

**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE & JMFC.,  
AT: MAGADI**

Present:

**Sri.Hanumanth Satwik.,LL.M,  
Addl. Senior Civil Judge & JMFC., Magadi**

**Dated : This the 20<sup>th</sup> day of April 2021**

**O.S.No.10/2015**

- Plaintiffs** : 1. Smt. Kariyamma,  
D/o late Lakshminarasimhaiah,  
Aged about 52 years,  
R/at Uddanahalli Village,  
Tavarekere Hobli,  
Bengaluru South Taluk.
2. L Narasimhaiah,  
S/o late Lakshminarasimhaiah,  
Aged about 55 years.
3. L.Narasimhamurthy,  
S/o late Lakshminarasimhaiah,  
Aged about 51 years.

Plaintiff no.2 and 3 both are R/at  
Ankaiahayanapalya Village,  
Ajjanahalli Dakale, Tavarekere Hobli,  
Bengaluru South Taluk.

(By **Sri. K.R.A.**, Advocate)

--V/s--

- Defendants** : 1. Sri. Siddappa,  
S/o late Chikkamuthaiah,  
Aged about 54 years.

2. Sri. Narasimhamurthy,  
S/o Siddappa,  
Aged about 28 years.

(By Sri. **N.S.**, Advocate)

**ORDER ON IA NO.XI**

The present suit is for declaration and permanent injunction.

2. The present application has been filed by defendant no.1 U/o VII rule 11(a), (b) & (d) of C.P.C. praying this court to reject the plaint. The defendant in the application stated his case as stated in the written statement and denied the plaint averments. Defendant no.1 submits that the plaintiffs did not question the Will executed by Hanumaiah during his life time. The plaintiffs disputed the Will after the death of Hanumaiah and after the lapse of 16 years and after the lapse of 3 years from the date of the order passed by Hon'ble Court of 1<sup>st</sup> Addl. District and Sessions Judge, Ramanagara in P & SC No.5/2021. As on the date of the suit the plaintiffs are not in possession of the suit schedule properties. The valuation of the suit and court fees paid is not proper. The plaintiffs knowing about the execution of the gift deed did not question it. The plaintiffs are barred from purchasing the properties under PTCL

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Act. The suit is not maintainable. In this regard defendant no.1 prays as above.

3. The plaintiffs filed objections to the application. The plaintiffs in the objection denied the application averments and prays reject the application.

4. Heard arguments of both counsel.

5. Considering the contentions of both counsel, following points arise for my consideration.

1. Whether defendant no.1 has made out grounds to reject the plaint as the plaint does not disclose cause of action?
2. Whether defendant no.1 made out grounds to reject the plaint U/o VII rule 11(b) of CPC?
3. Whether defendant no.1 has made out grounds to reject the plaint U/o VII rule 11 (d) of CPC?
4. What order?

6. My findings for the above points are as under.

Point No.1 : In the negative

Point No.2 : In the negative

Point No.3 : In the negative

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Point No.4 : As per final order  
For the following;

**REASONS**

7. **Point No.1:-** It is the case of defendant no.1 that as on 07.01.2015 there was no cause of action to file the present suit. In this regard, I have perused the plaint. It is the case of the plaintiffs that one Pujarasiah was the owner of the suit schedule properties. The said Pujarasiah is the father of Hanumaiah. After the death of Pujarasiah, Hanumaiah continued to be in possession of the suit schedule properties. Hanumaiah executed agreements of sale dated:10.02.1996 and 30.06.1989 and received sale consideration from plaintiff no.1 and 2. The said Hanumaiah also executed Will dated:15.11.1999 in favour of plaintiff no.2 and 3. Accordingly, the possession of the suit schedule properties was delivered to plaintiff no.2 and 3. On 31.03.2012 plaintiff no.2 and 3 executed gift deed in favour of plaintiff no.1 with respect to item no.1 of the suit schedule property. During the pendency of khatha proceedings, the defendants created Will and filed case bearing P & SC No. 5/2021 and obtained order. They are not the parties to the P & SC proceedings. They are in possession of the suit schedule properties.

