

IN THE COURT OF THE XVI ADDITIONAL CITY CIVIL
AND SESSIONS JUDGE (CCH-12) AT BENGALURU

Dated this the 17th day of April 2023.

PRESENT: Smt. Jyothsna. D, LL.B, LL.M.,
XVI Addl. City Civil & Sessions Judge,
Bengaluru.

ORIGINAL SUIT No.5065/2016

PLAINTIFF: Sri. Shivakumar represented by his
power of Attorney holders

-VERSUS-

DEFENDANTS: The Commissioner, BDA

ORDER ON I.A. NO.7

Applicant/defendant has filed this application under Order VII Rule 11 r/w Sec.151 of CPC seeking rejection of plaint.

2. In the accompanying Affidavit to the above IA, the defendant has stated that, the plaintiff has not approached this court with clean hands. The suit schedule property has already been acquired by the BDA for formation of "Sarakki Layout". The necessary documents are produced along with written statement filed by this defendant. It is further stated that the plaintiff by suppressing these facts, approached this court for the relief of permanent injunction with aillary

reliefs against the defendant. When once the land property is acquired and award is passed by the authority for formation of residential layout, the property is vested in the BDA and any other person claiming any right over the property does not have locus standi to file the suit against the defendant herein. The Hon'ble Supreme Court of India in its ruling reported in **(2013) 3 Supreme Court Cases 66**, also clarified that the civil court does not have jurisdiction to adjudicate the matter relating to acquired property and hence, the suit is not maintainable. The plaint for any relief has to be rejected as not maintainable and is without jurisdiction. It is further stated that this court was pleased to pass orders of vacating status quo, an interim order, on perusal of actual facts urged by this defendant. It is further stated that the BDA has already formed layout as specified in the acquisition proceedings. The plaintiff has already filed suits against this defendant for the sale relief in OS No.855/1997 which came to be dismissed on 19.09.2001 and he has also filed another suit in OS No.6164/2005 against this defendant which came to be

dismissed on 20.10.2012. The plaintiff has filed yet another suit in OS No.3353/2007 and the said suit also came to be dismissed on 03.04.2012. It is further stated that the plaintiff with a malafide intention against the defendant has filed present frivolous suit just to harass the defendant suppressing the real facts. The Plaintiff has also filed W.P.No.1867/2015 (BDA) which was withdrawn as not pressed on 11.01.2018. The plaintiff is unnecessarily filing one or the other suit against the defendant for the same relief which attracts the provision of doctrine of res judicata and therefore, the plaintiff has no locus standi to file the present suit and hence, prayed for rejection of the plaint.

3. The plaintiff has filed objections to the above application, contending that the application ought to have filed by the concerned person in charge of BDA, but the application is filed by the counsel of the defendant, which is not maintainable and the learned counsel has not assigned the correct provision of law and hence, the same is liable to be dismissed. It is further contended that the present application has

been filed only with an intention to harass the Plaintiff and to mislead this court and this court cannot come to a conclusion on the basis of the application filed by the counsel for defendant, but only can come to the conclusion only after the trial of the suit. It is further contended that the defendant authority has acquired the land bearing Sy.No.35/2A situated at Marenahalli Village, Uttarahalli Hobli, Bengaluru south taluk, for the formation of Sarakki Layout, vide its Preliminary Notification No.HMA13 MNJ 1969 dated 18.05.1969 and Final Notification No.HMA19 MNJ 1970 dated 27.05.1970. After coming to know about the acquisition proceedings by the BDA, the deceased plaintiff has given representation to the BDA and after considering the representation, the BDA have denotified the said land in Sy.No.35/2A measuring to an extent of 0.9.05 guntas as per Government Gazette Notification No.UDD/208/MNX/2010 dated 29.06.2010. Since the date of notification made by the BDA, it had not taken possession of the said property and the plaintiffs have continued to be in possession and enjoyment of the schedule property.

