



**IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH**

DATED THIS THE 2ND DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MRS JUSTICE K.S.HEMALEKHA
CIVIL REVISION PETITION NO. 100156 OF 2022

BETWEEN:

1. SHRI. G. SRINIVASULU SETTY
S/O LATE G. NARAYANA SETTY,
AGE. 79 YEARS, OCC. BUSINESS,
R/O. WARD NO. 16B, ANANTHAPUR ROAD,
BALLARI-583101.
2. SMT. CHANDRAKALAVATHI, W/O G. SRINIVASULU,
AGE. 75 YEARS, OCC. HOUSEHOLD,
R/O. WARD NO. 16B, ANANTHAPUR ROAD,
BALLARI-583101.

...PETITIONERS

(BY SRI. SABEEL AHMED, ADV.)

AND:

SHRI. RAGHVENDRA SETTY S/O LATE G. NARAYANA SETTY,
AGE. 81 YEARS, OCC. BUSINESS,
R/O. NO.7, NICKELBY, CHARE, MERRYOAKS,
DURHAM, DH1, 3QX, UNITED KINGDOM,
NOW RESIDING AT AGADI MAREPPA COMPOUND,
BALLARI-583101.

...RESPONDENT

(BY SRI. SURESH S. GUNDI, ADV.)

THIS CIVIL REVISION PETITION IS FILED UNDER SECTION 115 OF CPC, PRAYING TO CALL FOR THE RECORDS IN OS NO. 126/2014 (OLD NO. 20/2014) PENDING ON THE FILE OF THE I ADDITIONAL SENIOR CIVIL JUDGE BALLARI AND SET ASIDE THE IMPUGNED ORDER DATED 01.07.2022 PASSED BY THE I ADDITIONAL SENIOR CIVIL JUDGE BALLARI ON IA NO. X IN OS NO. 126/2014 (OLD NO. 20/2014) AND ALLOW THE APPLICATION FILED IN IA NO. X AS PRAYED FOR BY THE PETITIONERS, IN THE INTEREST OF JUSTICE AND EQUITY.



THIS CIVIL REVISION PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The present petition by the defendants assailing the order on I.A. No.X filed by the defendants under Order VII rules 11(a), (b) & (d) read with Section 151 of CPC, whereby, the Trial Court by the impugned order dismissed the application.

2. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

3. The suit was filed seeking declaration that the plaintiff is the absolute owner of the suit schedule property bearing T.S. No.52/16B, Survey Ward No.15, Block No.3 (CMC Ward No.16B) measuring to an extent of 2,412 sq. ft. The cause of action according to the plaintiff arose as stated in paragraph 25 of the plaint.

4. The defendant filed written statement and along with the written statement filed an application in I.A. No.X seeking for rejection of the plaint under Order VII rule



11(a), (b) & (d) read with Section 151 of CPC contending that the suit of the plaintiff is not maintainable and Order VII Rule 11(a) & (b) gets attracted and the suit of the plaintiff needs to be rejected at the threshold as looking into the plaint averments in paragraph Nos.25, 27 & 28.

5. The plaintiff filed objections to the said application inter alia denying the entire averments made in the application. The concerned Judge of the Senior Civil Judge at Ballari by its impugned order, rejected the application filed by the defendants holding that the question of limitation is a mixed question of law and fact and it required full fledged trial. Aggrieved by the rejection of I.A. No.X, the present petition by the defendants.

6. Heard the learned counsel Shri Sabeel Ahmed appearing for the petitioners and the learned counsel Shri Suresh S.Gundi appearing for the respondent.

7. The prime contention of the learned counsel appearing for the petitioners is that a perusal of the plaint



averments would evidence that the suit of the plaintiff is to be dismissed at the threshold, there was no cause of action as is evident from at paragraph Nos.3 and 25 of the plaint and sought for allowing the application and the present petition.

8. Per contra, learned counsel appearing for the respondent justifies the order of the Trial Court and would contend that the question of law is a mixed question of law and facts and the suit of the plaintiff cannot be dismissed at the threshold as rightly held by the Trial Court.

