



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

Smt.RANJITHA G.B, B.B.A, LL.B (Hons.)
II Addl. Civil Judge and JMFC, Magadi

Dated this 20th day of June, 2024

OS No.171/2019

- PLAINTIFFS :**
1. Smt.Rangamma,
D/o Late Gangaiah,
Aged about 62 years,
R/at No.237, 3rd cross,
Kannada Kasturi Saw Mill,
T.Dasarahalli,
Bengaluru-560057.
 2. Smt.Jayamma,
D/o Late.Gangaiah,
W/o Kenchappa,
Aged about 52 years,
R/at No.447, 12th cross,
Near K.M. School,
Bagalagunte,
Bengaluru-560073.
 3. Smt.Radha W/o Late G.Murthy,
Aged about 50 years,
 4. Sri.Krishna S/o Late G Murthy,
Aged about 32 years,

Both are R/at No.12/13A,
1st cross, B.T.S Layout,



Sidedahalli, Nagasandra post,
Bengaluru-56073.

5. Gangadhar S/o Late Kunnappa,
Aged about 73 years,
R.at No.16, Jagadish Nilaya,
Near Junjappa Temple,
Sri.Krishna Nagar,
Bengaluru-560015.

-Vs-

DEFENDANTS :

1. Smt.Maddurama
W/o Late Chikka Honnagangaiah,
D/o Late Siddappa,
Aged about 80 years,
R/at Dasegowdanapalya,
Solur Hobli, Magadi Taluk,
Ramanagara District-562121.
2. Smt.Gangahanumakka
W/o B.C.Bommegowda,
Aged about 75 years,
3. Maregowda S/o Late.Nanjappa,
Aged about 45 years,
4. G.Puttamaregowda,
S/o Late Gindappa,
Aged about 48 years,
Since dead by his Lrs.
- 4(a). Smt.Jayalakshmi,
W/o Late Puttamaregowda,
Aged about 46 years,



4(b). Girish S/o Late.Puttamaregowda,
Aged about 27 years,

4(c). Smt.Nanjamma,
D/o Late.Puttamaregowda,
Aged about 25 years,

4(a) to (c) All are R/at No.166,
Nanda Gokula Layout,
Near Sai Baba Temple,
Navilu Nagara, Thigalarapalya,
Bengaluru-560058.

5. B.G.Bommegowda S/o Lage Gindappa,
Aged about 51 years,

6. Smt.Lalitha W/o Late. B.G.Anjinappa,
Aged about 33 years,

7. B.Hanumantharayappa,
S/o Late.Bommaiah,
Aged about 60 years,
Since dead by his Lrs.

7(a). Smt.Rathnamma,
W/o Late.B.Hanumantharayappa,
Aged about 53 years,

(b) Sri.Harish
S/o Late.B. Hanumantharayapa,
Aged about 35 years,

(c) Chandrakala,
D/o Late.B.Hanumantharayappa
Aged about 33 years,



- (d) Smt.Shwetha
D/o Late.B.Hanumanthayappa,
Aged about 31 years.

7(a) to (d)
All are R/at of Basavenahalli,
Solur Hobli, Magadi Taluk,
Ramangara District.

8. Smt. Gangahanumakka W/o
Chikkaburaiah,
Aged Major

Defendants No.2 to 8 are R/at
Basavenahalli, Solur Hobli,
Magadi Taluk,
Ramangara District-562127.

9. Smt.Gowramma
W/o Late. Nanjappa,
Aged about 65 years,
R/at Basavenahalli,
Solur Hobli, Magadi Taluk,
Ramanagara District.

10. Smt.Namjamma,
D/o Late Nanjappa,
W/o Rajanna,
Aged about 45 years,
Bagenahalli, Kothigere Hobli,
Kunigal Taluk, Tumkur District.

11. Smt.Rathnamma
D/o Late.Nanjappa,
W/o Late.Papanna,
Aged about 43 years,



R/at Bagenahalli,
Khotigere Hobli,
Kunigal Taluk,
Tumkur District.

12. Smt.Jayamma,
D/o Late Gindappa,
W/o Hanumanthappa,
Aged about 60 years,
R/at No.115, 6th Main,
9th 'D' Cross,
Basappanakatte,
Rajagopalanagara,
Peenya 2nd stage,
Bengaluru-560058.
13. Smt.Anasuyamma,
D/o Late Gindappa,
W/o Ranganath,
Aged about 45 years,
R/at Megalapalya,
opp:Near Tlephone Tower(N.H.75)
Madigondanahalli Dhakle & post,
Kudur Hobli, Magadi Taluk,
Ramangara District, 562127.