It is further contended that after denotifying the property, the BDA authorities have come near the property and made attempts to interfere with the peaceful possession and enjoyment of the suit schedule property and attempted to demolish the existing structures standing on the suit schedule property by dispossessing the Plaintiff. In order to stop the illegal acts of BDA, the Plaintiffs have filed this suit against BDA for the relief of permanent injunction. It is further contended that since the BDA has already denotified the schedule property, the defendant has no right over the plaintiff's property. Hence, the above suit does not come under the res judicata since the cause of action to the suit is different and earlier suits filed by the deceased plaintiff is also different cause of action. It is further contended that the plaintiff has already filed a Writ Petition before the Hon'ble High Court of karnataka in W.P.No.20150/2014 to denotify the plaintiffs property which was acquired by the defendant and the same is still pending adjudication. This court has got ample power to entertain the suit of the plaintiff. It is further contended that the application

is devoid of merits and there is no substance in the same and hence, prayed for dismissal of the application.

4. Heard the arguments. Perused the materials placed on record.

5. On perusal of the pleadings and documents produced, the following points that would arise for consideration of this court are as follows:

1. Whether defendant has made out sufficient grounds to reject the Plaint as per Order VII Rule 11 r/w Sec.151 of CPC , as prayed in the above I.A.?

2. What order?

6. My findings on the above Points are as follows:

Point No.1 -In the Negative

Point No.2 - As per final order,

for the following -

REASONS

7. **Point No.1:** Admittedly, this suit is for permanent injunction against the defendants restraining them or their agents or any other persons claiming through them from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property and also from

demolishing the existing structure standing on the suit schedule property and for other consequential reliefs.

8. This application is filed by the defendant on 27-9-2018 at the stage of defendants' evidence. Though the learned counsel for plaintiff has not come forward to argue on this IA, but furnished 7 citations in support of this IA on 7-3-23. This court had posted the case for orders on this IA with liberty to file written argument of plaintiff's side on 9-1-2023 since the IA was filed in the year 2018 and sufficient opportunity given to the plaintiff's side to argue on the same. In the decisions of Hon'ble Supreme Court in SLA No. 2177/22(H S Deekshith and another vs M/S Metropoli overseas Ltd and others), Civil Appeal No 3500/2018 and Civil Appeal No 5254/2006 before Hon'ble Supreme Court of India, the Hon'ble Apex court has laid down ratio as under:

“ rejection of plaint under Order VII Rule 11 of the CPC is a drastic power conferred on the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order VII Rule 11, therefore, is stringent and has been consistently held to be so by the court. It is the averments in the plaint that has to be read as a whole to find out whether it

discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII Rule 11, the stand of the defendants in written statement or in the application for rejection of plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial."

9. As stated above, this case is for relief of permanent injunction which has recurrent incidents of cause of actions. In this case already plaintiff's evidence commenced and closed. This application is filed at the stage of defendant's evidence which shows there is need of full fledged trial. The case of the plaintiff is he is the absolute owner and in possession and enjoyment of suit schedule property which originally belonged to his father Sri Muniswamy who has purchased the same as per sale deed dated 8-11-1957. As per the documents file by the defendants it can be seen that there is a case previously decided about the possession of the property, but it does not clearly show that the portion of that property is the same as the plaint

schedule property of this case. This application for rejection of plaint filed by defendant under Order VII Rule 11 on 15-9-2017 after the plaintiff's evidence by pointing out that the suit is barred by the doctrine of resjudicata. Regarding this, the defendant has produced the judgment of Hon'ble Supreme Court dated 4-7-2016 in the case of R K Roja vs U S Rayudu and another which says that "an application under Order VII Rule 11 of the CPC can be filed at any stage as held by this court in Sopan Sukhdeon Sable and others vs Assistant Charity Commissioner and others. Therefore this application is maintainable but as per ratio laid down in the landmark case of *Srihari Hanumandas Totala v. Hemant Vithal Kamath and Ors.* (2021), the Supreme Court, while resolving the issue of "*res judicata as a ground of rejection of plaint*" stated that the justification given by the defendants must not be regarded while determining the merits of the application for rejecting a plaint on the ground whether a suit is barred by law or not; thus, only the averments in the plaint must be taken into consideration. Therefore, it is well settled law as

discussed above that while considering an application for rejection of plaint, the plaint averments are to be looked into but not the averments of the written statement even though the application filed under the ground of principle of res-judicata.

