



R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF AUGUST, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

REGULAR FIRST APPEAL NO. 460 OF 2017 (PAR)

BETWEEN:

1. M.S.Jagadeesh
Aged about 56 years
S/o late M.C.Someshwar
2. M.S.Narendra
Aged about 60 years
S/o late M.C.Someshwar
3. M.S.Jayadev
Aged about 56 years
S/o late M.C.Someshwar
4. M.S.Udayashankar
Aged about 51 years
S/o late M.C.Someshwar
5. M.S.Guruprasad
Aged about 47 years
6. Smt. M.S.Padma
Aged about 45 years

All are residents of No.28,
1st Cross, New Bamboo Bazar,
Medar Block, Mysore – 570001.

...Appellants

(By Sri Krishnamurthy G. Hasyagar, Advocate)

Digitally signed by
VEERENDRA
KUMAR K M
Location: HIGH
COURT OF
KARNATAKA



AND:

1. B.J.Jayasanthosh
Aged about 30 years
S/o. M.S.Jagadeesh
2. M.A.Harish Kumar
Aged about 45 years
S/o. M.V.Anantha
3. Smt. Lakshmamma
Aged about 64 years
W/o. M.V.Gnaneshwara
4. M.V.Shankar
Aged about 71 years
S/o. M.C.Vaggappa
5. Smt. Bhagyamma
Aged about 59 years
W/o. M.V.Devaraj
6. Smt. M.V.Dinamani
Aged about 60 years
W/o. late C.Shankar
7. Smt. Sharadamma
Aged about 57 years
W/o. M.C.Yellappa
8. M.C.Rajashekhara
Aged about 57 years
S/o. late M.C.Channabasappa
9. M.C.Channakeshava
Aged about 54 years
S/o. late M.C.Channabasappa
10. Smt. M.C.Dakshayini
Aged about 67 years
D/o. late M.C.Channabasappa



W/o. K.Somashekhar

11. Smt. M.C.Haranamma
Aged about 65 years
D/o. late M.C.Channabasappa
W/o. Shekar
12. Smt. M.C.Shanthamma
Aged about 63 years
W/o. Shivanna
13. Smt. M.C.Rajamma
Aged about 59 years
W/o. M.C.Mahadevappa
14. Smt. M.C.Kamakshi
Aged about 56 years
W/o. Vasu
15. Smt. M.C.Bhagya
Aged about 54 years
W/o. Anjana Murthy
16. Smt. M.S.Siddamma
Aged about 74 years
W/o. R.Puttaia,
D/o. M.C.Shivaramu
17. Smt. M.S.Chikkayellamma
Aged about 69 years
W/o. Mahadevappa
D/o. M.C.Shivaramu
18. Smt. M.S.Renuka
Aged about 66 years
W/o. Ramaiah
D/o. M.C.Shivaramu
19. Smt. N.Dakshayini
Aged about 30 years
D/o. S.M.Narasimhamurthy



20. N.Padmavathi
Aged about 32 years
D/o. S.M.Narasimhamurthy

21. N.Namitha
Aged about 30 years
D/o. S.M.Narasimhamurthy

22. N.Supriya
Aged about 28 years
D/o. S.M.Narasimhamurthy

Respondents 1 to 22 can be
served through Shri M.V.Shankar
No.1123, 3rd Main Road,
7th 'A' Cross, 'A' Block,
Kanakadas Nagar, Dattagalli,
Mysore – 570001.

Presently Residing at Door No.2134,
III 'B' Cross, Dattagalli 3rd Stage,
Kanakadasa Nagar, Mysore – 570022.

23. Smt. C.Sailakumari
Aged about 68 years
W/o. DR.C.S.Chandrashekharamurthy
No.352, 14-A Main Road, 2B Cross,
Basaveshwara Nagar,
Bengaluru – 560079.

24. Dr. C.S.Sanjay
Aged about 49 years
W/o. Dr. C.D.Sreenivasa Murthy

25. DR. C.S.Ravishankar
Aged about 43 years
W/o Dr. C.D.Sreenivasa Murthy

Respondents 24 and 25 are
Residing at No 148,



1st Main Road, Yadavagiri,
Mysore – 570020.

...Respondents

(By vide order dated 09/08/2018,
service of notice to R1 to R22 is dispensed with;
Sri S.R.Kamalacharan, Advocate for R23,
R25 and GPA holder of R24)

This RFA is filed under section 96 of CPC against the order dated 2.12.2016 passed in OS No.301/2008 on the file of the I Additional Senior Civil Judge, Mysuru, dismissing the suit for partition and separate possession.

This RFA, coming on for admission, this day, judgment was delivered therein as under:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE UMESH M ADIGA

ORAL JUDGMENT

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

This is an appeal against the order dated 02.12.2016 in O.S.No.301/2008 on the file of I Additional Senior Civil Judge, Mysuru holding the suit not maintainable and rejecting the plaint under Order VII Rule 11(a) of CPC.



