

**IN THE COURT OF THE ADDL. CIVIL JUDGE AND
JMFC, INDI.**

-PRESENT-

DEVARAJU H.R.

B.A., LL.B.

Additional Civil Judge & JMFC, Indi.

Dated this the 2nd Day of August, 2023

Original Suit No.92/2023

PLAINTIFF/S:

1. **Dharmaray S/o. Siddanagouda Patil.**

-V/s-

DEFENDANT/S:

1. **V.M. Bhandarkavate,**

I.A.NO.IV

Applicant/s/Defendant/s:

1. **V.M. Bhandarkavate,**
Age : 75 Yrs., Occ : Business,
R/o. Chadachan, Tq: Chadachan,
Dist: Vijayapur and others.

-V/s-

Opponent/Plaintiff/s :

1. **Dharmaray S/o. Siddanagouda Patil.**
Age: 67 Yrs., Occ: Retired,
R/o.Chadachan, Tq:Chadachan,
Dist: Vijayapur.

(By Sri. SVJ Adv., for plaintiff)
(By Sri. MSP, Adv., for Def. No.1 to 17 & 19)
(D-18 dead)

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ORDERS ON I.A.NO.IV

This is an application filed by the defendants No.1 to 17 under order 7 Rule 11(a)(d) R/w. Section 151 of CPC and prays for reject the plaint as barred by law of limitation and lack of cause of action.

2. The Brief facts of the plaintiff and defendants' case are as follows:-

The defendant No.16 in his affidavit annexed to this application has stated that, the plaintiff has filed present suit for permanent injunction against the defendants. The plaintiff has filed present suit on false grounds to mislead the court and to harass these defendants. Hence, suit is not maintainable under law and facts and liable to be dismissed, because suit filed by the plaintiff is barred by law of limitation and no cause of action arose to the plaintiff to file the present

suit, because plaintiff has not been shown in which plots the defendants are constructing the building. The plaintiff has filed the present suit without ownership over the suit schedule properties. Hence suit is not maintainable.

3. The plaintiff is claiming his share in suit schedule property before the Hon'ble Sr. C.J. and JMFC, Indi in OS No.1/2022 which is pending for disposal. Share of the plaintiff has not been decided. Hence, plaintiff is not having any locus standi to file the present suit. The defendants have purchased the plots from the APMC President and Secretary of Chadachan, but plaintiff has not made them as parties to the suit. They are the necessary parties to the suit because originally in the year 1972 APMC President and Secretary of Chadachan have purchased the property and they allotted the plots to the defendants on the strength of registered sale deed.

4. The defendant No.16 further submits that, the plaintiff has attained the age of majority in the year 1986, but till now he is not challenged the sale deed executed in favour of APMC and Secretary Chadachan. He was retired from service in the year 2016, after his retirement also he is not challenging the sale deed. Hence, suit is barred by law of limitation and lack of cause of action, hence he prays for reject the plaint as barred by law of limitation and lack of cause of action.

5. Per contra, the plaintiff has filed objections and contended that defendants have filed the present application to drag on the matter and to defer the hearing on I.A.No.I. Plaintiff in his plaint has referred about the flow of title of the suit property and right of plaintiff over the suit property and he has also discloses that suit filed by him for partition and separate possession. The elder brother alone has executed the sale deed during the minority of the plaintiff, hence permission is required to execute the sale deed as per the

provision of Hindu Minority and Guardianship Act and as well as under Guardian and Wards Act. Hence, sale deed executed by the brother of the plaintiff is void-ab-initio. Hence, the APMC did not acquire any right, title under the sale deed in respect of share of the plaintiff and defendants also have not acquired any rights through registered sale deed. Under Order 7 Rule 11 the court has to perused the averments of the plaint, no objections of the defendant. Hence, application filed by the defendants is not maintainable. Hence, prays for dismiss the application.

6. Heard both sides. Perused the available materials on records.

7. The following points would arise for consideration of this Court is as under:

- 1. Whether the plaint filed by the plaintiff does not disclose the cause of action?**
- 2. Whether the suit appears from the statement in the plaint to be barred by any law?**
- 3. What Order?**

8. My answer to the above points are as follows;

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

Point No:2. **In the Negative**

Point No:3. **As per final order** for the
following:-

REASONS

9. Point No 1:- These points are inter-connected to each other. Hence, they are taken up together for common discussion to avoid repetition of facts and evidence on record.

10. It is the case of the plaintiff that, he has filed suit in OS No.1/2022 for partition and separate possession against the children of his brother with respect to property bearing Sy.No.57/1 of Chadachan village, Chadachan taluka. It is further case of the plaintiff that his father namely Siddanagouda S/o.Dharmaray Patil has purchased the property through registered sale deed dated: 03.05.1957 from Yashawant S/o. Siddanagouda Patil for valid consideration, thereafter his father has divided the

property between his sons namely Malakappa and plaintiff. At the time of partition, plaintiff was minor, hence, his brother Malakappa acted as guardian for him.

11. After re-grant the property, his brother Malakappa had executed the sale deed in favour of APMC Secretary and Chairman of Chadachan. He came to know the said fact in the year 2016. Hence, he has filed suit for partition, the defendants are not parties to the suit hence, he has filed suit for permanent injunction against the defendants restrain them constructing any building in the suit schedule property. It is well settled that while dealing the application Under order 7 Rule 11 of CPC, court has to look into the plaint avements and defence set up by the defendants is not a ground to reject the plaint. In this regard the counsel for the plaintiff Sri. S.V.J has relied on decision of Hon'ble Supreme Court of India arising out of Civil Appeal No.2737/23 wherein the Hon'ble Supreme Court of India has held that while considering the 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 defence of the defendants cannot be looked into reject the plaint.

12. As already stated above, it is the case of the plaintiff that, he is having $\frac{1}{2}$ share over the suit schedule property, to defeat his share his brother Malakappa has sold out the property in favour of Chairman and Secretary of APMC Chadachan. Hence, he has filed suit for partition and separate possession. Meanwhile APMC Chadachan as allotted the sites and granted permission to construct the buildings in the suit schedule properties. Hence, defendants are trying to construct the buildings over the suit schedule properties. Hence, he has filed present suit for permanent injunction. On perusal of the written statement, it appears that the defendants have not denied the filing of the suit and flow of title of the plaintiff. Moreover, plaintiff has filed this suit for the relief of only bare injunction. Hence, to file

suit for permanent injunction, limitation is not ground to grant relief. Further the question is to whether the suit is barred by limitation or not his mixed question of law and fact. Hence, it needs enquiry of both the parties. Limitation would depend upon facts and circumstances of the each case. In case on hand plaintiff is claiming only permanent injunction on the strength of suit filed by him for partition and separate possession. Further as already stated above on perusal of the entire plaint it discloses the cause of action to file the present suit against the defendants when APMC reallocated the property to the defendants and defendants trying to construct building. Hence, without much discussion I hold **point No.1 and 2 in the Negative.**

13. Point No.3:- On above made discussions on points No.1 & 2, this court proceeds to pass following:-

ORDER

***I.A.No.IV filed by the Defendants under
order 7 rule 11 (A) & (D) of CPC is hereby
rejected.***

*(Dictated to Stenographer, transcribed and typed by her, corrected and then
pronounced by me, in the open Court on this the 02nd day of August 2023.)*

(Devaraju H.R.)
Addl Civil Judge and J.M.F.C.,
Indi