

KABR210009392021



**IN THE COURT OF Prl. SENIOR CIVIL JUDGE &
JMFC, ANEKAL.**

DATED THIS THE 15th DAY OF **October 2024**
PRESENT

Sri. Krishna Raj K., B.A., LL.B.,
Prl. Senior Civil Judge & JMFC.,
Anekal.

O.S No.641 / 2021

- Plaintiff/s:
1. Kumari Sangeetha
D/o Rajappa,
Aged about 21 years.
 2. Kumari Sujatha
D/o Rajappa,
Aged about 20 years.
 3. Kumari Bhavya
D/o Rajappa,
Aged about 16 years.
 4. Master Vinod
S/o Rajappa
Aged about 10 years.

Plaintiff Nos.3 & 4 are Minors
represented by their mother namely
Smt. Venkatalakshmi.

Plaintiffs 1 to 4 are R/at:
No.30, 20th Main,
Rama Temple Road,
Eazipura,
Bengaluru South,
Bengaluru – 47.

(By Sri. M.S.S.K, Adv)

V/s

- Defendant/s:
1. Smt. Papamma
W/o Late Dodda Muniyappa,
Aged about 75 years.
 2. Smt. Jayamma
D/o Late Dodda Muniyappa,
Aged about 62 years.
 3. Sri. Ramaiah
S/o Late Dodda Muniyappa,
Aged about 60 years.
 4. Smt. Sunandamma
D/o Late Dodda Muniyappa,
Aged about 58 years.
 5. Smt. Kanthamma
D/o Late Dodda Muniyappa,
Aged about 55 years.
 6. Smt. Muniyamma
W/o Late Chikka Muniyappa,
Aged about 70 years.
 7. Sri. Pillappa
S/o Late Chikka Muniyappa,
Aged about 54 years.

8. Smt. Shylaja
D/o Pillappa,
Aged about 34 years.
9. Sri. Ravi
S/o Pillappa,
Aged about 31 years.
10. Sri Rajappa
S/o Late Dodda Muniyappa,
Aged about 55 years.
11. Smt. Kanthamma
D/o Late Bolappa,
Aged about 49 years.

Defendant Nos.1 to 11 are
R/at: Thattanahalli Village,
Kasaba Hobli, Anekal Taluk,
Bengaluru Urban District.

12. Sri R. Saravana Kumar
S/o D. Rajanna,
Aged about 45 years.
R/at No.33, 11th Cross,
Sampangirama Nagar,
Bengaluru – 560 027.
13. M/s Southern Logistics
A Partnership Firm,
Having its office at
The Attria No.1,
Palace Road,
Bengaluru – 560 001.

Represented by its partner
Mr. K. Nagaraju.

(By Sri. V.S.K., Adv)

ORDER ON IA.No.3

IA.No.3 is filed by Defendant No.13 U/o 7 Rule 11(a), (b) & (d) R/w. Sec.151 of CPC for rejection of plaint on the ground that the plaint does not disclose cause of action and the suit is barred by limitation.

2. In the accompanying affidavit it is submitted that the father of the plaintiff i.e., defendant No.10 has sold the suit schedule property under registered sale deed dated 19.09.2005 in favour of defendant No.12. The defendant No.10 has alienated the suit schedule property as Kartha of the joint family for the benefit of entire family. The grand father of plaintiffs Late Chikka Muniyappa is also joined to execute the said sale deed. The registered sale deed as a public notice at large about the said transaction. Since the father and grand father of the plaintiffs have executed the sale deed in the year 2005 itself, the plaintiffs have no cause of action to file the present suit and the suit of the plaintiffs is barred by limitation. It is further contended that, the suit schedule property has been converted for industrial purposes under order dated 14.10.2008 in proceedings No.ALN(A)(K & A)

SR:255/06-07 by the Special Deputy Commissioner. Therefore the Court fee paid by the plaintiffs is insufficient. Hence the suit of the plaintiffs is liable to be rejected U/o.7 Rule 11 of CPC.

