



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 12TH DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

REGULAR FIRST APPEAL NO. 100247 OF 2024 (DEC)

BETWEEN:

SMT. PRABHAVATI W/O. SURENDRA NAVALLI,
AGE: 80 YEARS, OCC: AGRICULTURIST,
R/O: 165/2, MTS INDUSTRIAL ESTATE,
GOKUL ROAD, HUBBALLI, REP. BY HER
GENERAL POWER OF ATTORNEY HOLDER
SHRI. SURENDRA S/O. SAVANT NAVALLI,
AGE: 84 YEARS, OCC: BUSINESS, R/O: 165/2,
MTS INDUSTRIAL ESTATE, GOKUL ROAD,
HUBBALLI, DIST: DHARWAD-580030.

- APPELLANT

(BY SRI. JAYAKUMAR S. PATIL, SENIOR COUNSEL, FOR
SMT. SUNITHA P. KALASOOR, ADVOCATE)

AND:

- 1 SHRI. SUBASHCHANDRA S/O. TIRKAPPA AKKI,
AGE: 79 YEARS OCC: TAX CONSULTANT,
R/O. MAYURI GARDEN, BEHIND NEW BUS STAND,
GOKUL ROAD, HUBBALLI, DIST: DHARWAD,
PIN CODE-580 030.
- 2 SMT. SUMITRABAI ZATTINGRAY UMACHAGI,
AGE: 76 YEARS, OCC: HOUSEWIFE,
R/O. PLOT NO.4, ARIHANT NAGAR,
KUSGAL ROAD, KESHVAPUR, HUBBALLI,
PIN-580023.
- 3 SHRI. JAYESH S/O. GOPALBHAI PATEL,
AGE: 49 YEARS OCC: BUSINESS, R/O. NO.60,
ASHISH NAGAR, HUBBALLI, PIN-580023.
- 4 SHRI. SACHIN VIJAYKUMAR SHAH,
AGE: 43 YEARS OCC: BUSINESS,
R/O.H.NO.26, SHANTI NAGAR,



VISHVESHWAR NAGAR, HUBBALLI, PIN-580024.

- 5 SHRI. GURUNATH NAGESHRAO DESAI,
AGE: 68 YEARS OCC: BUSINESS,
R/O. COEN ROAD, HUBBALLI. PIN-580020.
- 6 SMT. BABIBEN W/O. BABULAL PATEL,
AGE: 80 YEARS OCC: HOUSEHOLD,
R/O. MADHAVPUR, HUBBALLI, PIN-580031.
- 7 SHRI. RAJU S/O. HARJIVANDAS PATADIA,
AGE: 59 YEARS OCC: BUSINESS,
R/O. ADARSH NAGAR HUABBALLI. PIN-580024.
- 8 SMT. BINDIBEN D/O. BABULAL PATEL,
AFTER MARRIAGE- SMT. BINDIBEN,
W/O. SUBHASH KARVEERSHETTER,
AGE: 50 YRS OCC: HOUSEHOLD WORK,
R/O. MADHAVPUR, HUBBALLI. PIN-58003.
- 9 SHRI. PRAKASH @ PRABHAKAR
GUNDAPANT MUNDAWADKAR,
AGE: 72 YEARS OCC: DOCTOR,
R/O. GOKUL ROAD, HUBBALLI. PIN-580030.
- 10 SHRI. ARUN GUNDAPANT MUNDAWADKAR,
AGE: 69 YEARS OCC: SERVICE,
R/O. GOKUL ROAD, HUBBALLI, PIN-580030.
- SRI. GUNDAPPA ANNAPPA PATRAVALI,
SINCE DECEASED BY HIS LR'S
11. SMT. MALATI W/O. LATE. GUNDAPPA PATRAVALI,
R/O: CHANDRAMA NILAYA, PLOT NO. 29,
HASTINAPUR BADAWANE, KESHWAPUR
HUBBALLI, PIN-580023.
12. BHARTESH S/O. LATE. GUNDAPPA PATRAVALI,
R/O: CHANDRAMA NILAYA PLOT NO. 29,
HASTINAPUR BADAWANE, KESHWAPUR
HUBBALLI, PIN-580023.
13. CHETAN S/O. LATE GUNDAPPA PATRAVALI,



R/O: CHANDRAMA NILAYA, PLOT NO 29,
HASTINAPUR BADAWANE, KESHWAPUR,
HUBBALLI, PIN-580023.

