

KARN410000942020



**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 16th day of March, 2022

O.S.No.58/2020

Plaintiff : Sri. B. R. Vivekananthan,
S/o. B. Y. Ramalinga Reddy,
Aged about 64 years,
R/at: No.203, 11th Main,
17th Cross, Lakkasandra Extension,
Bangalore-560030.

(By **Sri. B.R.** Advocate)

--V/s--

Defendants : 1. Sri. Satish,
S/o. Late. Bettaiah,
Aged about 55 years,

2. Sri. Vinay,
S/o. Satish,
Aged about 25 years,

Both are R/at: Dodderi Village,
Tavarekere Hobli,
Bangalore South Taluk.

(By **Sri. S.R.S.** Advocate)

ORDER ON IA NO.II

The present suit is for specific performance of contract.

2. The present application has been filed by the defendants U/o. VII rule 11(a & d) of C.P.C. praying this court to reject the plaint. Defendant no.2 in his affidavit filed accompanying the application submitted that that the registered agreement of sale is dated: 19.03.2014. The duration for execution of sale deed was three months. In the agreement of sale it is mentioned that I have signed necessary papers authorizing the plaintiffs to obtain necessary sanction plans and approvals from the competent authority to complete the sale transaction. He and his brothers separately executed agreement of sale in favour of the plaintiff. He requested the plaintiff to complete the sale transaction. However, the plaintiff evaded to complete the sale transaction. The plaintiff slept over the matter nearly 70 months and failed to pay balance sale consideration and never came forward with the revenue documents which were required to complete the registration process. He invested the advance sale consideration to purchase a better commercial unit. However, he could not fulfill his obligation with his vendor. As a result, the advance sale consideration received from the plaintiff was lost. The plaintiff being the root cause for restraining him from alienating the suit schedule property, because of entry in the encumbrance certificate, no person came forward to purchase the suit schedule property. Before filing the suit he issued legal notice dated: 11.11.2019 rescinding the agreement of sale dated: 19.03.2014. The plaintiff replied to the notice on 01.01.2020, by then he filed suit for mandatory injunction against the plaintiff for cancellation of agreement of

sale. Subsequently, the plaintiff filed the present suit for specific performance of contract. The cause of action is fictitious and suit is barred by Law of Limitation. In this regard, defendants pray as above.

3. The plaintiff in his objections contended that the present application is not maintainable. The defendants suppressed true facts. The defendants are in the habit of execution sale agreement in favour of purchaser and then enter into cancellation of sale agreement. The defendants agreed to complete the sale transaction by furnishing the relevant document. However, the defendant failed to do so. In fact, he requested defendants to expedite the sale transaction. The defendants got issued legal notice dated: 11.11.2019 for cancellation of agreement of sale on untenable grounds. He issued reply to the said notice. He also issued notice to one Sree Vinayaka Developers to not to enter into any sale transaction with respect to suit schedule properties with defendant no.1. Thus the plaintiff denying the material averments made in the application, prayed to reject the application.

4. Heard arguments of both counsel.

5. Considering the application, objection and the pleadings, following points arise for my consideration.

1. Whether the defendants have made out grounds to reject the plain U/O. VII R.11(a) of C.P.C?

2. Whether defendants have made out grounds to reject the
plaint U/o VII rule 11 (d) of C.P.C?
3. 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 : As per final order
for the following;

REASONS

7. **Point No.1:-** It is the case of the defendants that there is no cause of action to institute the present suit. In this regard, I have perused the plaint. Be it stated, it is the case of the plaintiff that he entered into agreement of sale with the defendants. The sale consideration was fixed at Rs.72,62,500/-. He paid the defendants an advance sale consideration of Rs.33 lakhs. He and the defendants entered into registered agreement of sale. He and the defendants agreed to complete the sale transaction within the period of three months from the date of agreement of sale. As per the agreement of sale the defendants were bound to furnish all the relevant revenue documents and other original documents of the suit schedule properties at their own cost. In spite of several demands, the defendants did not furnish the documents required for registration of sale deed with respect to suit schedule properties. In spite of several requests, defendant no.1 and 2 did not come forward to execute sale deed in his favour with respect to the suit schedule properties. It was brought to his notice that