9. Having heard the learned counsel appearing for the petitioners and the respondent, the only point that arise for consideration is:

"Whether the Trial Court was justified in rejecting I.A. No.X filed by the defendants under Order VII Rules 11(a), (b) & (d) read with Section 151 of the CPC in the present facts and circumstances of this case?"



10. In order to answer the point for consideration, the provision of Order VII Rule 11 CPC needs to be considered, which reads 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 written 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 for 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."



11. The guiding principle for deciding the application under Order VII Rule 11 CPC, can be summarize as follows:

- i) To reject the plaint on the ground that the suit is barred by limitation, only the averments have to be referred to and
- ii) To determine whether the suit is barred by limitation, it is necessary to consider whether the plaintiffs have stated the particulars about the cause of action by the plaintiff and the said fact can be established only by a trial.

12. A perusal of the plaint averment which is produced along with the petition would clearly evidence that the petitioner has stated about the cause of action at paragraph No.25 stating that the plaintiff came to Bellary in the year 2014 to attend the marriage, the cause of action has arisen at that point of time.



13. The Apex Court in the case of ***Popat and Kotecha Property Vs. State Bank of India Staff Association***¹ and ***Balasaria Constructions (P) Ltd. Vs. Hanuman Seva Trust and Others***² has held that the disputed question cannot be decided at the time of considering an application under Order VII Rule 11 CPC. Clause (d) of Rule 11 of Order VII applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows the suit is barred by any law in force. The Apex Court held that the question of limitation is a mixed question of law and fact and the suit cannot be dismissed as barred by limitation without framing issue of limitation and taking of evidence.

14. The Apex Court in the case of ***Church of Christ Charitable Trust and Educational Charitable Society Represented by its Chairman vs. Ponniamman Educational Trust Represented by its***

¹ (2005) 7 SCC 510

² (2006) 5 SCC 658



Chairperson/Managing Trustee³ [(2012)8 SCC 706]

relying on the judgment of ***Saleembhai vs. State of Maharashtra [(2003)1 SCC 557]*** at para No.11 has held as under:

"11. This position was explained by this Court in Saleem Bhai vs. State of Maharashtra and Others, (2003) 1 SCC 557, in which, while considering Order VII Rule 11 of the Code, it was held as under:

"9. A perusal of Order VII Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court."

It is clear that in order to consider Order VII Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial Court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the

³ (2012) 8 SCC 706



pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. vs. Ganesh Property (1998) 7 SCC 184 and Mayar (H.K.) Ltd. vs. Vessel M.V. Fortune Express and Others (2006) 3 SCC 100."

15. The application under Order VII Rule 11 CPC has to be decided within four corners of the plaint as held by the Apex Court in the case of **Srihari Hanumandas Totala Vs. Hemant Vithal Kamat⁴**. Plaint is sought to be rejected under (a), (b) and (d) of Rule 11 Order VII stating that plaint does not disclose the cause of action, plaint is undervalued and plaint is barred by law. Referring to the plaint averments, this Court needs to look into whether the Order VII Rule 11 (a), (b) and (d) is applicable to the present facts, paragraph No.25 of the plaint discloses the cause of action corroborated with paragraph No.3 of the plaint, making it evident that Order VII Rule 11 (a) is not applicable, the next ground regarding undervaluation under VII Rule 11 (b) is not applicable as the plaintiff has paid the proper Court fee, regarding plaint being barred by any law,

⁴ (2021) 9 SCC 99



the question of limitation is mixed question of law and fact, which requires evidence. The Trial Court has assessed the entire material on record and has rightly arrived at a conclusion that the question of limitation is a mixed question of law and fact and fulfledged trial needs to be conducted. In the circumstances, the Trial Court was justified in rejecting I.A. No.X filed by the defendants and the point framed for consideration by this Court is answered accordingly and this Court passes the following:

ORDER

- (i) The Civil Revision Petition filed by the defendants is hereby ***dismissed***.
- (ii) The impugned order by the Trial Court stands confirmed.

(Sd/-)
JUDGE

Vnp*
List No.: 1 Sl No.: 44