if the application is allowed no prejudice, hardship or injury will be caused to the plaintiff but if the application is rejected, defendants will be put to much hardship, loss. Hence, prays to reject the plaint.

3. On the other hand, in the objection filed to I.A.No.II the plaintiff contends that, she has filed the suit for specific performance of contract against the defendant No.1 to 4 and the first defendant along with other defendants who are his children owned the suit schedule property and where in possession of the same and due to the family legal necessity they offered to sell the said property to her and out of total extent, plaintiff decided to purchase 14 guntas in Sy.No.98/2 for a sum of Rs.1,05,000/- and paid an advance amount of Rs.1,00,000/- and in that connection they entered into sale agreement dated 04.05.2012 and in the agreement it was clearly mentioned that the katha of the suit property stands in the name of Smt.Marakka, the mother of the first defendant and after getting the katha transferred in the name of first defendant, the defendants would get executed the sale deed in her favour but inspite of repeated requests made by the plaintiff the defendants failed to get the katha transferred and finally in the first week of January 2015,

first defendant expressed his inability to get the khata transferred into his name, immediately the plaintiff made the efforts to get the katha transferred in the name of defendants and finally katha got transferred in their names but even after transfer of katha the defendants failed to execute the sale deed in her favour and kept postponing the execution of sale deed hence, having no other option the plaintiff issued a legal notice to defendants on 27.02.2016 and the same was served to the defendants but inspite of that they have not come forward to execute the sale deed. Hence, the plaintiff has filed the present suit. The plaintiff also states that the application filed by the defendants under Order VII Rule 11 of CPC is liable to be rejected, the present application is filed by the defendants on the ground that the suit is barred by limitation but in the entire application or in the affidavit, they have not stated when the time was completed or whether any time period was stipulated in the agreement on which ground the plaint is liable to be rejected. Except denying the execution of agreement of sale and receipt of sale consideration amount they have not specifically pleaded the time period stipulated for execution of the agreement. Further the question of limitation raised by the defendants is a mixed question of law and facts and same cannot be decided under order VII Rule 11 of CPC.

4. The plaintiff also states that, in the agreement of sale dated 04.05.2012 entered between the plaintiff and defendant

no time period was fixed for performance of contract and the defendants have received sale consideration amount. Further as per Article 54 of Limitation Act 1963 for Specific Performance of Contract, the period of 3 years limitation starts to run from the date fixed for performance or if no such date is fixed, when the plaintiff has notice, that performance is refused. In the case on hand, as time is not fixed in the agreement of sale the 3 years time commences when the plaintiff noticed that the performance is refused and in the present case it was in year 2016 the plaintiff noticed the defendants are refusing the performance of contract hence, immediately the plaintiff filed present suit and the suit is within time further the plaintiff also states that application filed by the defendants is divide of merits. Hence, prays to reject the application and in support of her contention she has relied on several rulings of Hon'ble Apex Court and High Court.

5. Heard the counsel for the plaintiff and counsel for the defendant and perused the written arguments filed by the counsel for the defendants.

6. The following points arise for my consideration;

*1) Whether the plaint is liable to be rejected and thereby application U/o 7 Rule 11 of CPC deserves to be allowed?*

*2) What Order?*

7. 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**

8. **Point No.1**: As already discussed above the defendants have filed present application to reject the plaint under Order VII Rule 11 of CPC. In the affidavit accompanying the application even though defendants admit that they are the absolute owners in possession and enjoyment of suit schedule property, they deny that they ever executed any sale agreement much less the one stated in the present suit dated 04.05.2012 in favour of the plaintiff or that they have ever received any sale consideration advance amount from the plaintiff. According to defendants, they had no necessity to sell the property and the plaintiff with an oblique motive to harass defendants and to grab the suit property from them has created, concocted, the sale agreement stated in the plaint. The defendants further contend that, they have not received any notice from the plaintiff or through her counsel, the plaintiff has falsely mentioned that she had issued legal notice. Even if, it is believed as true but not conceded, if at all the defendants executed the sale agreement in favour of the plaintiff, the plaintiff has not issued the notice within the stipulated period of 3 years hence, the suit is barred by limitation and no cause of action arises. On

this ground the defendants submit that the plaint of the plaintiff shall be rejected.