IA No.VII

**APPLICANTS/
DEFENDANTS No.2 to 7
& 9 to 13**

: Smt.Gangahanumakka &
Others

-V/s-



**OPPONENT/
PLAINTIFF**

: Smt.Rangamma & Others

i	<i>Provision under which the application is filed</i>	<i>Order VII Rule 11 of C.P.C.</i>
ii	<i>Relief sought for</i>	<i>Rejection of plaint</i>
iii	<i>The date on which the application is filed</i>	<i>15.11.2023</i>
iv	<i>Number of the application</i>	<i>IA No.VII</i>
v	<i>The date on which the objections are filed by different opponents</i>	<i>19.12.2023</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>20.06.2024</i>

**II Addl.Civil Judge & JMFC,
Magadi**

**ORDER ON IA No.VII FILED BY THE DEFENDANTS No.2 to 7 & 9
to 13 UNDER ORDER VII RULE 11 READ WITH SEC.151
OF CPC**

This application is filed at the stage of framing additional issues. The Defendants No.2 to 7 & 9 to 13 have this application under Order VII, Rule 11 read with Sec.151 of C.P.C, seeking to reject the plaint as it does not disclose cause of action and barred by law.



2. The Plaintiffs have filed the present suit for Redemption of Mortgage as against the Defendants in respect of suit schedule property. When the matter is posted for framing additional issues, the Defendants No.2 to 7 & 9 to 13 have filed this application, along with accompanying affidavit and sworn that, the Plaintiffs have filed this suit seeking for Redemption of Mortgage on the ground that the transactions dated 20.06.1961 and 09.07.1962 are the mortgage transactions and not to the Sale Deeds. The Plaintiffs have suppressed the fact that, after executing the Sale Deed dated 20.06.1961 by Sri.Chikkagangaiah in favour of Sri.Siddappa, there was a resale in respect of said properties by Sri.Siddaiah in favour of Chikkagangaiah on 04.07.1962 and the said sale was registered vide Sale Deed dated 09.07.1962 in document No.1973.

3. The Plaintiffs have pleaded that, the mortgage transaction was with the condition that, either on payment of principle amount and interest or on the expiring of the period of 10 years, whichever is earlier, the possession to be delivered to the mortgagor by redeeming the mortgage. On perusal of plaint at paragraphs No.9 to 11, it is stated that, the mortgage is for a period of 10 years and it is also specifically stated that, the mortgage will come to and end on 04.07.1972. As per Article.61 of Limitation Act, 1963, the limitation period for filing a suit for redemption is 30 years, which will come to an



end on 19.06.2001 and 04.07.2002. Therefore, the suit is hopelessly barred by time. The Plaintiffs have instituted false and frivolous suit and there is no need to permit the Plaintiffs to continue to prosecute the suit and on the face of the record, the suit is not maintainable. Therefore, the present suit is not maintainable as it does not disclose the cause of action and barred by law. If this application is allowed, no hardship or injury will be caused to the Defendants. Hence, prayed to allow the application.

4. The Plaintiffs have filed objection and contended that, the averments made in the plaint clearly establishes the cause of action for the suit. The question whether the suit is barred by limitation is a mixed question of law and fact and the same as to be determined by the Court on the basis of pleadings and evidence. This Court has to only look into the averments made in the plaint and not to be influenced by the averments made in the written statement. The properties in Sale Deed dated 20.06.1961 and 04.07.1962 are one and the same. The Defendants have not made out any grounds allow the application. Hence, prayed to dismiss the application.

5. Heard both sides. Perused the material on record.

6. In order to prove the contention of the Plaintiffs, they have relied on the following decisions:



1. Shakti Bhog Food Industries Ltd., V/s The Central Bank of India & Another, in Civil Appeal No.2515/2020 passed by the Hon'ble Apex Court

2. Salim D.Agboatwala & Others, V/s ShaMalji Oddhavji Thakkar and Others, in Civil Appeal No.5641/2021 passed by the Hon'ble Apex Court

3. Gurudev Singh V/s Harvinder Singh in CR No.3324/2022 passed by Hon'ble High Court of Punjab and Haryana

4. Urvashiben & Another V/s Krishnakant Manuprasad Trivedi, reported in 2019 (1) Kar.L.R 228

In order to prove the contention of the Defendants, they have relied on the following decisions:

1. Khatri Hotels Private Limited and Another V/s Union of India and Another, reported in (2011) 9 SCC 126

2. M/s Durga Projects and Infrastructure Pvt.Ltd., Bengaluru V/s Sri.S Rajagopala Reddy and Others, reported in 2019 (4) KCCR 3891.

7. This Court arises the following Points for consideration:

1. Whether the application filed by the Defendants No.2 to 7 & 9 to 13 under Order VII Rule 11 read with Sec.151 of CPC deserves to be allowed?



2. What order?

8. The findings to the above points are as follows:

Point No.1: In the “***Negative***”

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

REASONS

9. **POINT No.1:** The Plaintiffs have filed the present suit seeking for Redemption of Mortgage as against the Defendants. When the matter is posted framing additional issues, the Defendants No.2 to 7 & 9 to 13 have filed this application under Order VII, Rule 11 read with Sec.151 of C.P.C, seeking to reject the plaint as it does not disclose cause of action and barred by law.

