

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

Dated this the 12th day of February 2021

PRESENT: Smt. ASHA K.S.
B.A. L., LL.B.,
Prl. Civil Judge & JMFC., Sira

O.S. NO. 105/2018

PLAINTIFFS : T. Chandramohan,
 S/o. Thimmanna,
 Aged about 40 years,
 R/at Nayakarahatti,
 Sira Town and Taluk,
 Thumakuru District
**(By Sri. Venkatasubba rao,
Advocate)**

/Vs/

DEFENDANTS :1. B.R. Papanna,
 S/o. Late B.P. Rudrappa,
 Aged about 66 years,
 R/at Iyyangar street,
 Pavagada Town and Taluk,
 Thumakuru District,

2. Indira @ Indiraprasad,
 W/o. Late B.R. Babuprasad,
 Aged about 60 years,

3. B.R. Srividhya,
 D/o. Late Babuprasad,
 Aged about 30 years,

4. B.R. Indrani,
 D/o. Late B.P. Rudrappa,

and W/o. K. Jayaprakash,
Aged about 62 years,
R/at No. 9/22,
Sathyamangala road,
Kuvempu Extension,
Chamarajanagara District,

5. B.R. Manjula,
D/o. Late B.P. Rudrappa,
and W/o. S.R. Siddaramappa,
Aged about 47 years,
D2, 3 and 5 are residents of
Madanamadu village,
Barasidlahalli post,
Chikkanayakanahalli Taluk,
Thumakuru District,
6. B.R. Rajeshwari,
D/o. B.P. Rudrappa &
W/o. Late Mallikarjuna
Hiregowdar,
Aged about 40 years,
R/at 1st main, 3rd cross,
Ananda Nilaya,
Near Samudaya Bhavan,
Jayanagar West,
Thumakuru Town.
7. Aleem,
S/o. Yakoob sab,
Aged about 25 years,
Fish stall businessman,
Begum Mohalla,
Sira Town and Taluk,
8. Nadeem,
S/o. Saleem,
Aged about 35 years,
Mutton stall business,

Karadhi Mohalla,
Sira Town and Taluk,

9. Nagaraju,
S/o. Hanumanaik,
Aged about 35 years,
Fish stall business,
10. Devaraju,
S/o. Nagaraju,
Aged about 38 years,
Fish stall business,
D9 and 10 are residing
at Maruthi Nagara,
Sira Town and Taluk,
**(Sri. J. Muralikrishna,
Advocate for D1 & 2,
Sri. P.B.S. Bhoopathi gowda,
Advocate for D3,
Sri. B. Jayaramaiah,
Advocate for D4 to 6,
D7 to 8 – Exparte)**

In I.A. No.8

APPLICANT : B.R. Rajeshwari

.....Defendant No.5

/Vs/

OPPONENT : T. Chandramohan

.....Plaintiff

ORDERS ON I.A. NO.8

This is an application filed by the Applicant/defendant No.5 U/Or. VII Rule 11 (d) of CPC praying to reject the plaint.

2. In support of an application, the applicant/defendant No.5 has sworn to an affidavit on behalf of himself and defendants No.3, 4 and 6 and stated that the plaintiff has filed this suit for the relief of permanent injunction. In the affidavit, it is stated that the suit is not maintainable, there is no cause of action for filing of this suit. The plaintiff is not in possession of the schedule property and he has no right and title over the schedule property. Hence, prays to reject the plaint.

3. On the other hand, the learned counsel for the plaintiff has filed objection and contended that the provision of law applied by the applicant/defendant No.5 does not attract to the suit. The suit is not barred by law. It is simple suit for

permanent injunction. When the defendants caused obstruction, immediately the plaintiff has filed this suit. In the plaint, he has shown the cause of action. Only to harass the plaintiff, the applicant has filed this application. Hence, prays to dismissal of I.A.

4. Heard the arguments of learned counsel for plaintiff and perused the materials placed on record.

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

1. Whether the defendant No. 5 has made out ground to reject the plaint of the plaintiff?
2. What order ?

6. My findings on the above points are as under;

Point No.1 : In the **Negative.**

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

REASONS

7. POINT NO.1: This suit is filed by the plaintiff for the relief of permanent injunction. It is the case of the plaintiff that, he purchased the suit schedule property from defendant No.1 and his brother for valuable consideration. From the date of purchase, he is in possession of the schedule property. Even though they have no right over the schedule property, they tried to interfere with the plaintiff's possession. After service of suit summons, defendants No.7 and 8 not appeared and hence, they placed exparte. Defendants No.1 to 6 appeared through their advocates and filed written statement. They denied the plaintiff's case and filed this application with a prayer to reject the plaint.

8. The applicant has filed this application U/Or. VII Rule 11 (d) of CPC. But in the affidavit, he has stated that there is no cause of action to file suit. He prays to reject the plaint on the ground that, there

is no cause of action to present the plaint. As per Or. VII Rule 11, The plaint shall be rejected in the following cases;

- a) **Where it does not disclose a cause of action**
- b) **Where the relief claimed is under valued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so**
- c) **Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so.**
- d) **Where the suit appears from the statement in the plaint to be barred by any law**
- e) **Where it is not filed in duplicate**
- f) **Where the plaintiff fails to comply with the provision of rule 9.**

On perusal of above said provision, it is noticed that to reject the plaint U/Or. VII Rule 11(d) of CPC, suit should be barred by any law and it should be shown in the plaint averments also. In the plaint, nowhere stated that suit is barred by limitation or any other law. In the affidavit, applicant has stated that there is no cause of action to file the suit. It is

covered under Or. VII Rule 11(a) of CPC. As per Or. VII Rule 11(a) of CPC, where it does not disclose a cause of action, then plaint can be reject. In para 10 of plaint, the plaintiff has shown the cause of action to file the suit i.e., interference by the defendants prior to filing of suit. Whether the cause of action shown in the plaint is correct or not and limitation aspect has to be decide after the trial. At this stage, court cannot conduct mini trial to ascertain the contention of both the parties. The plaintiff has nowhere averred the pleadings regarding barred by any law. As stated above, in para No.10 of plaint, he has shown the cause of action. These aspects show that there are no grounds to reject the plaint either under Or. VII Rule 11(a) of CPC or U/Or. VII Rule 11(d) of CPC. The applicant has not made out ground to reject the plaint. Accordingly this point is answered in the **Negative**.

9. **POINT NO.2:** In view of my findings on Point No.1 in the **Negative**, I proceed to pass the following;

ORDER

I.A.No.8 filed by Applicant/defendant No.5 U/Or. VII Rule 11(d) of CPC is hereby dismissed.

(Dictated to the stenographer on computer, computerized and printout taken by her, then corrected and pronounced by me in the open court on **12.02.2021**)

(ASHA K.S.)
Prl. Civil Judge & JMFC.,
Sira