

IN THE COURT OF II ADDL. CIVIL JUDGE & JMFC
AT KANAKAPURA.

PRESENT: Smt.Hemashree D.
B.A.L., L.L.B.,
II Addl. Civil Judge & J.M.F.C
Kanakapura.

Dated: This 24th day of the March 2017.

O.S. NO.524/2016

BETWEEN:

Plaintiff:

- 1) Sri. M.D. Ashok
S/o Late M.S. Dasharath Rao,
Aged about 57 years,
R/at No. 53, 2nd floor,
5th cross, K.R. Layout,
6th Phase, J.P. Nagar,
Bangalore-78

(By Sri. M.G. Adv.)

Defendants :

- 1) Smt. Kempamma -
W/o late Nagaraju,
Aged about 50 years,
- 2) Sri.Basavaraju,
S/o late Basavegowda,
Aged about 70 years,
- 3) Smt. Sakamma
W/o Madappa,
Aged about 40 years,

Both are
R/at Chujjalegowdanadoddi,
Jakkasandra Dakle,
Maralawadi Hobli,
Kanakapur Taluk.

(By Sri. S.D. Adv.)

ORDER ON I.A.Under Order 7 Rule 11 (a)

The defendant filed this application for rejection of the
plaint.

1) It is stated in the accompanying that, the plaintiff
has suppressed the true and real facts. At the time of filing of
the suit the cause of action was shown in respect of Sy.No.
23/1. Later, the plaint was amended to insert Sy.No.23/3
instead of Sy.No.23/1. Therefore, there is no cause of action
in respect of property in Sy.No.23/3.

2) The plaintiff filed objection stating that, the defendant
on the basis of concocted documents tried to put up illegal
construction. At the time of filing the suit the names of the
defendants could not to be shown as residing in the western
side of the suit schedule property. In the documents
produced by the plaintiff the Sy.No. is properly mentioned.

After effecting katha in the name of plaintiff the Sy.No.23/1 was phoded as 23/3. The documents produced by the plaintiff also depict the same survey number. However, by over-sight the survey number was wrongly mentioned as Sy.No.23/1 instead of Sy.No.23/3.

3) Heard and perused the materials on record.

4) The following points arise for my consideration.

1) Whether the applicants/defendants have made out the grounds for rejection of plaint U/o 7 Rule 11(a) and (d) of CPC?

2) What Order?

5) My answers to the above points are as here under:-

Point No.1 : In the Negative

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

REASONS

6). Point No.1:- The defendants have sought for rejection of the plaint on the ground that there is no cause of action and the suit is barred by law. It is stated that, since by way of amendment the survey number is changed as 23/3 instead of 23/1, there is no cause of action in respect of Sy.No.23/3 at the time of filing the suit. Per contra, it is stated by the plaintiff that by over sight survey number has wrongly mentioned as Sy.No.23/1.

7) Originally the suit was filed in respect of suit schedule property bearing Sy.No.23/1. Subsequently survey number was amended and corrected as Sy.No.23/3. In this regard, it is stated by the plaintiff that land was phoded as Sy.No.23/3. RTC Produced by the plaintiff shows Sy.No.23/3. It is to be noted that, the plaintiff has amended only the survey number phoded as Sy.No.23/3. There is no change in the boundaries. Therefore, the schedule property is not changed. Thus, the contention of defendants that the cause of action did not arise in respect of Sy.No.23/3 does not hold water.

8) The defendants have also sought for rejection of plaint under order 7 Rule 11(d) of CPC i.e., the suit is barred by law. In this regard the defendants have not stated as to under which law the suit is barred. Therefore, the defendants have failed to make out the grounds for rejection of plaint. Accordingly, I answer Point No.1 in the Negative.

9) **Point No.2:-** In view of the above discussion, I pass the following.

ORDER

IA No. this filed by defendant in U/o. 7
Rule 11(a) and d) of CPC is rejected.

(Dictated to the Typist, typed by him and corrected and pronounced by me in the open court on this 24th day of March 2017).

(HEMASHREE .D)
II Addl. Civil Judge, & J.M.F.C.
Kanakapura.