14. SRI. RAGHAVENDRA TAVANAPPA TAVANAPPANAVAR,
AGE: 70 YEARS OCC: LIC AGENT,
R/O. CBT GANESHPET, HUBBALLI, PIN: 580020.
15. SHRI. SUDHIR RAYAPPA JAIN,
AGE: 61 YEARS OCC: SERVICE,
R/O. SHANTI NIVAS, AKSHAY ENCLAVE,
KUSUGAL ROAD, HUBBALLI, PIN-580023.
16. SMT. PADMAVATI,
W/O. DHARMANNA HANAMAKKANAVAR,
AGE: 73 YEARS OCC: HOUSEHOLD, R/O: 35/P591,
NEAR DANESHWARI NAGAR, IIIRD STAGE,
RAJEEV NAGAR, SHIRUR PARK, VIDYA NAGAR,
HUBBALLI, PIN-580031.
17. SHRI. PRAKASH KUBERAPPA NAVLOOR,
AGE: 76 YEARS OCC: NIL,
C/O. VIJAYLAXMI HARDWARES,
MAHAVEER GALLI, HUBBALLI, PIN-580028.
18. SHRI. SURENDRA PARASAPPA BOGAR,
AGE: 65 YEARS OCC: AGRICULTURE,
R/O. VIJAYLAXMI HARDWARES, MAHAVEER GALLI,
HUBBALLI, PIN-580028.
- SHRI. SHEETAL PADMANABHA DHARANEPPANAVAR,
SINCE DECEASED BY HIS LR'S ON SL.NOS.19 AND 21.
19. SHRI. VIJAY PADMANABHA DHARANEPPANAVAR,
AGE: 56 YEARS OCC: ENGINEER,
R/O. HOSUR, HUBBALLI, PIN-580021.
20. SMT. MANJULA W/O. SHEETAL DHARANEPPANAVAR,
AGE: 51 YRS, OCC: HOUSE HOLD,
R/O. HOSUR, HUBBALLI, PIN-580021.

SMT. SHANTABAI PADMANABHA DHARANEPPANAVAR,
SINCE DECEASED BY HER LR'S IN SL.NOS.19 AND 21.



21. SHRI. PADMANABHA SHIVARAYAPPA
DHARANEPPANAVAR, AGE: 82 YEARS OCC: NIL,
R/O: HOSUR, HUBBALLI, PIN-580021.

SHRI. TAVANAPPA TIRAKAPPA ANNIGERI,
SINCE DECEASED BY ITS LR'S.
22. SHOBHA W/O. LATE TAVANAPPA ANNIGERI,
AGE: MAJOR, R/O: TADAS TQ. SHIGGAVI,
DIST. HAVERI, PIN-581 207.
23. TEJAS S/O. LATE TAVANAPPA ANNIGERI,
AGE : MAJOR OCC: NOT KNOWN, R/O: TADAS,
TQ. SHIGGAVI, DIST. HAVERI, PIN-581 207.
24. SANDESH S/O. LATE TAVANAPPA ANNIGERI,
AGE : MAJOR OCC:NOT KNOWN, R/O: TADAS,
TQ. SHIGGAVI, DIST. HAVERI, PIN-581 207.
25. SMT. LEELAVATI D/O. BHIMRAO DESHPANDE,
AGE: MAJOR OCC: SERVICE, R/O: WALVEKAR GALLI,
HUBBALLI, PIN-580020.
26. SHRI. BHAGAVANTHAPPA RAMAPPA PUTTANNAVAR,
AGE: 59 YEARS OCC: AGRICULTURE, R/O: ANNIGERI,
DIST: DHARWAD, PIN-582201.
27. SHRI. DR. MOHAN RAMCHANDRA KADEMANI,
AGE: 59 YEARS OCC: DOCTOR,
R/O. RAMCHANDRA BUILDING, H NO. 95,
NRUPATUNGA PARK, HUBBALLI – 580032.
28. SHRI. RAJESH S/O. LINGARAJ SHEELVANT,
AGE: 35 YRS, OCC: STUDENT, R/O. 31, PATIL LAYOUT,
LINGRAJ NAGAR, HUBBALLI, PIN-580021.
29. SHRI. UDAY BABURAO ROKHADE,
AGE: 54 YRS, OCC: BUSINESS, R/O. OPP: BIG BAZAR,
GOKUL ROAD, HUBBALLI, PIN-580030.
30. CHANDRIKA D/O. GOPALBHAI PATEL,
AFTER MARRIAGE SMT. POOJA W/O. VIPUL GURU,
AGE: 60 YEARS OCC: HOUSE HOLD, R/O. NO. 60,
ADARSH NAGAR, HUBBALLI PIN-580024.
(ALSO RESIDING AT:NARAYANPUR,



AHMEDABAD, GUJARAT STATE.)

