

KAUK720000072025



**IN THE COURT OF THE SENIOR CIVIL JUDGE & PRL. JMFC.,
KUMTA, AT; KUMTA, UTTARA KANNADA**

Dated this the 2nd day of December, 2025

PRESENT

**Smt. B.S.Rayannawar, B.A., L.L.B.,
Senior Civil Judge
& Prl. JMFC, Kumta.**

O.S.No.1/2025

Plaintiff:	Sri. Balachandra Rama Nayak, Age: 64 years, Occ: Agriculturist, R/o. Bavikere, Ankola, Ankola Taluk.
Defendants:	1. Smt. Radha W/o. Rama Naik, Age: 64 years, Occ: Household, R/o. Holanagadde, Kumta Taluk. 2. Sharmila Chandrashekhar Naik Age: 51 years, Occ: Household, R/o. Holanagadde, Kumta Taluk. 3. Deepa Rama Naik Age: 31 years, Occ: Household, R/o. Holanagadde, Kumta Taluk.

	4. Mangala Harish Naik Age: 46 years, Occ: Household, R/o. Holanagadde, Kumta Taluk. 5. Amaranath Rama Naik, Age: 45 years, Occ: Agriculturist, R/o. Holanagadde, Kumta Taluk.
	<u>Rank of the Parties On I.A.No.V</u>
Applicant/Defendants:	Smt. Radha W/o. Rama Naik and others
	(Rep.by Sri. G.G.G. Advocate)
Opponents/plaintiff	Sri. Balachandra Rama Nayak,
	(Rep.by Sri. R.G.N.-Advocate)
Provision	U/o. VII Rule 11(d) of CPC.,
Relief sought for	To dismiss the suit as barred by limitation.
Application dated	03-06-2025
Application No.	IA No. V
Objection filed on	Nil
Order passed on	02-12-2025

ORDER ON I.A.No. V

The present I.A.No.V is filed by the applicant/defendants under Order VII Rule 11(d) of CPC to dismiss the suit as barred by limitation.

2. I.A.No.V supported with Affidavit of applicant/defendant No.1 stating that, the averments made in the written statement may be read as part and parcel of the affidavit to avoid repetition of facts.

3. The plaintiffs have filed this suit for specific performance of contract against the defendants. The defendants are the owners of property bearing No.555/3a measuring 1 acre 20 guntas of land and also owner of Sy. No.555/5 to an extent of 1/3rd share in 1 acre land of Holanagadde village, Kumta Hobli and taluk. During the life time of Rama Durgappa Naik, with an intention to develop the land, he was looking to approach bank for obtaining a loan. This being the case, the plaintiff approached Rama Durgappa Naik stating that he has got many contacts with bank Managers and that he can easily help him to avail loan from the bank.

4. Further stated that believing the words of plaintiff, Rama Durgappa Naik gave the document pertaining to the land to the plaintiff in order to obtain loan from the bank. Accordingly, plaintiff told Rama Durgappa Naik and her to affix signatures on

few documents in favour of bank and that they should be present in the Sub Registrar's Office at Kumta for execution of such loan documents, herself and her husband Sri. Ramdurgappa Naik visited the Sub Registrar's Office at Kumta on 22.9.2013 and plaintiff was also present during that time.

5. Further stated that photographs of Ramadurgappa Naik and herself and her husband was taken and signatures were sought to be taken on blank papers and when herself and her husband questioned plaintiff, plaintiff who had colluded with the staff of the Sub Registrar Office stated that, printer was not functioning and that the matter would be printed later and told defendants and her husband not to worry and accordingly believing the words of plaintiff, herself and her husband affixed the signatures on blank papers.

6. Thereafter herself and her husband were under the impression that loan would be sanctioned by bank. However, after few days, some amount was paid to her, stating that the sanctioning of bank loan would take some more time as they were scrutinizing the papers and after scrutinizing, the loan

would be sanctioned and herself and her husband could repay the amount given by plaintiff later. Believing in plaintiff's words, herself and her husband thought that bank loan would be sanctioned later. However, plaintiff was paying some money to her and other defendants and her husband and used to give one or the other reason for delay in bank loan. However, from the money received from plaintiff, herself and her husband were growing crops and thus herself and her husband were in continuous peaceful possession and enjoyment of the above said lands. Further stated that herself and other defendants have always been in continuous possession and enjoyment of the above said lands. Therefore, all allegations made by plaintiff that herself and her husband have executed an agreement of sale dated 22.9.2015 in favour of plaintiff agreeing to sell 1 acre 20 guntas of land in Sy.No.555/3a and 1/3rd undivided share in 1 acre of land in sy.no.555/5 of Holanagadde, Kumta Taluk for a sale consideration of Rs.22,01,100/- as advance sale consideration are all absolutely false and hence denied. The defendants state that only after receipt of plaintiff's notice dated 2.4.2024, defendants is shocked that plaintiff has misused her