10. The main grounds urged by the defendant under Order VII Rule 11 of the CPC for the rejection of plaint in this case is principle of res-judicata and along with this application produced copy of plaint in O S No.855/1997, copy of relevant portion of the order sheet in OS No.6164/2005 and copy of judgment passed in O S No.3353/2007. It is true under Order VII Rule 11 of CPC, it is made clear as to under what circumstances the plaint can be rejected. For a better understanding, order VII rule 11 of CPC is reproduced hereunder:

“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 comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers 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 papers, 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 learned counsel for the defendant argued that this case is not maintainable as it is barred by res-judicata and fit for rejection of plaint. He stated that the suit schedule property has already been acquired by the BDA for formation of "Sarakki Layout'. The necessary documents produced along with written statement are again filed by this defendant in support of this IA. He argued that the plaintiff by suppressing these facts, approached this court for the relief of

permanent injunction with ancillary reliefs against the defendant. When once the land property is acquired and award is passed by the authority for formation of residential layout, then the property is vested in the BDA and any other person claiming any right over the property does not have locus standi to file the suit against the defendant herein. He relied upon the judgment of Hon'ble Supreme Court of India reported in **(2013) 3 Supreme Court Cases 66 Commissioner, BDA and another vs Brijesh Reddy and Another**, also clarified that the civil court does not have jurisdiction to adjudicate the matter relating to acquired property and hence, the suit is not maintainable. But his documents filed along with IA that are the copy of plaint, order sheet and judgment in Os No.855/1997, OS No.6164/2005, OS No.3353/2007 respectively shows that this court has jurisdiction to try this case as the said cases were filed before Civil Courts. It is further stated that the BDA has already formed layout as specified in the acquisition proceedings. The plaintiff has already filed suits against this defendant for the sale relief in OS

No.855/1997 which came to be dismissed on 19.09.2001 and he has also filed another suit in OS No.6164/2005 against this defendant which came to be dismissed on 20.10.2012. The plaintiff has filed yet another suit in OS No.3353/2007 and the said suit also came to be dismissed on 03.04.2012. It is further stated that the plaintiff with a malafide intention against the defendant has filed present frivolous suit just to harass the defendant suppressing the real facts. The Plaintiff has also filed W.P.No.1867/2015 (BDA) which was withdrawn as not pressed on 11.01.2018. But on the other hand, plaintiff has pleaded that the plaintiff has already filed a Writ Petition before the Hon'ble High Court of karnataka in W.P.No.20150/2014 to denotify the plaintiff's property which was acquired by the defendant and the same is still pending adjudication. And on perusal of materials on record at this stage without trial this court cannot conclude that which portion in Survey number 35/2 was acquired by the defendant under process of law and whether the suit schedule property comes under that portion of the property acquired by BDA. As the nature of this suit is

for permanent injunction having mixed question of facts and law. And without a full-fledged trial, this court cannot conclude about receiving of compensation and possession of plaintiff in respect of suit schedule property. Therefore the defendant has not made out prima facie grounds to allow this application. Hence, this court answers point No.1 in the Negative.

12. Point No.2: For the foregoing reasons and discussions and considering the findings on the above point, the I.A filed by the defendant liable to be rejected. Accordingly, this Court proceed to pass the following:

ORDER

The I.A.No.7 filed by the defendant under Order VII Rule 11 of CPC is hereby dismissed.

No order as to cost.

*(Dictated to Judgment Writer on Computer, typed by her, revised by me and after corrections, pronounced in open Court on this the **17th day of April 2023.**)*

(JYOTHSNA.D)

XVI Addl. City Civil & Sessions Judge, Bengaluru.

17.04.2023

Order on IA No.7 pronounced in open Court vide separate detailed order. The operative portion is as hereunder:

The I.A.No.7 filed by the defendant under Order VII Rule 11of CPC is hereby dismissed.

No order as to cost.

XVI Addl. City Civil & Sessions
Judge, Bengaluru