- 31 SMT. PADMAJA BAHUBALI YALGI,
AGE:57 YEARS, OCC: HOUSE WIFE,
R/O. VIDYA NAGAR, HUBBALLI, PIN-580021.
- 32 SHRI. HARSHA S/O. BHARATRAJ YALGI,
AGE: 42 YEARS, OCC: BUSINESS, R/O/.PLOT NO.9,
MAHAVIR LAYOUT, KESHWAPUR,
HUBBALLI. PIN-580023.
- 33 SMT. REKHA BHARATRAJ YALGI,
AGE:65 YEARS, OCC: HOUSEHOLD,
R/O. MHB COLONY, CHENNA PET HUBBALLI,
NOW R/O. SHANTI NAGAR, BEHIND CHURCH,
KESHWAPUR, HUBBALLI, PIN-580020.
- 34 SMT. SUREKHA ASHOKKUMAR IAJARI,
AGE:57 YEARS, OCC: HOUSE HOLD,
R/O. MHB COLONY, CHENNA PET,
HUBBALLI, PIN: 580002.
ALSO RESIDING AT:SHANTI NAGAR,
BEHIND CHURCH, KESHWAPUR, HUBBALLI-580023.
- 35 SMT. SHEELAPRABHA DHANYAKUMAR IAJARI,
AGE:57 YEARS OCC: HOUSE HOLD,
R/O.MHB COLONY,CHENNA PET,
HUBBALLI, PIN-580002.
- 36 SHRI. RAMCHANDRA S/O. LAXMANRAO DINAKAR,
AGE:70 YEARS OCC: BUSINESS,
R/O. SILVER TOWN, HUBBALLI, PIN-580030.
- 37 SHRI. SUDHIR ANNASAHEB KUSANALE,
AGE: 76 YEARS OCC: BUSINESS,
R/O 43, KHB COLONY, CHENNA PET,
HUBBALLI, PIN-580024.
- 38 SMT. RAJASHREE W/O. SUDHIR KUSANALE,
AGE: 67 YEARS OCC: HOUSEHOLD,
R/O. 43, KHB COLONY, CHENNA PET,
HUBBALLI, PIN-580024.
- 39 ROOPA D/O. SSNKAPPA ANNIGERI,
AGE: 52 YEARS OCC: BUSINESS,



R/O. 9, JAYA NAGAR, VIDYA NAGAR,
HUBBALLI, PIN 580021.

- 40 SHRI. ARUNKUMAR VARDHAMANAPPA IJARI,
AGE:65 YEARS OCC: BUSINESS,
R/O. DAJIBANPETH, HUBBALLI, PIN-580028.
- 41 SHRI. TIPPANNA SHANKARRAO JADHAV,
AGE: 65 YEARS OCC: BUSINESS,
GOKUL ROAD, HUBBALLI, PIN-580028.
- 42 SMT PADMAVATI W/O. RAMCHANDRA MAYANNAVAR,
AGE: 69 YEARS OCC: HOUSEHOLD,
PAGADI ONI, HUBBALLI, PIN-580020.
- 43 SHRI. DHARANENDRA DEVENDRAPPA PATTANSHETTI,
AGE: 65 YEARS, OCC: BUSINESS,
R/O. KALAGHATGI. PIN-581204.
- 44 SMT. PUSHPAVATI LAXMANGOUDA PATIL,
AGE: 73 YRS, OCC: HOUSEWIFE, R/O. DEVI KRUPA,
VIDYA NAGAR, HUBBALLI, PIN-580031.
- 45 SHRI. SHIVARUDRAPPA ISHWARAPPA HALAKATTI,
AGE: MAJOR, OCC:ENGINEER,
R/O. H. NO.74, MAHALAXMI LAYOUT,
GOKUL ROAD, HUBBALLI, PIN-580030.

