

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

Dated this the 09th day of October 2020

PRESENT : Smt. Geeta
B.A., LL.B.(Hons),LL.M.,
Addl. Civil Judge & JMFC., Sira.

O.S. No.488/2012

PLAINTIFFS:

1. Kambakka,
W/o Late K.Kambayaiah,
Aged about 55 years,
2. Ranganatha,
S/o Late K.Kambayaiah,
Aged about 35 years,
3. Mohankumar,
S/o Late K.Kambayaiah,
Aged about 33 years,
4. Raghavendra,
S/o Late K.Kambayaiah,
Aged about 31 years,
5. Manjunatha,
S/o Late K.Kambayaiah,
Aged about 23 years,
6. Thippeswamy,
S/o Late K.Kambayaiah,
Aged about 21 years,
7. Rathnamma,
S/o Late K.Kambayaiah,
Aged about 30 years,
All are R/o Raanganatha Tire and
Tube work, N.H.4, Sira Town

(By Sri.J.A.,Advocate)

/Vs/

- DEFENDANTS:**
1. Premalatha,
W/o Ashokkumar,
Aged about 45 years,
 2. Ashok Kumar,
S/o Late Rangappa,
Aged about 50 years,
Both are R/o Sapthagiri Extention,
Sira Town.

(By Sri. D.S.K.,Adv.)

Parties in I.A.

APPLICANT : Premalatha,
/Vs/

OPPONENTS : Kambakka and others,

ORDER ON I.A.No.VII

The defendants have filed this application U/o.7 Rule 11(a) and (d) of CPC prayed for rejection of plaint and such other order.

2. The defendant has filed an affidavit in support of her application contending that, the subject matter of the suit has already decided before this court in O.S. No.89/2006, which was filed by the husband of the first plaintiff. The husband of the plaintiff had appealed

against the said judgment in R.A.No.2/2010 and the same was also dismissed. They also preferred an appeal before the Hon'ble High Court of Karnataka which was also rejected at the admissions stage. The plaintiffs are utter strangers to her property which is site No.10 formed in Honnurappa's Layout in Sy.No.39/3 of Sira Town. The suit schedule property was formed in Sy.No.39/6A, the said Sy.No.39/6A lies in between Sy.No.39/3 and Sira-Banavara road. The above said Sy.No.39/6A is a vacant land which is a road margin. The defendant further contended that, one Krishnamurthy in collusion with revenue authorities had got Sy.No.6A done in revenue records. The subject matter was decided on merits by the court in O.S.No.135/1988 declaring that Sy.No.39/6A is vacant land left for road margin and the suit schedule property is not in existence. The judgment in O.S.No.135/1988, O.S.No.89/2006, R.A.2/2010 has clearly stated that Sy.No.39/6A is not in existence. The defendant No.1 has filed suit in O.S.No.322/1999 for declaration of her title over her site against the husband

of first plaintiff which was decreed and the husband of the plaintiff had not appealed against the judgment. In all the above cases the subject matter of the suit is same. There is no suit schedule property and averments made in the plaint that, they have been running Tire shop in the suit schedule property is all created to enter in to her property which is site No.10. The Defendant further contended that, she has no property on any side of the plaintiffs' suit schedule property the plaintiffs have filed this suit just to harass her. With these averments prayed to allow the application by imposing heavy cost.

3. On the other hand, the plaintiff has filed objections contending that, the application is not maintainable, the averments made in the application are far away from the truth. The case is posted for defendant's evidence at this stage the defendant has filed this application. The husband of the plaintiff has purchased suit schedule property and same has been compromised between the plaintiff's husband and his vendor. The defendant is only adjacent owner towards

the southern side of the suit schedule property, the defendant is not having any right , title and interest over the suit schedule property. In RSA No.2701/2010 the Hn'ble High court of Karnataka has given findings that, earlier compromise is binding to both the parties i.e., the husband of the plaintiff and his vendor. The defendant and her husband are also parties to the previous suit. With these averments the plaintiff prayed to reject the application.

4. Heard the arguments, perused the materials on record.

5. The following points that would arise for my consideration.

1. Whether the plaint does not discloses cause of action?
2. Whether the statements in the plaint are barred by any law?
3. What Order?