signature and husband's signature and created alleged agreement of sale dated 22.9.2015. She reiterate that herself and her husband Ramadurgappa Naik had never agreed to sell the above said land in favour of plaintiff for a sum of Rs.24,15,200/- nor they have received an advance sale consideration of Rs.22,01,000/- towards sale of the above said land. Therefore, all further allegations in this regard stated in the notice dated 2.4.2024 are false and hence denied.

7. The allegation in the notice that plaintiff took possession of the above said lands in 2015 after the execution of the alleged agreement of sale is false and hence denied. They continue to be in peaceful possession and enjoyment of the above said lands till date. It is further false on the part of plaintiff to allege that he has constructed a building in the above said lands. The said building belongs to them and that plaintiff has no right, title or interest in the said building.

8. Notwithstanding the fact that herself and her husband have not executed the alleged agreement of sale dated 22.9.2015 in favour of plaintiff in respect of above said land, very fact that

plaintiff has chosen to issue legal notice after a period of 9 years from the date of the alleged agreement of sale clearly establishes the fact that plaintiff was waiting for lapse of time in order to get over the fraud playing by plaintiff on defendants and her husband, defendants reiterates that the alleged agreement of sale dated 22.9.2015 is outcome of the fraud and deceit played by plaintiff and that plaintiff does not get any right, title interest from a fraudulent document.

9. Further submit that there is no cause of action for the plaintiff to file the above suit. It is submitted that the alleged agreement of sale is dated 22.9.2015. The plaintiff does not state anywhere in the plaint as to when he requested the defendant No.1 and her husband to execute the sale deed for the first time after the alleged agreement of sale dated 22.9.2015. The plaintiff has made a vague statement that he used to request the defendant No.1 and her husband to execute the sale deed and they kept on postponing the execution of the sale deed. The plaintiff has deliberately refused to mention the first date as to when he requested the defendant No.1 and her husband to

execute the sale deed in respect of the suit schedule property deliberately and intentionally. This is a classic case of clever drafting by the plaintiff to avoid the question of limitation.

10. Further submit that by the time the plaintiff issued a legal notice dated 2.4.2024, the plaintiff's claim had already been time barred. Issuance of legal notice will not give the cause of action for the plaintiff. Therefore, the plaintiff has no cause of action to file the suit. Further, the Hon'ble Apex Court has held that in the case of K.Akbar Ali -vs-K.Umerkhan and others in SLP (Civil No.31844/2018) that clever drafting create an illusive cause of action is not permitted in law. The Court has got inherent power to curtail frivolous and vexatious suits from consuming the Court's valuable time.

11. It is further submitted that in the case of Saban Sudhdeo Sebal and others -vs- Charity Commissioner and others reported in 2004 (3) SCC 137 held that the objective of order 7 Rule 1 CPC is to keep out of Courts irresponsible law suits. The onus of the Court is to reject the plaint in any suit which either does not make out cause of action or which ex-facie

appears to be barred by limitation upon plain reading of the plaint. It is further submitted that in the case of Raghavendra Sharan Singh -vs- Ramprasanna Singh reported in (2019) SCC Online SC 372 has held that trial is not required to be conducted to determine whether the suit is barred by law or not in every case of the law of limitation is not a mixed question of law and facts. Where a plaint ex-facie indicates that it is barred by law, the Court had to exercise its power under Order 7 Rule 1 and reject the plaint.

