



**IN THE COURT OF THE CIVIL JUDGE & JMFC.,**

**AT: HAGARIBOMMANAHALLI**

DATED THIS THE 2<sup>nd</sup> DAY OF SEPTEMBER 2024

: **PRESENT:**

SRI. **SAYED MOHIUDDIN URF KHAWAJA PEERAN.**, BA. LLB.,(Spl.)  
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI.

**O.S.No.2/2021**

**PLAINTIFF/s** : **Bellakki Ramappa S/o Bheemavva,**  
Aged about : 65 years, Agriculturist,  
R/o: Chintrapalli Village, H.B.Halli Taluk,  
Bellary District.

**Vs**

**DEFENDANTS/s 1): Bellakki Hanumakka D/o Bheemavva,**  
Aged about: 68 years, Agriculturist,  
R/o Chintrapalli, Vallabhapura main road,  
H.B.Halli Taluk, Ballari District.

2): **Bellakki Netravathi D/o Hanumakka,**  
Aged about: 45 years, Coolie, R/o Chintrapalli,  
Vallabhapura main road, H.B.Halli Taluk,  
Ballari District.

3): **Smt.B.P.Meenakshi W/o Pampapati**  
**D/o Bheemavva,**  
Aged about 42 years, Sandur road, Hosapete,  
Ballari District.

4): **C.Mallikarjuna S/o Hanumakka,**  
Aged about 39 years, Coolie, Valmiki  
Bhavana, Kudligi road, H.B.Halli,

H.B.Halli Taluk, Ballari District.

- 5): **Bellakki Manjunatha S/o Hanumakka,**  
Aged about 35 years, Coolie cum  
Agriculturist, R/o Chintrapalli, H.B.Halli,  
H.B.Halli Taluk, Ballari District.
- 6): **Kamakshi W/o Not known D/o Hanumakka,**  
Aged about 31 years, Housewife,  
R/o Chintrapalli, H.B.Halli, H.B.Halli Taluk,  
Ballari District.

### **I.A.No.III**

**APPLICANTS/DEFENDANTS : Bellakki Hanumakka D/o  
Bheemavva and others.**

(Rep.by Sri.**U.K.**, Advocate)

V/s

**RESPONDENT/ PLAINTIFF : Bellakki Ramappa S/o  
Bheemavva,**

(Rep. by Sri.**G.G.**, Advocate)

### **ORDER ON I.A.No.III**

The defendants have filed I.A.No.III under Order 7 Rule 11(a) and (d) of CPC for rejection of plaint.

**2.** In the accompanying memorandum of facts to the said IA, it is stated by the Counsel for the defendants that, the plaintiff has filed the present suit against the defendants for

the relief of declaration of title and permanent injunction with respect of suit schedule property. The plaintiff has seek the declarative relief on the strength of gift deed dated 09.07.1962, but the plaintiff ought to have seek declaration of title within 3 years from the date of execution of the said document. The plaintiff has filed the baseless suit after lapse of more than 58 years, hence suit is barred by law of limitation. The plaintiff has failed to disclose any cause of action for filing the suit in the plaint and the date and events mentioned in the cause of action of the plaint are imaginary, the plaintiff has created the same to file the false suit. Hence they prays to reject the plaint.

**3.** To the said application, the plaintiff has filed objections by denying the entire contentions of the defendants, and further contended that the said application is not maintainable. The reasons assigned in the application and memorandum of facts are false. With an intention to drag on the proceedings the defendants have filed the false application. Hence he prays to dismiss the application.

4. Heard the arguments of both the side and perused the records.

5. The following points arise for my consideration:

1) **Whether the defendants have made out proper grounds for rejecting the plaint U/O.7 Rule 11(a) and (d) of CPC as prayed in the I.A?**

2) **What order?**

6. My answers to the above points are as under:

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

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

### **REASONS**

7. The present suit is filed by the plaintiff against the defendants for the relief of declaration of title and permanent injunction with respect of the suit schedule property. When the case was posted for hearing on I.A.No.II the present application was filed by the defendants along with written statement. Order 7 Rule 11 of CPC provides as under;

**11. Rejection of plaint.— 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 undervalued, 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 returned 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 provisions of rule 9:]**