- RESPONDENTS

(BY SRI. SUDHINDRA V. KOPPAR, ADVOCATE FOR C/R1;
SRI. K.L. PATIL, ADVOCATE FOR C/R4 AND C/R27;
SRI. S.S. CHALAWADI, ADVOCATE FOR R7)

THIS RFA IS FILED UNDER SECTION 96 OF CPC.,
CHALLENGING THE JUDGMENT AND DECREE PASSED BY THE
SECOND ADDITIONAL SENIOR CIVIL JUDGE, AND JMFC, HUBBALLI
DATED 19.02.2024 IN O.S. NO. 174/2020 & ETC.,

THIS RFA COMING ON FOR ADMISSION, THIS DAY, JUDGMENT
WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA



JUDGMENT

(PER: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR)

Being aggrieved by rejection of plaint in O.S. No. 174/2020 on the file of II Addl. Sr. Civil Judge, Hubballi, the plaintiff has preferred this appeal.

2. The plaintiff brought the suit seeking declaration that sale deeds dated 30.08.1989, 31.08.1989 and 01.09.1989 executed by her in favour of defendants 1 to 6, 8 to 12, 14, 15, 17, 18, 22, 24, 27 to 29, 31 to 42 in respect of certain plots formed in land bearing Sy. No. 165/2 and 174/1+2 (CTS Nos. 4772 and 4773) of Marian Thimmasagar village, Hubballi, Dharwad District as illegal, sham, colourable, null and void, and not binding on her. She also sought declaration that the sale deeds executed by purchasers from her in favour of other defendants as illegal, sham, colourable, null and void, and not binding on her. She sought for another declaration that she be declared absolute owner of the suit properties and for an incidental relief of permanent injunction to restrain the



defendants or anybody claiming under them from disturbing her peaceful possession and enjoyment.

3. Defendants 2, 4, 5, 14, 16, 18, 19, 21, 23, 30, 35, 36, 37, 38 and 39 filed an application under Order VII Rule 11(a) and (d) of Civil Procedure Code seeking to reject the plaint. In the affidavit subjoined with the application, it is stated that the plaintiff has very clearly stated in the plaint that she executed sale deeds on 30.08.1989 and 31.08.1989. Her suit to declare these two sale transactions was filed after lapse of 30 years from the date of registration of the sale deeds and therefore the suit is hopelessly barred by limitation. The cause of action mentioned in the suit is only imaginary. The suit is therefore not only abuse of process of law but also vexatious. In this view, the plaint requires to be rejected.

4. The plaintiff of course objected to the application, but the trial court having gone through the plaint averments arrived at a conclusion that the suit was on the face of it time barred as the sale deeds were of the year 1989. The



trial court also opined that the suit had no cause of action and hence rejected the plaint by passing an order on 19.02.2024. Therefore the plaintiff is before this court.

5. We have heard the arguments of Sri Jayakumar S. Patil, learned senior counsel appearing on behalf of Smt. Sunitha P. Kalasoor, learned counsel for the appellant-plaintiff and Sri K.L. Patil, learned counsel for the respondents-defendants.

6. Sri Jayakumar S. Patil put forward three points during his arguments. The first point was that the plaint states the reasons which made the plaintiff to execute the sale deeds. She never intended to sell the properties to the defendants. She did not receive consideration and did not deliver possession of suit properties to the purchasers. The sale deeds were nominal to see that the lands owned by the plaintiff were not acquired by the Government according to The Urban Land Ceiling and Regulation Act which was in force at that time. The defendants knew the purpose for which the sale deeds were executed. They



should have retransferred the suit properties to the plaintiff after a certain period of time and since they asserted title in themselves, the plaintiff was constrained to seek declaration as the sale deeds were nominal and void ab initio.

6. His second point of argument was that limitation is a mixed question of facts and law. In the circumstances narrated in the plaint, the trial court could have raised an issue with regard to limitation and decided it based on evidence. Rejecting the plaint straight away holding that the suit is time barred is not permitted and therefore the order under challenge suffers from infirmity.

7. His third point of argument was that the application under Order VII Rule 7 of CPC was filed only by some of the defendants, that means the plaint would be saved as against the defendants who did not apply for rejection of plaint. The impugned order has the net effect of rejecting the plaint partially which is not permitted and on this count also the impugned order requires to be set aside.