2. Shorn of details, the case of the plaintiffs is like this:

One Chikkayallappa was the propositus of the joint family. He had three sons and a daughter by name M.C.Somakka. The plaintiffs are the legal heirs of M.C.Somakka. Chikkayallappa died in the year 1915 and M.C.Somakka died on 24.09.1990, at the age of 77 years. The defendants are the legal heirs of the sons of Chikkayallappa. The plaintiffs claimed partition in the plaint schedule property bearing Municipal Door Nos.222, 223, 224, 232 and 592 situate at Mandi Mohalla, Sayyaji Road, Mysuru, stating that the said property belonged to the joint family and they too have a legitimate share in it. Defendants No.23 to 25 are the persons in whose name the suit property stood at the time when the suit was filed.

3. The defendants No.24 and 25 filed written statement denying the right of Somakka to



inherit the property and thereby the right of the plaintiffs to claim the property. They also pleaded that the suit was time barred.

4. The trial court framed issues. Plaintiff No.1 adduced evidence as PW1. On the day when PW1 was to be cross examined, defendant No.24 filed an application as per I.A.No.15 under Section 151 of CPC to try additional issue No.4 as preliminary issue. This additional issue No.4 pertains to valuation of the suit property and payment of court fee. While deciding I.A.No.15, the trial court judge read the plaint and entertaining a doubt that there was no cause of action for the suit, directed the plaintiffs' advocate to argue on that point. After hearing, the trial court came to conclusion that there was no cause of action for the suit and hence rejected the plaint exercising its power under Order VII Rule 11(a) of CPC.



5. Assailing the order of the trial court, the argument of Sri Krishnamurthy G Hasyagar, learned advocate for the appellant is that the trial court, having framed the issues and commenced recording of evidence, should not have proceeded under Order VII Rule 11 CPC to reject the plaint. Elaborating, he argues that in the given set of circumstances, the maintainability of the suit depended on factual aspects which can only be decided after the oral evidence is recorded. In support of his arguments, he has placed reliance on the judgment of the Supreme Court in the case of ***State of Orissa vs. Klockner and Company and others***¹, of the Division Bench of this court in ***Mr. Jagadish Poonja vs. The South Canara Hotel Complex Pvt. Ltd. and others***² and of the Kerala High Court in ***Anil Kumar vs. Smt. Vijayalakshmi M V and another***³. His another

¹ AIR 1996 SC 2140

² ILR 2016 KAR 31

³ AIR 2007 KERALA 123



submission is that the trial court should not have proceeded to reject the plaint under Order VII Rule 11 CPC without an application being filed by the defendants, and therefore the appeal is to be allowed and matter remanded to trial court for decision on merits.

6. Sri S.R.Kamalacharan, learned counsel for respondents No.23, 25 and GPA holder of respondent No.24 argued for sustaining the order of the trial court by placing reliance on the judgment of the Supreme Court in ***Raghwendra Sharan Singh vs. Ram Prasanna Singh (Dead) by LRs***⁴.

7. Having heard both sides, it can be stated at the outset that there is no legal infirmity in the order impugned in this appeal. Order VII Rule 11 is a provision in CPC which empowers the court to reject the plaint at any stage of the proceeding for

⁴ (2020)16 SCC 601



various reasons enumerated in clauses (a) to (f). Very often clauses (a) and (d) are invoked for rejection of plaint. It is not incorrect to state that it is the duty of the court to reject the plaint the moment it finds that the plaint does not disclose cause of action, or from a statement made in the plaint, the suit is barred by law. Clauses (b), (c), (e) and (f) or Order VII Rule 11 empower the court to reject the plaint, but such a power cannot be exercised at once, for the attention of the plaintiff must be drawn for correcting the valuation or to supply requisite stamp or to file the plaint in duplicate or to comply with the provisions of Rule 9 of Order VII CPC as the case may be. If the plaintiff fails to comply within the time prescribed, the court may proceed to reject the plaint. But the same is not the position if the plaint does not disclose cause of action or the suit appears to be barred by any law. There are plethora of decisions on this point and to maintain the conciseness, it is



not necessary to refer to the decided cases on this point. It may also be stated that the moment the court finds that the plaint does not disclose cause of action or suit is barred by law, it can reject the plaint without expecting an application to be filed by the defendant, ofcourse only after hearing the plaintiff. In this case the trial court has *suo-moto* exercised the power under Order VII Rule 11(a) CPC finding that the plaintiffs had no right to sue.