9. On the other hand, the plaintiff in her objection states that, the defendants are the owners in possession of suit schedule property and they entered into an agreement of sale dated 04.05.2012 with her by receiving advance sale consideration amount agreeing to get the sale deed executed after getting the katha of the suit property changed into their names which is standing in the name of Smt.Marakka, the mother of first defendant but even after several requests of the plaintiff they did not get the katha changed into their names and finally in the first week of 2015 they expressed their inability to transfer the katha in their name and the plaintiff by her efforts got the katha transferred in the name of defendants and finally after the katha being transferred in their name when plaintiff asked them to execute sale deed the defendants kept on postponing the execution, hence without having any other option she alleges to have issued legal notice dated 27.02.2016 in favour of defendants but as they failed to comply with the demand, she has filed the present suit. The plaintiff further states in her objection that, the defendants in the present application have sought to reject the application, on the ground that the suit is barred by limitation but in the entire application or in the affidavit nowhere the defendants have

stated when the time was completed and whether any time period was fixed in the agreement. The plaintiff also states that in the agreement of sale entered between them dated 04.05.2012, the time period was not fixed hence, the question of limitation does not arise. She further states that, in a suit for Specific Performance of agreement of sale, the limitation period is 3 years and the said limitation starts from the date fixed for performance of contract or if no such period is fixed, when the plaintiff has noticed that the performance is refused and in the present suit the plaintiff noticed that the defendants are refusing performance in the year 2016 and hence, she got issued a notice on 27.02.2016 and thereafter filed the present suit and hence, suit is within a period of limitation and the defendants have filed this vexatious, false, frivolous application just to harass the plaintiff and the said application is devoid of merits and the question of limitation being the mixed question of law and facts it cannot be decided under Order VI Rule 11 of CPC on these grounds prays to dismiss the application filed by the defendants.

10. From the above discussed facts, it is clear that the defendants are seeking the rejection of plaint on the ground that the legal notice which is allegedly issued by the plaintiff to defendants is not within a period of 3 years and hence, the suit is barred by limitation and there is no cause of action. Here, it is a notable fact that, the defendants submit that there is no cause

of action but when we go through the relevant provision of Civil Procedural Code Order VII Rule 11 of CPC it clearly provides that **“plaint shall be rejected where plaintiff does not disclose cause of action”**. Hence, it is clear that plaintiff can be rejected only when on going through the pleadings of the plaintiff stated in the plaint the court is satisfied that, the plaintiff does not disclose the cause of action. Hence, the base for rejection of the plaintiff is the pleadings made in the plaint but when we go through the pleadings of the plaintiff nowhere it appears that there is no cause of action to proceed with the suit. Hence, the alleged contention taken by the defendant that there is no cause of action cannot be considered at this point of time. Even though defendants have denied the execution of alleged agreement of sale dated 04.05.2012 and receipt of advance sale consideration amount and also denied that the plaintiff has issued legal notice to any of them, these denials cannot be discussed at this point of time, in this application and the same requires full fledged trial. Merely because the defendants denied the said facts, court cannot come to the conclusion that plaintiff has no cause of action to proceed with the suit.

11. The defendants further state that even if it is believed that the plaintiff has issued a notice but not admitted, if at all she had issued a notice the same is not issued within a stipulated period of 3 years and hence, the suit is barred by limitation but in this connection the plaintiff as already

discussed has stated that, there was no period of limitation fixed in the sale agreement to perform the contract hence the question of limitation of the 3 years from the date of execution of agreement does not arise for consideration in the present suit.

12. As per Article 54 of the Limitation Act 1963 the limitation for filing a suit for specific performance of contract is 3 years from the date fixed for performance or if no such date is fixed, when the plaintiff has notice that the performance is refused hence, on bare reading of the provision it is clear that unless and until the time period is fixed for the performance the limitation starts from the date when the plaintiff get the notice that the defendants are refusing the performance of contract and the question whether the time period is fixed for performance or not, whether the time is essence of the contract or not, can be decided by the court only after conducting the full fledged trial and the question of limitation as rightly pointed out by the counsel for the plaintiff is a mixed question of law and fact and in support of his contention the counsel for the plaintiff has relied on the ruling laid down by the **Hon'ble Apex Court in Bansari Construction Pvt. Ltd. V/s Hanuman Seva Trust and Others** in which it was held as follows:

“In Order VII Rule 11(d) of CPC- plaint cannot be rejected under Rule 11(d)- suit cannot be dismissed as barred by limitation without proper

pleadings, framing of issue of limitation and taking evidence --the question of limitation is a mixed question of law and fact and ex facie on reading of the plaint, suit cannot be held to be barred by limitation--parties relegated to contest the suit-- it shall be open to defendant-- appellant to raise any plea available to it under the law including the plea available to it under the law including the plea of limitation and maintainability of suit etc.," the plaintiff has also relied on another ruling of **Hon'ble Supreme Court in Rathnavathi and Another V/s Kavitha Ganesha Das**, "in which the Hon'ble Apex Court clearly stated that, "Limitation Act 1963-- Article 54-- suit for specific performance of agreement of sale of immovable property-- the Limitation period for-- commencement of-- In the absence of fixed date of performance, the limitation starts from the date when the plaintiff had noticed of refusal of performance". She also relied on another judgment in **Goparaju Venkatabharatha Rao and Another V/s Nagula Ramakottaiah** in which the Hon'ble High Court observed that "No time was framed for performance of , suit filed after 14 years of agreement not barred by limitation".

13. I have carefully gone through the above rulings, on going through the said ruling I am of considered opinion that, as rightly pointed out by counsel for the plaintiff suit cannot be rejected on the question of limitation as the same is a mixed question of law and facts and it is necessary to consider the said question to go through the evidence laid down.

14. It is a settled law that the plaint cannot be rejected at the out set under order VII Rule 11 of CPC as barred by limitation, if the question of limitation appears to be a mixed question of law and facts and when the limitation is a pure question of law and is visible from the pleadings of the plaint itself to be barred by law and it becomes clear that the suit is barred by limitation, then only plaint can be rejected. In the case on hand, the objection raised by the defendant as to the fact that suit is barred by limitation as the plaintiff has issued a notice after a lapse of period of 3 years from the date of execution of sale agreement, is a mixed question of law and fact and the said question can be decided only after going through the facts put forth by both the parties and the evidence laid down by both the parties. Hence, I am of considered opinion that, plaint cannot be rejected on this ground also. Merely, based on contentions taken by defendants, it cannot be said that suit is barred by limitation hence there is no cause of action.

15. In the case on hand it is not a case where the suit from the averments made in the plaint could be said to be

barred by limitation and that there is no cause of action. The averments made in the plaint without addition or subtraction must show that it is barred by any law or by law of limitation to attract the application order VII Rule 11 of CPC but that is not so in the present case. Further, order VII Rule 11 of CPC speaks of a suit as it appears from the statement or averments made in the plaint to be barred by any law or any law of limitation. The disputed questions cannot be decided at the time of considering an application filed under order VII Rule 11 of CPC, it applies in those cases only, where the averments made in the plaint of the plaintiff without any doubt or dispute shows that suit is barred by law of limitation.

16. So far as the allegation of defendants that, there is no cause of action to file the suit is concerned it must be taken note of that the absence of cause of action is a legitimate reason to reject the plaint but for the court to act on this basis it must be convinced that the plaintiff would not be entitled to any relief even if all the facts stated in the plaint were accurate hence, to come to the conclusion as to rejection of the plaint on the ground that there is no cause of action the court must be satisfied that on going through the entire pleadings of the plaintiff he is not entitled to any reliefs and merely because the defendants have denied the allegations made by the plaintiff court cannot come to said conclusion that there is no cause of action. Therefore, the defendants have not made out valid

grounds to reject the plaint as prayed for. Therefore, having considered the facts and circumstance of the case, the court is of the opinion that the defendants failed to establish that the plaint is liable to be rejected as per order VII Rule 11 of CPC hence, **Point No.1 is answered in the Negative.**

17. **Point No.2:** In view of my findings on point No.1 I proceed to pass the following:-

**ORDER**

I.A.No.II U/o VII Rule 11 of CPC  
filed by the defendant No.1 to 4 is  
hereby rejected.

No order as to costs.

(Dictated to the Stenographer, transcribed and computerized by her, then corrected and pronounced by me in the Open Court on this the 04<sup>th</sup> day of December 2023)

Sd/-  
I Addl. Civil Judge & JMFC.,  
Kanakapura.