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The defendants created Will and obtained probate. The defendants are attempting to alienate and interfere in the suit schedule properties. Thus, having read the plaint in its entirety, I am of the view that the plaint does disclose cause of action. This being the case, regard being had to the application, objection and the plaint averments, I am of the view that defendant no.1 failed to show that the plaint does not disclose cause of action and warrants rejection. Accordingly, point no.1 is answered in the negative.

8. **Point No.2** : - It is the case of defendant no.1 that the valuation of the suit and the court fees paid is not proper. In this regard, it is necessary to note that whether the court fee paid by the plaintiffs is proper or not requires evidence. Even otherwise, this court did not direct the plaintiffs to correct the valuation. Be it stated, U/o VII rule 11 (b) of CPC, plaint can be rejected if the plaintiffs fails to correct the valuation on being required by the court to correct the valuation within the time fixed by the court. In the case at hand, it is not the case of defendant no.1 that this court required the plaintiffs to correct the valuation. So also, the perusal of the order sheet does not give any indication about this court

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ordering the plaintiffs to correct the valuation of the suit. This being the case, I am of the view that without their being any order from this court to the plaintiffs to correct the valuation, the plaint cannot be rejected. Thus, having regard to the application, objection and the plaint averments, I am of the further view that defendant no.1 failed to show that the plaint is liable to be rejected U/o VII rule 11(b) of CPC. Accordingly, point no.2 is answered in the negative.

9. **Point No.3** : - In the present application, defendant no.1 is seeking rejection of plaint on the ground that the suit is barred by law of limitation. The defendant submits that the plaintiffs have disputed the Will after the lapse of 16 years of the death of Hanumaiah and after the lapse of 3 years from the date of order of Hon'ble Court of 1<sup>st</sup> Addl. District & Sessions Judge, Ramanagara in P & SC No.5/2021. Defendant no.1 further submits that the plaintiffs are barred from purchasing the properties.

10. Be it stated, it is settled principles of law that while deciding an application for rejection of plaint, the plaint averments only have to be looked into. Thus, in view of the settled legal position, if the plaint is read in its entirety nothing is forthcoming about

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Hanumaiah belongs to Adi Karnataka community and the plaintiffs belong to General Category as alleged in the application. In the absence of any averments made in this regard in the plaint, I am of the view that the plaint cannot be rejected as the plaintiffs are debarred from purchasing the properties under PTCL Act.

11. Further, with regard to suit being barred by law of limitation is concerned, it is necessary to refer Article 59 of Limitation Act. Thus, in the case at hand it is not the case of the defendants that the Will dated:26.11.1999 is an unregistered instrument. Thus, having regard to Article 59 of Limitation Act, the limitation for canceling the decree or instrument starts from the date when the facts entitling the plaintiffs to have instrument or decree canceled or set aside first become known to them. Thus, to decide on whether the suit is barred by law of limitation or not, it is necessary to decide as to when the facts entitling the plaintiffs to set aside the decree first become known to them. This issue can be decide only by taking evidence and during trial. This being the case, I am of the view that the plaint cannot be rejected as it is barred by law of limitation without their being evidence.

12. In the case at hand, defendant no.1 failed to show that the suit is liable to be rejected as the plaintiffs are debarred from purchasing the properties under PTCL Act. Defendant no.1 further failed to show that the suit is liable to be rejected as it is barred by law of limitation. In this circumstances, considering the application, objection and the plaint averments, I am of the view that defendant no.1 failed to show that the plaint warrants rejection U/o VII rule 11 (d) of CPC. Accordingly, point no.3 is answered in the negative.

13. **Point no.4**:- In view of reasons on point no.1 to 3, I proceed to pass the following,

**ORDER**

**IA No.XI filed U/o VII rule 11(a), (b) & (d) of  
C.P.C. by defendant no.1 is hereby rejected on cost  
of Rs.100/-.**

(Dictated to the stenographer, typed by him corrected by me and then pronounced in the open court on this the 20<sup>th</sup> day of April 2021.)

**(Hanumanth Satwik)  
Addl. Senior Civil Judge & JMFC.,  
Magadi.**