6. My finding to the above points as follows :-

- | | |
|--------------|--|
| 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 and 2 : In order to avoid repetition of facts and for the sake of convenience, these two points taken together for consideration. The plaintiff has filed this suit for declaration of their title to the suit schedule property and for permanent injunction restraining the defendants or their agents or anybody claiming under them from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property.

8. It is alleged by the plaintiffs that, suit schedule property originally belong to S.N.Krishnamurthy which was a vacant site in land bearing Sy.No.39/6A. The husband of the plaintiff K.Kambayaiah was purchased under an oral sale deed, since then disputes arose between the said K.Kambayaiah and S.M.Krishnamurthy. Therefore K.Kambayaiah has filed O.S.No.315/1998 before the court. During the pendency of that suit the defendant S.M.Krishnamurthy and the plaintiff K.Kambayaiah have compromised the case. The

defendant Krishnamurthy has admitted the ownership of K.Kambayaiah over the suit schedule property, accordingly a decree was drawn. On the strength of decree, katha of the suit schedule property was made out in the name of K.Kambayaiah, he had constructed a shed and using the same as godon.

9. It is further averred by the plaintiffs that, the defendants own their house property which is situated opposite to the southern direction of the suit schedule property and in between the property of the plaintiff and defendants there is a 10 feet wide galli. Earlier on account of interference K.Kambayaiah had filed against these defendants for the relief of permanent injunction and the said suit was dismissed after contest. Against the said judgment and decree K.Kambayaiah had preferred an appeal before the Hon'ble High Court of Karnataka in RSA No.2701/2010, the said appeal was rejected at the stage of admission itself, wherein it was held that, plaintiffs title which was claimed under a compromise decree in O.S.No.315/1998 regarding

ownership and possession over the suit schedule property was rightly observed that, the compromise decree is binding on the parties. The O.S.No.89/2006 was only for permanent injunction. Now the defendants by taking undue advantage and denying a title and attempting to interfere with the plaintiffs' title and possession of the suit schedule property.

10. The said K.Kambayaiah was died leaving behind the present plaintiffs as his legal heirs, the suit schedule property was devolved upon the plaintiffs by natural succession thus the continued to be owner in peaceful possession and enjoyment of the suit schedule property. The plaintiffs further averred that, the cause of action for the suit arose when the defendants denied the title of the plaintiffs and attempted to interfere with the peaceful possession and enjoyment of the suit schedule property.

11. The defendant No.1 contended that, there are many cases filed by the husband of the plaintiff No.1, in all those cases the subject matter of the suit was same.

Further, the suit schedule property is not in existence. On perusal of the plaint averments it is noticed that, the plaintiffs have filed this suit for declaration and permanent injunction and contended that, the husband of the plaintiff No.1 was purchased the suit schedule property, after his death the plaintiffs have succeeded the suit schedule property and they are in possession and enjoyment of the suit schedule property. The defendants are the owners of the house property which is situated opposite to the southern direction of the suit schedule property and denying the title of the plaintiffs and attempting to interfere with the plaintiffs' possession over the suit schedule property. In the cause of action it is stated that, the defendants denied the title of the plaintiffs and attempted to interfere with the plaintiffs' peaceful possession and enjoyment of the suit schedule property. It is well settled principle of law that, the cause of action is bundle of facts. By going through all these plaint averments it is noticed that, there is a cause of action for the plaintiffs to file this suit. Though there are

many cases filed and decided on the same subject matter that as to be looked in to at the time of deciding on full fledged trial. Moreover this is a suit for declaration and permanent injunction, the burden is on the plaintiff to prove the existence of the suit schedule property and his title and possession over the suit schedule property. Therefore the plaintiff has pleaded cause of action in the plaint and there is no bar under any law for them to file this suit. Hence I answer point No.1 and 2 in **Negative**.

12. Point No.3: In view of the finding given on above points and for the reasons stated therein, I proceed to pass the following ;

ORDER

I.A. filed by the defendant No.1
U/o.7 Rule 11 (a) and (d) of CPC is
hereby rejected.

(Directly dictated to the stenographer on computer, computerized and printout taken by her, then corrected and pronounced by me in the Open Court on this 09th day of October 2020).

(Geeta)
Addl. Civil Judge & JMFC,
Sira.

(Order pronounced in the
open court, vide separate
order)

ORDER

I.A. filed by the defendant
No.1 U/o.7 Rule 11 (a) and (d)
of CPC is hereby rejected.

Addl. Civil Judge & JMFC,
Sira.