defendant no.1 and 2 entered into sale transaction with one Sree Vinayaka Developers during the subsistence of agreement of sale dated: 19.03.2014. Subsequently, the defendants got issued him legal notice dated: 11.11.2019 canceling the agreement of sale dated: 19.03.2014. He replied to the said notice. He is ready and willing to perform his part of the contract. Thus, having perused the plaint in its entirety, I am of the view that the plaint discloses cause of action. In this view of the matter, considering the application, objection and the plaint, I am of the view that the defendants failed to show that the plaint does not disclose cause of action. Resultantly, I am of the view that the defendants failed to show that the plaint warrants rejection under Order VII R.11(a) of C.P.C. Accordingly, point no.1 is answered in the negative.

8. **Point No.2:-** It is the case of the defendants that as per the plaint averments agreement of sale was executed on 19.03.2014. As per the terms of the agreement of sale, the sale transaction should be completed within the period of three months from the date of agreement of sale. The plaintiff should have instituted the suit within the period of three years from the date when three months time period came to an end. As such, the present suit is barred by Law of Limitation. In this regard, I have perused the plaint. The plaint reflects that as per clause 2 of the agreement of sale, the defendants were bound to furnish the revenue documents and the other original documents of the suit schedule

properties at their own cost. The defendants did not furnish the said documents for registration of sale deed with respect to the suit schedule properties. Thus, having regard to the facts of the case, I am of the view that it is necessary to determine at whose default the sale transaction could not be completed within the period of three months as fixed by the parties in the agreement of sale. This being the case, the question of limitation, in the facts and circumstances of the present case, can be decided only by taking evidence and in a full fledged trial. At this stage of the case the said question cannot be decided.

9. Even otherwise, it is settled principle of law that the question of limitation is a mixed question of Law and fact. Further, the issue on limitation can be decided by taking evidence and in a trial. In this regard, I am supported by the decision of Hon'ble High Court of Karnataka between Smt. Sarojamm V/s. Smt. Shakuntalamma (Civil Revision Petition No.122/2018), wherein Hon'ble Court held thus:

“That apart, it is seen that the question of limitation is a mixed question of Law and facts and is required to be adjudicated after an enquiry and after affording an opportunity to the parties.”

In view of the Law laid down by the Hon'ble High Court and considering the facts and circumstances of the case, the question of

limitation being the a mixed question of law and fact, I am of the view that the said question is a triable issue.

10. The learned counsel for the defendants in support of his case relied on the following decisions;

1. N. V. Srinivas Murthy and others V/s. Mariyamma (dead) by proposed L.Rs., and others cited in AIR 2005 SC 2897.

2. Fatehji and company and another V/s. L. M. Nagpal and others cited in (2015) 8 SCC 390.

3. Dahiben V/s. Arvindbhai Kalyanji Bhanusali (Gajra) dead through L.Rs., and others cited in (2020) 7 SCC 366.

I have perused the decisions relied upon by the learned counsel for the defendants. Be it stated, for the above said reasons it is clear that the plaint does disclose cause of action. Further, in the facts and circumstances of the case and having regard to the plaint averments, this court is of the opinion that the question of limitation is a triable issue. Further, the facts and circumstances present in the case at hand are different from the facts and circumstances present in the decisions relied upon by the learned counsel. In these circumstances, with due respect to the decisions relied upon by the learned counsel, I am of the view that they are not applicable to the facts and circumstances of the present case.

11. Thus, in the case at hand, having regard to the plaint version, I am of the view that the question of limitation can be decided by taking evidence

and in a full fledged trial. Further, the question of limitation being mixed question of law and fact, is a triable issue. In this view of the matter, considering the application, objections and the plaint, I am of the view that defendants have not made out any grounds to reject the plaint under Order VII Rule 11(d) of C.P.C., as it is barred by Law of Limitation. Accordingly, I answer point no.2 in the negative.

12. **Point no.3**:- In view of reasons on point no.1 & 2, I proceed to pass the following,

ORDER

**IA No.II filed U/o. VII rule 11 (a & d) of C.P.C.
by defendants is hereby rejected on cost of
Rs.100/-.**

(Dictated to the Typist directly on the computer, typed by her, corrected by me and then pronounced in the open court on this the **16th day of March, 2022.**)

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