

KAUK030004342023



IN THE COURT OF THE ADDITIONAL CIVIL JUDGE & J.M.F.C-II.,
AT: KARWAR

PRESENT: **Smt. Akshatha C.R.**
B.B.A., L.L.B.(Hons.)

Addl.Civil Judge & J.M.F.C-II of Karwar.

Dated: 2nd Day of January 2024.

ORIGINAL SUIT NO. 44/2023

Plaintiff/s : Ramesh Purshottam Gaonkar and another.

(By Sri.H.S.S., Adv.)

V/s.

Defendant/s : Shanta Vishram Naik and others.

(Deft. 1 to 5,7 By Sri. S.K.P.,Adv.)

(Deft. 8 by Sri. D.G.P., Adv.)

Deft. No.6 Exparte)

I.A. No. IV

Applicant/s : Shanta Vishram Naik and others.

(Deft. 1 to 5,7 By Sri. S.K.P.,Adv.)

(Deft. 8 by Sri. D.G.P., Adv.)

(Deft. No.6 Exparte)

V/s.

Opponent /s: Ramesh Purshottam Gaonkar and another.

(By Sri.H.S.S., Adv.)

ORDERS ON I.A.NO. IV

1. Counsel for defendants has filed an application under Order VII Rule 11(a) and (b) of C.P.C. read with Section 289 of Karnataka Panchayat Raj Act seeking to dismiss the suit of the plaintiff as not maintainable.

2. In the accompanying affidavit it is stated that plaintiffs have filed a suit against Gram Panchayat, Vailwada, Karwar. Thus being so plaintiffs have not issued notice under Section 289 of Karnataka Panchayat Raj Act prior to the institution of the suit though it is mandatory under said Act. Thus the suit of the plaintiffs is not maintainable at the threshold as such no purpose will be served if the Court proceeds to conduct trial and the same will amount to waste of time and nothing else. The plaintiffs

have filed this suit seeking to restrain the defendants from encroaching the pathway by way of blockage and also sought to remove the constructed compound wall. But they have not paid proper court fees and valuation of the property is shown less than its value to avoid court fee on market value. They have not sought the relief of declaration. In this background, counsel for defendants sought to dismiss the suit of the plaintiffs as not maintainable.

3. Per contra, plaintiffs have filed objections to the instant application contending that while deciding the application filed under Order VII Rule 11 of C.P.C. only the averments of the plaint have to be seen and the defence raised by the defendant should not be looked into. Section 289(4) of Karnataka Panchayat Raj Act says that when the suit is for bare injunction then issuance of prior notice to the State/Local Authority is not mandatory. Moreover, the concerned defendant i.e., P.D.O. has not raised any objection to that effect. It is further stated that despite

granting T.I. order in favour of the plaintiffs, defendants have violated the order. Thus he has no legal right to file the present application. That in the order pertaining to the conversion of land from Agricultural land to Non-Agricultural land wherein it is agreed by the defendant that he will handover the land to defendant No.8 for public purpose which itself shows that plaintiffs have a right over the suit land and there is no need to seek any declaration as alleged by the defendant No.1 to 6. With these contentions he sought to dismiss the application with cost.

4. Heard both the sides. Perused the materials placed fore of this Court.

5. In view of the same the following points arise for the consideration of this Court.

1. Whether the defendants have made out sufficient grounds to allow their application and consequently to dismiss the suit of the plaintiffs?

2. What Order?

6. My answer to the above points are as follows:

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

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

REASONS

7. **Point No.1:** Defendants have filed an application under Order VII Rule 11(a) and (b) of C.P.C. read with Section 289 of Karnataka Panchayat Raj Act seeking to dismiss the suit on the grounds that plaintiffs have not complied the mandatory provision of Section 289 of Karnataka Panchayat Raj. Prior notice required to be issued to P.D.O., Gram Panchayat Vailwada, Karwar has not been abided by the plaintiffs. Besides the plaintiffs have filed this suit seeking the relief of permanent injunction alone without seeking the relief of declaration. Thus the suit of the plaintiffs is bad. Valuation of the suit property is shown less than its actual value to avoid court fees and has merely paid Rs.25/- towards court fees. Hence the defendants pray to dismiss the suit as not maintainable.