10. As per the contention of the Defendants No.2 to 7 & 9 to 13, the Plaintiffs have filed this suit seeking for Redemption of Mortgage on the ground that the transactions dated 20.06.1961 and 09.07.1962 are the mortgage transactions and not to the Sale Deeds. The Plaintiffs have suppressed the fact that, after executing the Sale Deed dated 20.06.1961 by Sri.Chikkagangaiah in favour of Sri.Siddappa. The Plaintiffs have pleaded that, the mortgage transaction was with the condition that, either on payment of principle amount and interest or on the expiring of the period of 10 years, whichever is earlier, the possession to be delivered to the



mortgagor by redeeming the mortgage. On perusal of plaint at paragraphs No.9 to 11, it is stated that, the mortgage is for a period of 10 years and it is also specifically stated that, the mortgage will come to and end on 04.07.1972. Therefore, the suit is hopelessly barred by time. In order to prove the case of the Defendants No.2 to 7 & 9 to 13, they have produced the documents such as Sale Deed dated 04.07.1962.

11. The Plaintiffs have contended that, the averments made in the plaint clearly establishes the cause of action for the suit. The question whether the suit is barred by limitation is a mixed question of law and fact and the same as to be determined by the Court on the basis of pleadings and evidence. This Court has to only look into the averments made in the plaint and not to be influenced by the averments made in the written statement. The Defendants have not made out any grounds allow the application.

12. It is pertinent to note that, the power under Order VI Rule 11 read with Sec.151 of CPC, can be exercised only by looking into the averments stated in the plaint and not the averments of the written statement. It is important to ascertain that, whether the present suit filed



by the Plaintiff discloses the cause of action. On perusal of plaint, it reveals that, at para No.14 & 15, the Plaintiffs have specifically pleaded that, on 20.02.2019, the Plaintiffs have requested the Defendants to execute the Deeds of Redemption of Mortgages dated 20.06.1961 and 04.07.1962 and on 20.03.2019, the Plaintiffs have issued legal notice calling upon the Defendants to execute the said deeds, for which, the Defendants have got issued the reply notice on 04.04.2019 and stated that, they will not comply the demands made by the Plaintiffs. The said paragraphs in the plaint itself discloses that, there is a cause of action in the present suit. Moreover, the cause of action means the bundle of facts which is necessary to prove the claim of the Plaintiffs and same is supported by the decision passed by the **Hon'ble High Court of Karnataka in Sri. Madappa @ Shivalingappa @ Madivalappa and others V/s Sri. Madivalappa, reported in ILR 2017 KAR 2496**, the relevant portion of the decision is extracted below for reference:

“cause of action consist of a bundle of facts which will be necessary for the plaintiff to prove in order to get a relief from the court and cause of action a very fact, which, if traverse it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court”.



13. By considering the aforesaid decision, this Court is of the opinion that, the Defendants No.2 to 7 & 9 to 13 have not made grounds to allow the application on the ground that, the suit does not disclose the cause of action. With due respect, the decisions relied by the both the Counsels are not applicable to the present case on hand, as the facts and circumstances are different.

14. With regard to suit is barred by any law of limitation is concerned, the Defendants No.2 to 7 & 9 to 13 have contended that, the Plaintiffs ought to have file this suit in the year 2001 and 2002 itself as the limitation period for filing the suit for redemption is 30 years. It is important to note that, the question of limitation is the mixed question of law and fact and such issues cannot be decided only by looking into the plaint averments and the same is supported by the decision relied by the Counsel for Plaintiffs which is passed by ***Hon'ble Apex Court of India in Urvashiben and Another V/s Krishnakant Manuprasad Trivedi, reported in 2019(1) Kar.L.R 228,*** the relevant portion of decision is extracted below for reference:



“It is fairly well settled that, so far as the issue of limitation is concerned, it is a mixed question of fact and law. It is true that, limitation can be the ground for rejection of plaint in exercise of powers under Order VII Rule 11 (d) of the CPC. Equally, it is well settled that for the purpose of deciding application filed under Order VII Rule 11 only averments stated in the plaint alone can be looked into, merits and demerits of the matter and the allegations by the parties cannot be gone into”

By relying on the aforesaid decision and reasons, this Court is of the opinion, without conducting the full-fledged trial, the question of limitation cannot be decided effectively. Moreover, at this stage, the defense set-up by the Defendants No.2 to 7 & 9 to 13 cannot be taken into consideration. Hence, this Court proceeds to answer Point No.1 in the “**Negative**”.

15. **POINT No.2:** In view of the aforesaid reasons, this Court proceeds to pass the following:

ORDER

IA No.VII filed by the Defendants No.2 to 7 & 9 to 13 under Order VII rule 11 read with



Sec.151 of CPC, is hereby rejected with cost of
Rs.500/-.

(Dictated to the Stenographer, directly through computer & corrected by me and
then pronounced in the open Court on this the 20th day of June, 2024)

**II Addl. Civil Judge & JMFC,
Magadi.**