8. Sri K.L. Patil argued that plain reading of the plaint itself makes it very clear that the plaintiff executed the sale deeds in favour of some of the defendants. It is not her case that sale deeds were obtained by those defendants by misleading or defrauding her. Once sale deeds were registered, they cannot be cancelled on the ground that consideration amount had not been paid to her. In that event remedy was to file a suit for recovering consideration amount. The reliefs that the plaintiff has claimed cannot be granted at all. As it is very clearly stated in the plaint that the plaintiff executed the sale deeds in the year 1989, and if according to her they were nominal and executed without any intention to effect transfer, she should have filed the suit within three years from the date of execution of sale deeds, instead the suit was filed after 30 years. It is very apparent that the suit is time barred. In these set of circumstances it cannot be said that limitation is mixed question of law and facts. Plaint can be straight away rejected without there being need to record evidence on the issue of limitation. So



also, the cause of action shown in the plaint was imaginary and has nothing to do with the other plaint averments. Thus he argued for dismissing the appeal.

9. After hearing both sides, the point that requires to be answered is:

Whether in the premise of the material facts pleaded in the plaint, the suit appears to be apparently time barred and therefore rejection of plaint by the trial court under Order VII Rule 11 does not suffer from infirmity?

10. It is well established proposition that only the plaint averments must be considered to decide the application made under Order VII Rule 11 CPC. The trial court has followed this principle. Now if the plaint is read as a whole what appears is that the plaintiff has given reason for executing the sale deeds on 30.08.1989 and 31.08.1989. She has stated in para 3 of the plaint that the plaintiff received a notice from the State Government under the provisions of Urban Land Ceiling and Regulation Act as she



owned excess urban lands. In order to obviate excess land from being acquired by the Government she made an application under Section 20 of the Urban Land Ceiling and Regulation Act seeking exemption for two acres of land in the suit property. Her application was considered and the government granted exemption by imposing certain conditions. She also applied for permission to transfer the land and the said application was also considered with a condition that she should use the land for industrial purpose. Some other part of the land was sought to be acquired by Karnataka Industrial Area Development Board and an acquisition notification came to be issued in this regard on 15.07.1986. Giving these details, she further pleaded that she made an application to the competent authority to change the land use from industrial to residential. Though in the beginning her request for change of the land use was not considered, later an order was passed on 02.07.1988 permitting the use of the land from industrial purpose to residential purpose with a condition that the land must be sold within one year.



While according sanction the Government passed an anti-dated order and therefore a lot of pressure was mounted on the plaintiff to see that she should sell the land, else she would have lost entire land. It was under these circumstances she decided to sell the land and executed sale deeds on 30.08.1989 and 31.08.1989. But all these sale deeds were executed without consideration and she made it clear to her purchasers that they should convey back all the plots that were purchased from her after some time. She never delivered possession to the purchasers. She stated that she did not transfer any right, title or interest inspite of the fact that the sale deeds were registered. The defendants are also aware that the sale deeds were nominal and that they did not derive any lawful title. This is the gist of the plaint.

11. In the paragraph dealing with cause of action, it is stated that the defendants started claiming their right over the plots in the suit land based on formal sale deeds and started interfering with her peaceful possession. She



stated that the interference occurred in the last week of March, 2020 and again there was an interference in the month of June, 2020 i.e., during lockdown period due to pandemic COVID 19.

12. Given a plain and meaningful reading to the plaint, it undoubtedly manifests that the plaintiff decided to sell the suit land to avoid acquisition of excess land by the Government. She may have given any reason for selling the plots formed in the suit land to some of the defendants as stated above, but she was aware that she was executing the sale deeds. A clear inference can be drawn from the plaint averments that the plaintiff executed the sale deeds on 30.08.1989 and 31.08.1989 consciously and conscientiously. It is not her case that the defendants put pressure on her to execute the sale deeds. It is not her case that the defendants obtained the sale deeds by misrepresentation. And it is not her case that there was fraud in coming into being of the sale deeds. She has clearly stated that because of the Government order she



had to complete the sale transaction within a year and that made her to execute the sale deeds. In para 5 of the plaint she has stated that the Government order created an immense duress situation, and therefore it is evident from this statement that she does not ascribe anything to the defendants that they took undue advantage of such kind of a situation. Execution of sale deed was her voluntary act. In this premise, if according to her the sale deeds were nominal, or even sham without intending to transfer right, title over the suit property, she must have filed the suit within three years according to Article 59 of the Limitation Act. She might have sought the relief of declaration, but the ultimate effect in the event of such a kind of relief being granted is cancellation of the sale deeds which falls within the ambit of Sec. 31 of the Specific Relief Act. Article 59 of the Limitation Act makes it very clear that a suit to cancel or set aside an instrument or decree or for the decision of the contract is to be filed within three years from the day when the facts entitling the plaintiff to have the instrument or decree