3. Despite giving sufficient opportunity the plaintiffs have not filed any objections to the above application.

4. Heard the arguments of learned counsel for the defendant No.13.

5. Despite giving sufficient opportunity the learned counsel for the plaintiffs did not submit his arguments. Hence the arguments of the plaintiffs is taken as nil.

6. The points that would arise for consideration of this court are;

POINTS

1. Whether the defendant No.13 has made out sufficient grounds to reject the plaint U/o 7 Rule 11 of CPC ?

2. What order or decree ?

7. My findings on the above points are as under;

Point No.1 : In the Negative,

Point No.2 : As per the final order
for the following:

R E A S O N S

8. **Point No.1:-** It is the specific case of the plaintiffs that the suit schedule property bearing Sy.No.61 measuring 3 acre 10 guntas situated at Thattanahalli Village, Kasaba Hobli, Anekal Taluk, Bangalore Urban District is their ancestral joint family property. One late Muthappa is the common ancestor of plaintiffs and defendants 1 to 11. The said late Muthappa and his wife namely Smt. Pillamma died leaving behind their 3 children namely Dodda Muniyappa-died, Chikka Muniyappa-died, and Bolappa-died. Dodda Muniyappa died leaving behind his wife Smt. Papamma -defendant No.1, and 4 children namely Jayamma – defendant No.2, Ramaiah – defendant No.3, Sunandamma – defendant No.4 and Smt. Kanthamma – defendant No.5. Chikka Muniyappa also died leaving behind his wife namely Muniyamma – defendant No.6, and 2 children namely Pillappa -defendant No.7, Rajappa – defendant No.10. The defendants 8 & 9 are the children of Pillappa. The plaintiffs 1 to 4 are the children of Rajappa -defendant No.10. Bolappa and his wife died leaving behind their only daughter namely Kanthamma -defendant No.11. Originally the suit schedule property was purchased by one Muthappa who is the common ancestor of plaintiffs and defendants 1 to 11 and his sons namely Dodda Muniyappa,

Chikka Muniyappa and Bolappa under 4 registered sale deeds on behalf of the joint family of the plaintiffs and defendants No.1 to 11. Subsequently after purchase, the katha and other revenue documents are also duly mutated in the name of late Muthappa and his sons under M.R. No.1/1984-85, 3/1984/85, 3/1984-85 by the concerned revenue authorities. Subsequently after the death of said late Muthappa and Dodda Muniyappa, Chikka Muniyappa, and Bolappa, the plaintiffs and defendants 1 to 11 inherited the suit schedule property as his class-1 legal heirs. As such the suit schedule property is the ancestral and joint family properties of plaintiff and defendants 1 to 11 and they are in joint possession and enjoyment of the suit schedule property as Hindu undivided joint family members. Till today there is no partition in between the plaintiff and defendants 1 to 11. The plaintiffs are entitled for their legitimate 1/5 share out of 1/3 share in the suit schedule property. Such being the facts and circumstances, since from some time, the defendants 1 to 11 by colluding with each other are acting detrimental to the interest of the plaintiffs and trying to misuse and mismanage the suit schedule property with a malafide intention to defraud the plaintiffs. As such on 05.02.2021 the plaintiffs questioned the illegal acts of the defendants 1 to 11 and requested them to effect partition and to allot their legitimate

share in the suit schedule property. The defendants 1 to 11 refused to effect partition and to allot their legitimate share in the suit schedule property, and for the first time proclaimed that the suit schedule property was already alienated in favour of some third parties. Immediately the plaintiffs obtained all the relevant documents in respect of the suit schedule property and came to know the illegal acts of the defendants.

9. On perusal of documents, the plaintiffs came to know that late Dodda Muniyappa, late Chikka Muniyappa and the defendant Nos.3, 5, 7 to 11 who has no exclusive right, title and interest over the suit schedule property has illegally executed registered sale deed dated 19.09.2005 in favour of defendant No.12. In turn the defendant No.12 has illegally executed registered sale deed dated 01.12.2008 in favour of defendant No.13 in respect of portion of the suit schedule property without the consent and knowledge of the plaintiffs and behind the back of the plaintiffs. All the said alleged sale transactions are taken place without the consent and knowledge of the plaintiffs and behind the back of the plaintiffs. Those sale deeds executed in favour of defendant Nos.12 & 13 are not binding on the plaintiffs. The plaintiffs are entitle to 1/5th share in the suit schedule properties by partition and separate possession. The sale deeds

dated 19.09.2005 and 01.12.2008 are null and void and not binding on the plaintiffs.

