

**IN THE COURT OF THE SENIOR CIVIL JUDGE, AT
KUNDAPURA.**

Present:- Sri RAJU N.,
B.A., LL.B.,
Senior Civil Judge.
Kundapura.

Dated:- This the 25th day of July 2024.

O.S.9/2024

Parties to the suit:

Plaintiff :

Mr. Viji Paul (57 years)
S/o. Late. E.M. Paulose,
Residing at Baladi,
Amparu Village,
Kavradi post,
Nellikatte,
Kundapura Taluk,
Udupi District.

(Rep. By Advocate Sri P.J.,)

//Vs//

Defendants :1.

Laisamma Joy (55 years)
W/o. Late Joy Abraham,

2. Dom Joy (33 years),

3. Tom Joy (30 years)

4. Tess Joy (28 years)

No.2 to 4 are children of
Mrs. Laisamma Joy,
All are residing at Gorate,

Amparu Village and post,
Nellikatte, Kundapura Taluk,
Udupi District.

(D1 to 4 -Rep. By Advocate Sri. M.P.C.,)

Parties to I.A. No.II :

Applicant : Laisamma Joy and others /Defendants

V/s

Opponent/s : Viji Paul / Plaintiff

1.	Provision under which the application is filed	Order VII Rule 11 R/w Sec.151 of CPC
2.	Relief sought for	Rejection of the Plaintiff
3.	The date on which the application is filed	05-04-2024
4.	Number of the application	I.A. No. II
5.	The date on which the objections are filed by different opponents	25-04-2024
6.	The date on which the orders were passed on the said application	25-07-2024

ORDERS ON I.A.No.II

The said I.A. has been filed by the defendant under order VII Rule 11 r/w section 151 of CPC seeking an order for rejection of the plaint on the ground that suit is filed without being any cause of action.

2. In the memorandum of facts the learned counsel for the defendants stated that the suit is filed plaintiff based on the agreement of mortgage dated 12-03-2021 which was registered in documents No.2964/2020-21 at Shankaranarayana and wherein defendants agreed to pay the loan amount within three years from the date of mortgage with interest at the rate of 12% p.a. but, the suit filed without completion of three years on 26-02-2024 but cause of action occurred only on 12-03-2023. Hence the plaint is liable to be rejected. Accordingly, sought for allow the I.A.No.II.

3. On the other hand the above said I.A.No.II has been opposed by the plaintiff on the ground that the said I.A.No.II is not filed in accordance with Civil Rules of Practice applicable to the maintaining of the interlocutory application. It is further contended that the defendants have to pay borrowed amount with interest at the rate of 12% p.a. According, to the defendants, three years will be lapsed on 12-03-2024 but the present I.A. filed on 30-03-2024 by that time the period of three years already completed. The suit is for recovery of money. That

as precaution measures suit filed within three years. The defendants are liable to pay of Rs.21,71,792/-.

4. It is further contended that plaintiff has got issued notice before before filing of the suit on 31-01-2024 and said notice was posted on 26-02-2024. But the defendants sent belated reply on 17-02-2024. The defendants have filed this application to delay proceedings. Hence, no grounds to sustain the said I.A.No.II. Accordingly, sought for dismissal of the above said I.A.No.II.

5. Heard both the sides. Perused the materials available on record.

6. Now, the following points that arise for my consideration:-

1. Whether the plaint does not disclose the cause of action and hence, plaint is liable to be rejected under VII Rule 11(a) of CPC ?

2. If so, what order?

7. Now my findings on the above points are as follows:-

Point No.1 : In the Negative

Point No.2 : As per final order for the
Following reasons:-

REASONS

8. **Point No.1:** As mentioned above the suit is brought by the plaintiff against defendant No.1 to 4 for the relief of recovery of money Rs.21,75,792/- with interest based on the mortgage agreement dated 12-03-2021. The said mortgage agreement is registered as mentioned above.