cancelled or set aside first becomes known to the plaintiff. In this case, the plaintiff has clearly stated that she executed the sale deeds on two dates, namely 30.08.1989 and 31.08.1989 (in the first prayer another dated 01.09.1989 is also mentioned). She was aware of the fact that she was executing the sale deeds. She cannot refer to any other date except these two dates. Therefore the cause of action arose on the day when she executed the sale deeds if according to her the sale deeds that she executed were nominal. The Urban Land and Regulation Act was repealed on 22.03.1999. At least she could have thought of instituting the suit within three years from the date of repeal. She did not. She filed the suit after 30 years.

13. Question of limitation is not always a mixed question of law and fact. It becomes a mixed question of law and fact only when the facts pleaded are so intricate and complex with regard to date of knowledge of transaction giving rise to cause of action. On the other hand if from



the plaint averments, the date of emergence of cause of action can be apparently and explicitly made out, and if the suit is found to have been filed beyond the prescribed time, the plaint can be rejected under Order VII Rule 11(d) of CPC. In the present case, the cause of action for the plaintiff is to be reckoned from 30.08.1989 and 31.08.1989, and no other date. The cause of action that the plaintiff has pleaded based on the interference is not the real one. At best, those dates may indicate the alleged interference, but for the purpose of granting the main relief of declaration, the limitation has to be reckoned only from 30.08.1989 and 31.08.1989.

14. Sri Jayakumar S. Patil placed reliance on the judgments of the Supreme Court in ***Vineeta Sharma and Rakesh Sharma & Others¹, Mudi Gowdappa Sank Vs. Ram Chandra Ravagouda²*** and ***Kalwa Devadattam and Others Vs. Union of India and Others³***, in support of his argument that a document that comes into

¹ (2020) 9 SCC 1

² (1969) 1 1960 SC 335

³ AIR 1964 SC 880



existence nominally or executed for an ulterior purpose can be set aside. It is to be stated that none of these judgments is applicable in the present situation, for the documents involved in all these three reported judgments were partition deeds executed between or among the members of the joint family. Taking note of the situation that a partition deed had been brought into existence in order to defeat the right of a widow, it was held in the case of ***Mudi Gowdappa*** that the facts show that the partition deed was never acted upon. And in the case of ***Kalwa Devadattam***, the facts indicate that the father effected partition among his sons to defeat the interest of his creditors and to save the property for his sons. There was no real purpose for executing this partition deed. In ***Vineeta Sharma*** also what is held is that if there was no real intention to effect division of the properties, the document evidencing partition was sham or nominal. But in the case on hand, the defendants are not the members of the joint family of the plaintiff. They are all outsiders and purchasers from her. The moment the sale deed is



executed and registered, all rights, title and interest of the transferor are transferred to the transferee. If consideration amount is not paid, sale deeds cannot be declared as null and void, nor they can be cancelled also unless it is made out that sale deeds were obtained fraudulently or by misrepresentation. Remedy available to the transferor is to sue for recovering consideration money. Therefore the judgments that the learned senior counsel relied on can be distinguished on facts.

15. It is true that the application under Order VII Rule 7 was filed by some of the defendants. It is for this reason Sri Jayakumar Patil argued that the impugned order has the effect of partial rejection of the plaint in favour of some of the defendants. On the proposition that partial rejection of plaint is not permitted he has relied on the judgments of the Supreme Court in the case of **D. Ramachandran Vs. R.V. Janakiraman & ors**⁴ and

⁴ (1999) 3 SCC 267



Kum. Geetha Vs. Nanjundaswamy & Ors.⁵. These two judgments are also not applicable here. It is not that all the defendants must seek for rejection of plaint. Even if some of the defendants make such an application and if it is found that plaint is worth rejection for any of the reasons, it inures to the benefit of non applicant defendants.

16. Therefore what we find is that there is no infirmity in the order impugned in this appeal. The trial court has rightly rejected the plaint. Appeal is therefore dismissed with costs.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE**

bvv
LIST NO.: 1 SL NO.: 23

⁵ Civil Appeal No. 7413/2023