

**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE & J.M.F.C., AT DEVANAHALLI.**

PRESENT

**Sri. PATIL HARISH RANGANAGOWDA,
B.A., LL.B.(Hon's)**

Addl. Senior Civil Judge & J.M.F.C.
Devanahalli.

Dated this day of 22nd June, 2022.

O.S.No.24/2009

Smt. Ashwathamma & Others : **Plaintiffs**

(Pltfs. - By Sri. H.G.N.,
Advocate)

- V/s. -

Smt. Seethamma & Others : **Defendants**

(D1 & 2 - By Sri.
D.V.C.R., Advocate)
(D3(a) - By Sri. V.C.,
Advocate)
(D3(b) - Exparte)
(D3(c & d) - Absent)

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ORDER ON I.A. FILED UNDER ORDER 7 RULE
11 (A), (b) AND (D) OF C.P.C.

The defendant No.3(a to d) have filed this I.A. under order 7 Rule 11 (a), (b) & (d) of C.P.C seeking to reject the plaint as it is barred by law by of limitation and want of cause of action. Before proceeding with the instant application, it would appropriate to narrate the facts.

2. **Facts of the case are unfurled hereunder :**

It is pleaded by the Plaintiffs that the suit schedule property they themselves and defendants constitute Hindu undivided joint family and suit schedule properties are joint family properties of themselves and defendants. According to them one Akkayamma and Nanjappa were the original propositus died leaving behind three daughters namely Nagamma, Nanjamma and Lakshamma. They are the daughters of said Nanjamma. The defendants are the daughters of said Nagamma. The 3rd daughter Lakshamma died without any issues. The said Akkayamma and Nanjappa died leaving behind them and defendants to succeed the properties. Accordingly they succeeded the property. The request made by them to effect Partition and Separate Possession has been turn down by the defendants. Hence they approached this court.

3. The defendant No.2 filed Written Statement by admitting the claim over suit property and other properties mentioned in the statement. The defendant No.1 did not choose

to appear. The legal heirs of defendant No.3 appeared and filed this application seeking rejection of plaint.

4. The defendants No.3(a to d) have contended that the said Akkayamma bequeathed the properties under registered Will Deed dated 22-05-1959 in favour of her daughter Lakshmiddevamma and Nanjamma and her grandson Nagaraj bequeathing property bearing Sy.No.117/3. The suit schedule properties also bequeathed in favour of said Nagaraj. The revenue records carried the name of said beneficiary of Will. The said Lakshmiddevamma sold her property bearing Sy.No.117/3 in favour of Nanjundappa. The said has been in turn sold in favour of Chikkanna S/o Papanna. The plaintiffs have filed this suit by suppressing the said transactions made by Akkayamma. Therefore the suit is barred under proviso to Section 6 of Hindu Succession Amendment Act 2005. Therefore the said dispossession's are saved by virtue of said provision. Therefore they seek to reject the plaint.

5. Heard both the counsel on record. Having heard both the sides and having perused the material on record, following points would arise for my consideration :

1. Whether the defendant No.3 (a to d) make out a ground to reject the plaint?
2. What order?

6. **Having heard the counsel on record my findings to above points is as under :**

Point No.1 : **In the Negative,**

Point No.2 : **As per final Order for the following :**

REASONS

7. **Point No.1** : The defendants seek to reject the plaint on the ground that the suit is barred by law of limitation and it also bad for want of cause of action. They pressed into service about the Will executed by said Akkayamma in favour of his two daughters and grandson. The question before court is as to whether the said Will can be taken into consideration at this stage to hold that the plaintiffs have no cause to maintain the suit. In my opinion the said factum of Will cannot be considered at this stage to thrown out the plaintiffs. The defendants have to prove the said factum of Will by resorting to evidence. This court has already framed issues in regard to said Will. Therefore it is well settled law that while considering the issue of existence or non existence of cause of action the plaint averments are germane. Therefore the question of consideration of said Will at this stage does not arise at all. Therefore reserving liberty to the parties to address the same in the trail I hold that the defendant No.3(a to d) failed to make out ground to reject the plaint. The issue of limitation is also mixed question of law and fact which cannot be conveniently applied at this stage. The defendant No.3(a to d) have pressed

into service about the proviso to Section 6 of Hindu Succession Amendment Act of 2005 which saves the dispossession of property by way of testamentary instrument. In the instant case the capacity of said Akkayamma in executing Will Deed has to be considered. Therefore the said proviso fails to aid the defendants at this stage to seek rejection of plaint. **Hence I hold above point in the Negative.**

8. **Point No.2** : In the light of aforesaid finding on the above said point, I proceed to pass the following :

ORDER

The application filed by defendants under order 7 Rule 11(a), (b) and (d) of C.P.C is hereby rejected.

The case is posted for plaintiff evidence.

Call on: 04-08-2022 for plaintiff evidence.

(Dictated to the Typist directly on computer, same is corrected and then pronounced by me in the open court on this the 22nd day of June, 2022).

**(PATIL HARISH RANGANAGOWDA)
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.**