



**IN THE COURT OF THE ADDL. SR. CIVIL JUDGE & J.M.F.C.,
AT:MAGADI.**

**Present: Sri. Sandeep S. Reddy, B.A., LL.B.,
Addl. Sr. Civil Judge & JMFC., MAGADI.**

DATED : THIS THE 4th DAY OF JUNE, 2024
O.S.No.350/2020

PLAINTIFFS : Smt. Puttalakshamma & Ors.,
(By Sri. R.H.R. Advocate)

V/s

DEFENDANTS : Sri. Narasimhamurthy R., & Ors.,
(D1 by Sri. G.H.M. Advocate)
(D3 by Sri. T.B. Advocate)
(D2 & 4 by Sri. M.S.N. Advocate)
(D5 to 8 Exparte)

ORDER ON IA No.5

The present suit is for declaration, permanent injunction and consequential reliefs.

2. The I.A.No.5 is filed by defendant No.1 & 3 praying to reject the plaint U/O.VII R.11 of C.P.C., for want of cause of action.

3. In the accompanying affidavit to I.A.No.5 the defendant No.1 & 3 have stated that, the plaintiff had filed I.A., U/O.23 R.1(3)(a) of C.P.C.,



praying to permit them to withdraw the suit with a liberty to file fresh suit. That, as per the case of the plaintiff one Bachagaiah is the Mulapurusha and Gangamma is his wife and Smt. Gangalaxmamma is their daughter. That, Smt. Gangalaxmamma is plaintiff's maternal grand-mother. The defendants further state that, Sri. Bachagaiah had second marriage with one Aliya and defendant No.1 to 3 are the children born to said Aliya. The defendants have sought for share in the suit schedule property. That, there is suppression of material facts by the plaintiff and hence has sought for rejection of the plaint.

4. The plaintiffs have filed objections to the aforesaid application filed by defendant No.1 & 3. In the objection the plaintiff has denied the contents of the accompanying affidavit. The plaintiffs have further stated that, the I.A.No.5 is not maintainable and that the averments contained in the plaint alone should be considered while considering U/O.7 R.11. That, the plaint discloses cause of action and the contention raised by defendant No.1 & 3 cannot be entertained. That, the suit is filed within limitation and the question of limitation is the mixed question of Law and fact. Hence, the application filed by the plaintiff cannot be entertained and needs to be dismissed.



5. Heard arguments of defendant No.1 & 3 and plaintiffs.
6. Considering the contentions of the parties, following points arise for my consideration:
 1. Whether defendant No.1 & 3 have made out grounds to reject the plaint as it does not show cause of action?
 2. What order?
7. My findings for 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:-** The defendant No.1 and 3 have filed the aforesaid I.A., in a casual manner. The accompanying affidavit to I.A.No.5 does not contain any of the grounds for rejection of the plaint. It only states that, defendant No.1 to 3 being the children of Smt. Aliya and Bachegaiah have sought for share in the suit schedule properties. That, there are formal defects in the suit and that they have sought for rejection of the application. The facts pleaded along with I.A.No.5 are nowhere related to I.A., U/O.VII



R.11 of C.P.C. The approach of the plaintiff with respect to I.A.No.5 has been rather casual, lethargic, pedantic.

9. The plaintiff has taken the contention that, the plaint does not contain the cause of action. On perusal of the plaint it can be seen that, the present suit is for declaration praying to declare the plaintiffs and defendant No.4 to 8 as absolute owners of suit schedule property, permanent injunction praying to restrain defendant No.1 to 3 from not interfering with plaintiff's possession and enjoyment of the suit schedule property and restraining defendant no.1 to 4 from alienating suit schedule property. Further, at para No.6 of the plaint the plaintiffs have shown that the cause of action arose on 22.10.2020 when defendants tried to interfere with plaintiff's possession of the schedule property.

10. The question relating to the cause of action on perusal of the plaint clearly shows that, the plaint contains the cause of action. Even on careful perusal and reading between the lines, the cause of action relating to the suit clearly arises. Hence, the question of rejecting the plaint for want of cause of action does not arise at all.



11. Further, the question relating to limitation is a mixed question of law and facts. This court has already rejected the application U/O.23 R.1(3) of C.P.C., on the ground that, liberty cannot be given to file fresh suit. Hence, the defendant No.1 to 3 have not made out any grounds for rejection of plaint. Hence, I answer Point No.1 in the Negative.

12. **POINT NO.2:** In view of reasons on point No.1, I proceed to pass the following,

ORDER

IA No.5 filed U/O.7 Rule 11 of C.P.C., by defendants

No.1 & 3 is hereby rejected on cost of Rs.100/-.

Call on to hear on I.A.No.6.

(Dictated to the Typist directly on the computer, typed by her, corrected by me and then pronounced in the open court on this the **4th day of June, 2024.**)

(Sandeep S. Reddy)
Addl. Sr. Civil Judge & JMFC.,
Magadi.