12. It is further submitted that the above principle is reported in the case of Durga Projects and Infrastructure Pvt.Limited -vs- S.Rajagopal Reddy and others reported in (2019) 4 KCCR 3891. Hence, in view of the above said judgements, the Hon'ble Supreme Court has clearly held that where it is a prima facie barred by law, the Court can reject the plaint under Order 7 Rule 11 CPC. The above decisions of the Hon'ble Apex Court are cleverly applicable to the instant case on hand. Even for the present suit, the plaintiff does not deliberately and intentionally disclose as to when he requested the defendant No.1 and her

husband Rama Durgappa Naik to execute the sale deed in respect of the suit schedule property for the first time after the alleged agreement of sale dated 22.9.2015. This is a clever drafting and creates an illusion regarding the cause of action because the plaintiff merely states that he was requesting the defendant No.1 and her husband to execute the sale deed in respect of the suit schedule property but cleverly avoids mentioning the date when he requested the defendant No.1 and her husband for the first time. In this background, it is humbly prayed that the plaintiff's suit is barred, by limitation and hence this Court has to reject the plaint on this ground alone. Further stated that issuance of the notice in respect of time barred claim is untenable and unsustainable in law. The defendants reiterate that they are in peaceful possession and enjoyment of the above said land and that plaintiff has no right, title or interest in the above said land by virtue of the alleged agreement of sale dated 22.9.2015 and therefore, the demand of plaintiff to furnish the documents as alleged in the notice and execute the registered sale deed in favour of plaintiff does not arise.

13. Further submit that continuation of the suit would be abuse of process of Court and if this application is allowed, no injustice or hardship will be caused to the plaintiff whereas if this application is rejected, the defendants will be put into great hardship and injury. Hence prayed to allow the application.

14. In spite of sufficient opportunity the plaintiff not filed objection to IA No.V, hence objection to I.A.No.V by plaintiff is taken as nil.

15. Heard counsel for defendants on I.A.No.V. Perused application, annexed affidavit and other material on record.

16. The points that arise for my consideration are as follows;

POINTS

1. Whether the defendants have made out grounds to dismiss the suit as time barred?
2. What order ?

17. The findings on the above points are as hereunder:

Point No.1: In the Negative

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

REASONS

18. **Point No.1:** Order VII Rule 11(d) CPC postulates for rejection of plaint in the circumstances given therein. In the instant case the defendant is trying to invoke order VII Rule 11(d) of CPC as herself and her husband Ramadurgappa Naik had never agreed to sell the above said land in favour of plaintiff for a sum of Rs.24,15,200/- nor they have received an advance sale consideration of Rs.22,01,000/- towards sale of the above said land. Therefore, all further allegations in this regard stated in the notice dated 02.04.2024 are false and hence denied.

19. The allegation in the notice that plaintiff took possession of the above said lands in 2015 after the execution of the alleged agreement of sale is false and hence denied. They continue to be in peaceful possession and enjoyment of the above said lands till date. It is further false on the part of plaintiff to allege that he has constructed a building in the above said lands. The said building belongs to them and that plaintiff has no right, title or interest in the said building.

20. Notwithstanding the fact that herself and her husband

have not executed the alleged agreement of sale dated 22.9.2015 in favour of plaintiff in respect of above said land, very fact that plaintiff has chosen to issue legal notice after a period of 9 years from the date of the alleged agreement of sale clearly establishes the fact that plaintiff was waiting for lapse of time in order to get over the fraud playing by plaintiff on defendants and her husband, defendants reiterates that the alleged agreement of sale dated 22.9.2015 is outcome of the fraud and deceit played by plaintiff and that plaintiff does not get any right, title interest from a fraudulent document.

21. Further submit that there is no cause of action for the plaintiff to file the above suit. It is submitted that the alleged agreement of sale is dated 22.9.2015. The plaintiff does not state anywhere in the plaint as to when he requested the defendant No.1 and her husband to execute the sale deed for the first time after the alleged agreement of sale dated 22.9.2015. The plaintiff has made a vague statement that he used to request the defendant No.1 and her husband to execute the sale deed and they kept on postponing the execution of the sale deed. The

plaintiff has deliberately refused to mention the first date as to when he requested the defendant No.1 and her husband to execute the sale deed in respect of the suit schedule property deliberately and intentionally. This is a classic case of clever drafting by the plaintiff to avoid the question of limitation.

22. Further submit that by the time the plaintiff issued a legal notice dated 02.04.2024, the plaintiff's claim had already been time barred. Issuance of legal notice will not give the cause of action for the plaintiff. Therefore, the plaintiff has no cause of action to file the suit. Further, the Hon'ble Apex Court has held that in the case of K.Akbar Ali -vs-K.Umerkhan and others in SLP (Civil No.31844/2018) that clever drafting create an illusive cause of action is not permitted in law. The Court has got inherent power to curtail frivolous and vexatious suits from consuming the Court's valuable time.