8. The decisions cited by Sri Krishnamurthy G Hasyagar do not appear to be applicable in the factual context. In the first of the cited judgments i.e., ***Klockner and Company***, the trial court rejected the plaint under Order VII Rule 11 CPC entertaining the application of the first defendant who stated that the plaintiff had no cause of action for the suit. This order was set-aside by the High Court of Orissa and rejected the application of the first defendant. The Supreme Court, while



confirming the order of the High Court, distinguished between the pleas namely 'no cause of action for the suit' and 'the plaint not disclosing cause of action'. It was also found that the plaintiff had pleaded cause of action which was to be determined on the basis of materials (other than plaint) which the parties could produce at an appropriate stage.

9. The Division Bench judgment of this court in ***Jagadish Poonja*** mainly discusses the question as to how an issue relating to limitation is to be decided. The observation of this court are found in Para-29, which is extracted below.

29. When in the plaint the plaintiff specifically avers that the suit is filed within the time of limitation and hence the suit is in time, the Court cannot embark upon an enquiry on an application filed by the defendant under Order 7 Rule 11(d) to find out whether the statement is correct or not and then decide the said issue. The



plaint to be rejected on the ground of bar of limitation under Section 3 what has to be seen is only the plaint averments. If the plaint averments do not disclose that the suit is barred by limitation, then the question of rejecting the plaint under Order 7 Rule 11(d) would not arise. When the defendant raises the plea of bar of limitation, the Court is bound to frame an issue regarding limitation. As the issue regarding limitation cannot be tried as a preliminary issue, the said issue has to be decided after recording of evidence upon all the issues framed in the suit including the issue regarding limitation. It is only thereafter the Court could decide the question whether the suit is barred by the law of limitation. Therefore, the question of the Court going into the question of bar of limitation on an application filed under Order 7 Rule 11(d) CPC would not arise. Rejection of the plaint on the ground that the suit is barred by limitation is ex facie illegal and cannot be sustained. In that view of the matter, the order passed by the Trial Court cannot be sustained.



10. In the judgment of the Kerala High Court in **Anil Kumar** what is held is that though court has an obligation to reject the plaint on any of the grounds provided under Rule 11 of Order VII of CPC, the plaint cannot be rejected merely for the reason that in the opinion of the judge the plaintiff may not succeed. Therefore all these three judgments, in our opinion may not be applicable in the context of the situation before us.

11. In the judgment of the Hon'ble Supreme Court in **Raghwendra Sharan Singh**, cited by the learned counsel for respondents, the question of rejection of plaint on the ground of limitation arose, and having regard to the plaint averments which appeared to have been drafted cleverly to save limitation, the Hon'ble Supreme Court held that the plaint should have been rejected under Order VII Rule 11(d) of CPC.



12. In the case on hand, the rejection of plaint was not on the point of limitation, the trial court has held that the plaintiffs do not have right to sue. The question begging is if the plaintiffs do not have right to sue at all, can the plaint be rejected under Order VII Rule 11(a) of CPC. The answer must be in affirmative. The cause of action indicated in the plaint must be real in the sense on the day when the suit was filed the right to claim relief on the basis of bundle of facts pleaded must be available and must continue to be available to the plaintiffs till the suit is decided on merits. If the plaint averments clearly disclose that right to claim relief is not at all available, the invariable conclusion has to be that plaint does not disclose cause of action which attracts exercise of power under Order VII Rule 11(a) of CPC.

13. Now if the plaint averments in present case are examined, it is found apparently that the



propositus Chikkayallappa died in the year 1915. At that time, the age of the plaintiffs' mother was only 2 years. She died at the age of 77 years on 24.09.1990. In accordance with law as it stood before the Hindu Succession Act 1956 came into force, a female member of the family including daughter was not entitled to claim share in the ancestral joint family property. When Somakka did not succeed to the plaint properties, its wondering how the plaintiffs can claim share in the properties. In between 1915 i.e., the year when Chikkayallappa died and the date of death of M.C.Somakka i.e., 24.09.1990, there were many alienations with respect to the plaint schedule property and as has been stated in the plaint itself, the property became the subject matter of auction sale. Assuming that M.C.Somakka had any right in the properties, the fact remains that she did not challenge. Defendants No.23 and 24 are the legal heirs of the purchaser in the auction sale.



These are the factual aspects that can be culled out from the plaint itself.

14. It is true that the trial court commenced recording of evidence and even without an application from the defendants, the trial court rejected the plaint while deciding an application filed under Section 151 CPC. This exercise of power by the trial court cannot be said to be illegal. As has been clearly enunciated in the classical judgment of the Supreme Court in the case of **Arivandandam vs. T.V.Satyapal and another**⁵, "Nip at the bud" is the rule. In the case on hand meaningful reading of the plaint discloses very clearly that the plaintiffs do not have right to sue which answers the requirement that the plaint does not disclose cause of action. Even though some cause of action is shown in para 23 of the

5. AIR 1977 SC 2421



plaint it is not real. Hence for all these reasons,
the appeal is ***dismissed***.

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

**Sd/-
(UMESH M ADIGA)
JUDGE**

KMV
List No.:1 Sl No.:10