9. Now, at this stage, is relevant to refer the clause mortgage agreement at page No.2 stipulated thereon which reads as follows:

“ ಮೇಲೆ ಹೇಳಿದ ಐವೇಜಿಗೆ ವರ್ಷ 1 ಕ್ಕೆ ರೂಪು 12% ರ ಶೇಕಡಾ ಸೆಲೆಯಿಂದ ಬಡ್ಡಿ ಮತ್ತು ಅಸಲುನ್ನು ಈ ಲಾಗ್ಯತು ಮೂರು ವರ್ಷಗಳೊಳಗೆ ಮರು ಪಾವತಿಸಿ, ಆ ಪ್ರಕಾರ ತೆರತಕ್ಕ ಐವೇಜನ್ನು ವಾಯಿದೆಗೆ ಸರಿಯಾಗಿ ತೆರದೇ ಬಾಕಿ ಮಾಡಿಕೊಂಡರೆ ಹಾಗೇ ಬಾಕಿ ಮಾಡಿ ಕೊಂಡ ಐವೇಜಿಗೆ ವೈದೆಯಿಂದ ವಸೂಲುವರಗೆ ಬಡ್ಡಿ ಕೂಡಿಸಿ ತೆರಲಿಕ್ಕೂ ಹಾಗೆ ಅಸಲು ಹಣವನ್ನು ವೈದೆಗೆ ಸರಿಯಾಗಿ ತೆರದೇ ಬಾಕಿ ಮಾಡಿಕೊಂಡರೆ ಆ ಬಗ್ಗೆ ಬಾಕಿ ಇರುವ ಹಣವನ್ನು ಏಕಕಂತಿನಿಂದ ನಿಮಗೆ ನಾವು ತೆತ್ತು ನಮ್ಮ ಖರ್ಚಿನಿಂದ ರಶೀದಿ ಸಮೇತ ಈ ದಸ್ತಾವೇಜುಗಳನ್ನು ವಾಪಾಸು ಪಡೆಯಲಿಕ್ಕೂ ಹಾಗೂ ಅಸಲು ಬಡ್ಡಿ ಹಣಗಳನ್ನು ಇದಕ್ಕೆ ಜವಬ್ದಾರಿ ಮಾಡಿದ ಕೆಳಗೆ ಕಾಣ್ಲೆದ ಆಸ್ತಿಯ ಪ್ರಥಮ ಜವಬ್ದಾರಿಯಿಂದಲೂ, ನಮ್ಮ ಸ್ವಂತ ದೇಹ ಜವಬ್ದಾರಿಯಿಂದಲೂ ಕೂಡ ನಿಮಗೆ ತೆರುವರೇ ನಾವು ವ ನಮ್ಮ ಸಂತತಿ ವಾರೀಸುದಾರ ಪ್ರತಿನಿಧಿಯವರು ಬದ್ಧರಾಗಿರುತ್ತೇವೆ.”

10. The defendants did not dispute the agreement of mortgage as well as creating of charge over the land in

Sy.No.170/2 to an extent of 5.11 acres as security for having borrowed an amount of Rs.16,00,000/-. On going through relevant clause of the mortgage agreement as referred above it makes it very clear that a borrowed amount has be paid within three years with interest at the rate of 12% p.a. the mortgage agreement but no condition the suit has to be brought after lapse of three years from the date of borrowing loan. Moreover as per Article 62 of Indian Limitation Act 1963 suit for recovery of money due under mortgage can be filed soon amount becomes due as stipulated thereon within 12 years. As such it is needless to say that the plaint does not discloses the cause of action since, mortgage agreement itself crystal clear that the defendants have to pay within three years. Therefore, when no specified time is mentioned within three years I am of the clear view that the suit can be filed at any time within three years of mortgage agreement. Hence, I do not find any grounds in the I.A.No.II. Accordingly, the I.A.No.II is liable to be dismissed. Hence, I answered the point No.1 in the negative.

11. **Point No.2:** In view of the above said findings on point No.1, I proceed to pass the following order:-

ORDER

I.A.No.II filed under order VII Rule 11 r/w
section 151 of CPC is dismissed.

(This order dictated to the stenographer transcribed and computerized by her, corrected by me and then pronounced in the open Court on this the 25th day of July 2024)

**(RAJU N.)
Senior Civil Judge,
Kundapura.**