23. It is further submitted that in the case of Saban Sudhdeo Sebal and others -vs- Charity Commissioner and others reported in 2004 (3) SCC 137 held that the objective of order 7 Rule 1 CPC is to keep out of Courts irresponsible law

suits. The onus of the Court is to reject the plaint in any suit which either does not make out cause of action or which ex-facie appears to be barred by limitation upon plain reading of the plaint. It is further submitted that in the case of Raghavendra Sharan Singh -vs- Ramprasanna Singh reported in (2019) SCC Online SC 372 has held that trial is not required to be conducted to determine whether the suit is barred by law or not in every case of the law of limitation is not a mixed question of law and facts. Where a plaint ex-facie indicates that it is barred by law, the Court had to exercise its power under Order 7 Rule 1 and reject the plaint.

24. It is further submitted that the above principle is reported in the case of Durga Projects and Infrastructure Pvt.Limited -vs- S.Rajagopal Reddy and others reported in (2019) 4 KCCR 3891. Hence, in view of the above said judgements, the Hon'ble Supreme Court has clearly held that where it is a prima facie barred by law, the Court can reject the plaint under Order 7 Rule 11 CPC. The above decisions of the Hon'ble Apex Court are cleverly applicable to the instant case on hand. Even for the

present suit, the plaintiff does not deliberately and intentionally disclose as to when he requested the defendant No.1 and her husband Rama Durgappa Naik to execute the sale deed in respect of the suit schedule property for the first time after the alleged agreement of sale dated 22.9.2015. This is a clever drafting and creates an illusion regarding the cause of action because the plaintiff merely states that he was requesting the defendant No.1 and her husband to execute the sale deed in respect of the suit schedule property but cleverly avoids mentioning the date when he requested the defendant No.1 and her husband for the first time. In this background, it is humbly prayed that the plaintiff's suit is barred, by limitation and hence this Court has to reject the plaint on this ground alone. Further stated that issuance of the notice in respect of time barred claim is untenable and unsustainable in law. The defendants reiterate that they are in peaceful possession and enjoyment of the above said land and that plaintiff has no right, title or interest in the above said land by virtue of the alleged agreement of sale dated 22.9.2015 and therefore, the demand of plaintiff to furnish the documents as alleged in the notice and execute the registered

sale deed in favour of plaintiff does not arise. That the continuation of the suit would be abuse of process of Court and if this application is allowed, no injustice or hardship will be caused to the plaintiff whereas if this application is rejected, the defendants will be put into great hardship and injury. Hence prayed to allow the application.

25. A plaint can be rejected if it is clearly barred by the law of limitation, but only if this is evidence from the face of the plaint itself without needing to consider the defense and is only permissible for a clear-cut case. If the question of limitation is a mixed question of law and fact, the court cannot reject the plaint at the preliminary state and must allow the suit to proceed to trial. A plaint can be rejected if, by reading the plaint as a whole, it is patently and unequivocally clear that the suit is time barred.

26. In the present suit the plaintiff seeks relief of specific performance of contract. Usually the time limit for registration of sale deed mentioned in agreement of sale. Normally, in case of immovable property there is no presumption that time is the

essence of contract even though the time is stipulated in the agreement. Section 55 of Indian Contract Act, 1872 deals with the effect of failure to perform at a fixed time, in contract in which time is essential. In contract relating to sale of immovable property if time is specified for payment of the sale price but not in regard to the execution of the sale deed, time will become the essence only with reference to payment of sale price but not in regard to execution of the sale deed. Normally in regard to contract relating to sale of immovable properties, time is not considered to be the essence of the contract unless such an intention can be gathered either from the express terms of the contract or implidely from the intention of the parties as expressed by terms of the contract. Hence as in this case the defendant taken contention that the suit is barred by limitation. But the point of limitation is matter of law and fact. Hence the petition cannot be reject on the ground of limitation, hence the application filed by the defendant No.1 is not deserves to be allowed. Hence **point no.1 answered in the Negative.**

27. **Point No.2:** In view of the reasons discussed above this court proceeds to pass the following:

ORDER

I.A No.V filed by the applicant/
defendants under order VII Rule 11(d) of
C.P.C. is hereby dismissed.

(Directly dictated to the stenographer to the computer, corrected and then pronounced by me in the open Court on this the 2nd day of December, 2025)

(Smt. B.S.Rayannawar)
Senior Civil Judge
& Prl. JMFC., Kumta.

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