10. On service of suit summons the defendant No.13 has appeared and filed his written statement. The defendant No.13 contended that the northern portion of Sy.No.61 measuring 1 acre 30 guntas was converted from agricultural use to non-agricultural industrial purposes vide order dated 14.10.2008 bearing No.ALN(A)(K & A) SR:255/06-07 by the Special Deputy Commissioner, Bangalore. Under such circumstances, the Court fee paid by the plaintiffs is insufficient and on this ground the suit of the plaintiffs is liable to be rejected. It is further contended that the father of the plaintiffs i.e., defendant No.10 along with their grand father late Chikka Muniyappa have executed registered sale deed dated 19.09.2005 in favour of defendant No.12 with respect to the suit schedule property. The present suit filed by the plaintiffs is barred by limitation. The defendant No.12 after purchasing the said property converted the northern portion to the extent of 1 acre 30 guntas for industrial purposes and thereafter the defendant No.12 has executed registered sale deed dated 01.12.2008 in favour of defendant No.13. The defendant No.13 has purchased the remaining extent of the suit schedule property under registered sale deed dated 31.01.2022. The alienation was

made for the benefit of joint family and the plaintiffs were minors at the time of execution of the sale deed. The present suit filed by the plaintiffs after lapse of several years is barred by limitation.

11. In support of the case of the plaintiffs, the plaintiffs have produced genealogical tree, RTC extract, mutation extract, encumbrance certificate and copy of the sale deeds. On the other hand, the defendants have not produced any documentary evidence to substantiate their contention.

12. The learned counsel for the defendant No.13 argued that the suit of the plaintiffs is hopelessly barred by limitation and they are challenging the sale deed, which was executed in the year 2015. The vexatious suit shall be nipped in the bud. The Court fee paid by the plaintiffs is insufficient. The suit schedule property has been converted for industrial purposes. The plaintiffs ought to have paid the Court fee on the actual market value of the suit schedule property. In support of the above arguments the learned counsel for defendant No.13 relied on the decisions **1. Dahiben v. Arvindbhai Kalyanji Bhanusali reported in (2020) & SCC 366, 2. T. Arivandandam v. T.V. Satyapal reported in (1997) 4 SCC 467, 3. Dalip Singh v. State of U.P reported in (2010) 2 SCC 114, 4. S.P. Chengalvaraya Naidu v. Jagannath (1994) 1 SCC 1, 5. Beereddy Dasaratharami Reddy v. V. Manjunath**

reported in (2021) 19 SCC 263, 6. Sri Narayan Bal v. Sridhar Sutar reported in (1996) 8 SCC 54, 7. M.R. Vinoda v. M.S. Susheelamma reported in (2021) 20 SCC 180, 8. G. Nagaraju v. Ramesh reported in 2023 SCC OnLine Karnataka 19.

13. Despite giving sufficient opportunity the plaintiffs have not submitted their arguments. In the light of the argument advanced by the learned counsel for defendant No.13, I have perused the entire material on record. The plaintiffs have filed suit for partition and separate possession contending that the suit schedule property is their ancestral joint family property and there was no partition with respect to the suit schedule property. The plaintiffs further contended that the defendant No.10 who is the father of the plaintiffs along with Dodda Muniyappa and Chikka Muniyappa have executed registered sale deed dated 19.09.2005 in favour of defendant No.12. In turn the defendant No.12 has executed registered sale deed dated 01.12.2008 in favour of defendant No.13. Since the suit schedule property is their ancestral joint family property, the said Dodda Muniyappa and Chikka Muniyappa including the defendant No.10 have no exclusive right to alienate the suit schedule property and the alienation was not for the legal necessities. The plaintiff No.1 is aged about 21 years, plaintiff No.2 is aged about 20 years,

plaintiff No.3 is aged about 16 years and plaintiff No.4 is aged about 10 years. The plaintiff Nos.3 & 4 being minors represented by their mother Smt. Venkatalakshmi. The contention of the defendant No.13 is that the suit is barred by limitation. It is contended that the alienation that had taken place in the year 2005 and the present suit is filed in the year 2021. Therefore the suit is barred by limitation.