7.1. Per contra, counsel for plaintiff resisted the application by filing objections. In the objections it is contended that while deciding the application filed under Order VII Rule 11 of C.P.C. only the averments of the plaint alone have to be seen and not the defence raised by the defendants. That the issuance of notice to the Panchayat prior to the institution of the suit is not mandatory requirement particularly when the suit is filed seeking the relief of bare injunction as per Section 289(4) of Karnataka Panchayat Raj Act. Moreover the concerned defendant has not raised any objection in that regard. Further it is stated that despite issuance of TI order in favour of the plaintiffs, defendant have acted in contrary to the said order. Besides in an Order pertaining to conversion of Agricultural Land to Non-Agricultural land, said defendant has agreed that defendant will handover the land to defendant No.8 for the purpose of public road which is self-explanatory. Thus there is no need to seek any declaration as alleged by the defendant No.1 to 5 and 6. In this backdrop, plaintiffs urge to dismiss the said application.

8. The counsel for defendant No.1 to 5 and 7 sought to reject the plaint by invoking the provisions of Order VII Rule 11 of C.P.C. That it is to be noted here that Order VII Rule 11 prescribes the grounds upon which plaint can be rejected. Rule 11 says that (i) plaint has to be rejected when it does not disclose the cause of action, (ii) where the relief claimed is under-valued and on the failure of the plaintiff to rectify the valuation within a time fixed by the Court, (iii) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, (iv) where the suit appears to be barred by any law, (v) where it is not filed in duplicate and (vi) where the plaintiff fails to comply the provisions of rule 9 of Order VII. Therefore the ground upon which the defendant sought to reject the plaint filed by the plaintiff is not covered in the aforesaid provision. Further the question which arises for consideration at this juncture is *‘Whether the plaint can be rejected upon the grounds which are not mentioned in Rule 11 of Order VII?’* The Hon’ble Apex Court in ***T. Arivandanam v. T.V. Satyapal*** reported in **(1977) 4 SCC 467** observed that

“If on a meaningful- or formal-reading of the plaint if it appears to be manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, he (Munsif) should exercise his power under Order VII rule 11, C.P.C. taking care to see that the ground mentioned therein fulfilled.”

Thus as per the aforesaid dictum, there is very limited scope for rejection of plaint on any other ground which is not specifically mentioned in the said rule provided it shall fulfil the ground mentioned therein. However, in the instant case, the averments of the plaint prima facie does not appear to be vexatious and meritless. Plaintiffs have filed this suit seeking to restrain the defendants from blocking the alleged pathway and defendant No.8 who is a P.D.O., Gram Panchayat Vailwada, Karwar is a formal party and it seems that plaintiffs have no claim against him.

9. Besides, the defendants have taken contention that suit for bare injunction is not maintainable in its present form without seeking the relief of declaration. Though the plaintiffs have sought the relief of permanent

injunction alone without seeking the relief of declaration, the suit of the plaintiffs cannot be dismissed at the threshold especially by invoking the provisions of Order VII Rule 11 of C.P.C. Further the defendants have raised a contention that valuation of the suit property is shown less to avoid court fee on the market value and has paid only a sum of Rs.25/- towards court fees. It is to be noted here that when the suit is filed seeking the relief of permanent injunction, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees one thousand whichever is higher and not on the market value. Thus, the contention taken by the defendants does not hold water. For the foregoing reasons and discussion this Court answers point No.1 in the **Negative**.

10. Point No.2: In view of answering the point No.1 in the Negative, this Court proceeds to pass the following.

ORDER

The application filed by the counsel for defendants U/o. VII Rule 11(a) and (b) of C.P.C. R/w Section 151 of C.P.C. is hereby dismissed.

No order as to costs.

(Typed by me on my laptop, corrected, signed by me and then pronounced the Judgment in the Open Court on this the **2nd day of January 2024**).

Smt. Akshatha C.R.
Addl. Civil Judge & JMFC-II,
Karwar.