**[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]**

**8.** According to the defendants, the plaintiff seeking the declaratory relief on the basis of gift deed dated 09.07.1962, and the plaintiff has filed the suit after lapse of more than 58 years of execution of the said gift deed. Hence

suit is barred by law of limitation. I have perused the plaint averments. The plaintiff has filed the present suit against the defendants for the relief of declaration of title and permanent injunction with respect of the suit schedule property. In the plaint para No.3, the plaintiff has contended that he acquired the suit schedule property under gift deed dated 09.07.1962 from his grandmother Bellakki Bheemavva. As per the plaint, the plaintiff not filed the present suit for seeking cancellation of the said gift deed, but the plaintiff has filed this suit for the relief of declaration of title over the suit schedule property. On perusal of the plaint averments it discloses that there is no statement in the plaint to show that the suit is barred by law of limitation.

**9.** The contention of the defendants is that the plaintiff has not discloses the cause of action in the plaint and the date and events mentioned in the cause of action of the plaint are imaginary one and created to file the false suit. As per plaint para No.9 and 12 cause of action for filing the suit to the plaintiff against the defendants occurred in the months of October, November and December of 2020. The

present suit is filed in the year 2021. As per the plaint averments it discloses that the plaintiff has shown the cause of action in his plaint for filing the present suit. In the reported decision **(2020) 7SCC 366 DAHIBEN V/S ARAVINDBHAI KALYANJI BHANUSALI (GAJRA) DEAD THROUGH LEGAL REPRESENTATIVES AND OTHERS.** In *para No.23.10, 23.11, 23.12* the *Hon'ble Supreme Court of India* held as under;

**23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.**

***23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn.Ltd., v M.V.Sea Success /which reads as: (SCC p.562, para 139).***

***“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct***

***in their entirety, a decree would be passed.”***

***23.12. In Hardesh Ores(P) Ltd., v. Hede & Co., the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D.Ramachandra v.R.V.Janakiraman.”***

In the above said decision the Hon'ble Supreme Court of India clearly held that for deciding the application under Order 7 Rule 11 of CPC plea taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant and cannot be averted to or taken into consideration. As stated above the plaintiff contended that the cause of action shown by the plaintiff is imaginary, false and not real. In the above said decision in para No.23.12 the Hon'ble Supreme Court of India clearly held that if the allegations in the plaint prima facie shows a cause of action the Court cannot embark upon an enquiry whether the allegations are true in fact.

10. In the reported decision **2023 SCC OnLine SC 1270 (G. Nagaraj and Another vs. B.P. Mruthunjayanna and Others)** the **Hon'ble Supreme Court of India** in **Para No.6** of the said decision held as under.

*6. The law is well settled. For dealing with an application under Rule 11 of Order VII of CPC, only the averments made in the plaint and the documents produced along with the plaint are required to be seen. The defence of the defendants cannot be even looked into. When the ground pleaded for rejection of the plaint is the absence of cause of action, the Court has to examine the plaint and see whether any cause of action has been disclosed in the plaint.*

As per the above said decisions the relevant fact which need to be looked into for deciding the application under Order 7 Rule 11 are the averments of the plaint only. For considering the application under Order 7 Rule 11 averments in the plaint alone are to be examined and no other extraneous factor can be taken into consideration. Further in the above said decisions of **(G. Nagaraj and Another vs. B.P. Mruthunjayanna and Others)** the **Hon'ble Supreme Court of India** clearly held that for dealing with an application under Order 7 Rule 11 of CPC only the averments made in

the plaint and the documents produced along with the plaint are required to be seen. The defense of the defendant cannot be even looked into. On the basis of above reasons and discussions, I am of the opinion that the present application filed by the defendant is not maintainable, hence same is liable to be dismissed. As such, I answer **Point No.1 in the Negative.**

**11. Point No.2** :- For the aforesaid reasons and discussions made above, I proceed to pass the following:-

### **ORDER**

I.A.No.III filed by the defendants under Order 7 Rule 11(a) and (d) of CPC is hereby dismissed.

*(Dictated to the Stenographer, transcribed and computerized by her, corrected by me, and then pronounced in the open court on this the 2<sup>nd</sup> day of SEPTEMBER 2024.)*

**(SAYED MOHIUDDIN URF KHAWAJA PEERAN)  
CIVIL JUDGE & JMFC., H.B.HALLI.**