14. On perusal of the pleadings in the plaint it appears that the contention of the plaintiff is that the suit schedule property is their ancestral joint family property, such being the case, the defendant No.10 including the grand father of the plaintiff have no exclusive right to alienate the suit schedule property and the alienation was not for the legal necessities. Under such circumstances, the question that whether the suit schedule property is their ancestral joint family property or not and whether the alienation was for family legal necessity or not will have to be decided only after full pledged trial. The said disputed question of fact cannot be adjudicated at this pre-trial stage. Further the plaintiffs have filed the above suit immediately after attaining the majority. Some of the plaintiffs are yet to be minors.

15. The plaintiffs in para No.8 pleaded that recently the they came to know about the execution of the sale deed dated

19.05.2005. Under such circumstances, the question of limitation is purely a mixed question of law and fact. Opportunity should be given to the plaintiffs to show that they are not aware about the execution of the said sale deed. The plaint cannot be rejected on the basis of mixed question of law and fact. Since the plaintiffs are minors and some of the plaintiffs have attained the age of majority and immediately after attaining the age of majority they have filed the present suit. Under such circumstances, the ratio laid down by the Hon'ble Apex Court in Dahiben's case and the decision of Hon'ble Apex Court in T. Arivandandam's case referred supra, are distinguishable and not applicable to the case on hand. There is no dispute regarding the proposition laid down in the other decisions relied by the learned counsel for the defendant No.13. However those decisions are distinguishable from the fact and circumstances of the present case. It is well settled principle of law that will considering the application U/o.7 Rule 11 of CPC the averments of the plaint alone to be taken into consideration. On perusal of the plaint averment, it discloses the cause of action to the plaintiffs to file the above suit. The question of limitation is to be adjudicated after full pledged trial.

16. The defendant No.13 contended that the Court fee paid by the plaintiffs is in sufficient. The valuation slip annexed to the

plaint shows that the plaintiffs have valued the suit U/Sec.35 (2) of Karnataka Court fees and Suits Valuation Act and paid Court fee of Rs.200/-. The plaintiffs have valued the suit at Rs.16,00,000/- for the purpose of jurisdiction and paid Court of Rs.200/-. The plaintiffs have pleaded that they are in joint possession and enjoyment of the suit schedule property. As per the averments of the plaint it is evident that the plaintiffs were not ousted from the suit schedule property. In order to determine the payment of Court fee, the averments of the plaint is to be taken into consideration. The contentions of the defendant that they have converted the suit schedule properties for industrial purposes and the plaintiffs are not in joint possessions of the suit schedule property is not a ground to insist that the plaintiffs to pay the Court fee U/Sec.35(1) of Karnataka Court Fee and Suit Valuation Act. Therefore the contentions urged by the defendant No.13 regarding the rejection of plaint on the ground of none payment of sufficient Court fee is not acceptable. Hence the defendant No.13 is failed to make out sufficient grounds to reject the plaint U/o.7 Rule 11 (a), (b) & (d) of CPC. Accordingly, Point No.1 is answered in the ***Negative***.

17. **Point No.2:-** In view of my findings on the above points, I proceed to pass the following order ;

ORDER

**IA.No.3 filed by the defendant No.13 U/o 7
Rule 11(a), (b) & (d) R/w. Sec.151 of CPC is
hereby rejected.**

(Dictated to the stenographer, transcribed by her corrected and the
pronounced by me in open court, on this the *15th day of October 2024*).

**(Krishna Raj K.,)
Prl. Senior Civil Judge & JMFC.,
Anekal.**