



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

PRESENT

SRI. PRAVEEN NAYAK, LLM.,
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.

Dated this day of 11th June, 2024.

O.S.No.686/2019

Smt. Parvathamma & Others : **Plaintiffs**

(Plts. - By Sri. M.R.T.,
Advocate)

- V/s. -

Sri. B. Muniyappa & Others : **Defendants**

(Def.1 - By Sri. A.N.,
Advocate)
(Def.2 - By Sri. A.Y.A.,
Advocate)
(Def.6 & 7 - Exparte)
Def.3 to 5 - -----

**_*_

ORDER ON I.A. No.VI



The defendant No.2 filed the instant application U/o.VII Rule 11 (a) and (d) R/w.Sec. 151 of C.P.C, seeking rejection of plaint for want of cause of action and the suit is barred by law of limitation.

2. In the affidavit, the defendant No.2 has stated that the plaintiffs have filed present suit for the relief of Partition and Separate Possession against the defendants. Now, the matter is posted for service of summons to the other defendants. The suit properties have been already partitioned between the defendants No.1 and 2 as per registered partition deed dated 04.04.1996. As per the partition, 'A' schedule properties were allotted to the defendant No.1 and 'B' schedule properties were allotted to defendant No.2. The defendants No.1 and 2 have been in possession and enjoyment of their respective shares as per the partition by entering their names in the revenue documents. There is no joint family in existence as claimed by the plaintiff and all the properties have been already partitioned. Accordingly, there is no cause of action to file the suit. The present suit has been filed in the year 2019, but registered partition effected on 04.04.1996 and the suit is clearly barred by limitation. The plaintiffs ought to have filed the present suit within 3 years from the date of registered partition and the present suit came to be filed after laps of 22 years. It is settled law that as per amended Hindu Succession



Act any alienation or partition made prior to 20.12.2004 is saved. Hence, prayed to allow the application.

3. The counsel for plaintiff filed objection to the present application by reiterating the plaint averments. It is further contended that the suit is filed within the period of limitation and there is cause of action to file the suit. The present application is not maintainable under law. Hence, prayed to rejected the application with cost.

4. **The brief averments of the Plaint are as follows:-**

The original plaintiffs have filed the present suit in respect of suit schedule properties seeking partition and separate possession and also the relief of declaration in respect of various documents. It is the case of the plaintiffs that one G. Bachappa was the kartha of the joint family. He had 4 children by name Muniyappa, Jeyappa, Lakshamma and Parvathamma. The sons of Bachappa are the defendants No.1 and 2 herein. The plaintiff No.1 is a daughter of Bachappa. Lakshamma died leaving behind the plaintiffs No.2 and 3. The plaintiffs and the defendants No.1 to 3 are the absolute owners in physical and exclusive possession and enjoyment of the suit schedule properties. The plaintiffs and the defendants No.1 and 2 are the members of Hindu joint family. The plaintiffs have narrated the manner in which



the suit item No.1 to 24 have been acquired. The plaintiffs have further submitted that the suit schedule properties are originally acquired by the father of the plaintiff No.1 and defendants No.1 and 2 and the same are either self-acquired properties or ancestral properties. As per the RTCs, it is clear that some of the suit schedule properties have been acquired by G. Bachappa and the same are his self-acquired properties and the remaining properties are acquired by him through his father. The plaintiffs have stated about acquisition of suit item No.23 and 24 by Bachappa through registered Sale Deed dated 30.06.1968. They have narrated about the partition effected between the defendants No.1 and 2 on 04.04.1996 and the subsequent transactions in respect of the suit schedule properties. The plaintiffs have stated that the cause of action to file the suit arose on 15.10.2018, when the defendants No.1 and 2 refused to effect partition. Hence, the suit.

5. Heard both sides.

6. **The following points would arise for my consideration:**

1. Whether the defendant No.2 has made out grounds for rejection of plaint ?
2. What order?



7. **My findings on above points are as under:**

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

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

REASONS

8. **Point No.1:-** The defendant No.2 has sought for rejection of plaint mainly on following grounds:

- a. There is no cause of action to file the suit.
- b. The suit is barred by limitation as the same came to be filed in the year 2019 after laps of 22 years from the date of registered partition effected between the defendants No.1 and 2.
- c. As per the recent amendment to the Hindu Succession Act any alienation or partition made prior to 20.12.2004 is saved and the present suit is clearly barred by law.



9. It is trite to mention here that while considering the application filed under Order 7 Rule 11 of C.P.C. the court need to look into the plaint averments alone. It is also trite law that the averments of Written Statement are irrelevant in considering the issue of rejection of plaint. Therefore, the claim of defendants in seeking rejection of plaint has to be considered in the light of said settled law.

10. The present suit has been filed by the plaintiffs against the defendants seeking Partition and Separate Possession of their share in the suit schedule properties. They have also sought for the relief of declaration in respect of the partition deed dated 04.04.1996 and subsequent transaction. It is trite law that while deciding an application for rejection of plaint the court has to look into the plaint and plaint documents only. The defence taken by the defendants is immaterial. In view of the same the court has to read the plaint in whole to see whether there is any cause of action to file the suit. The learned counsel for the defendant No.2 has argued that there is no cause of action to file the suit as the partition has been effected on 04.04.1996 between the defendants No.1 and 2 and the same has been acted upon. The plaintiffs have no right to claim that there is a joint family in existence. The suit properties are not available for partition. In view of the said contention on going through the plaint averments, it is clear that the plaintiffs themselves



have stated that they and the defendants No.1 and 2 together constitute a joint Hindu family. In Para No.9 of the plaint they have admitted that a registered partition has been effected between the defendants No.1 and 2 on 04.04.1996. However, on further reading of the plaint, in para No.5, the plaintiffs have clearly stated that as per the RTCs some of the suit properties are the self-acquired properties of G. Bachappa, the father of the plaintiff No.1 and the remaining properties were acquired by him through his father. It gives an inference that as per the plaintiff some of the suit schedule properties are self-acquired properties of Bachappa, which falls U/Sec.8 of Hindu Succession Act. The remaining properties are ancestral properties and the same falls U/Sec.6 of Hindu Succession Act. The heavy burden is cast upon the plaintiffs to establish the same by producing the materials before this court. However, in order to decide these aspects the court has to frame issues and give an opportunity to the plaintiffs to establish the same. Under such circumstances, it cannot be held that there is no cause of action to file the suit. The counsel defendant No.2 has vehemently argued that the suit is barred by limitation. It is settled law that limitation is a mixed question of law and fact and the same can be decided after full-fledged trial. It is the contention of the defendant No.2 that the partition effected in the year 1996 and the present suit came to be filed after laps of more-than 22 years. The counsel for defendant No.2



has further argued that the partition effected in the year 1996 and as per amendment to section 6 of Hindu Succession Act any partition took place prior to 20.12.2004 are saved. It is pertinent to note here that as observed supra the plaintiffs have pleaded in para No.5 of the plaint that some of the suit schedule properties are self-acquired properties of Bachappa and the remaining properties were acquired by him through his father. Under such circumstances, section 6 and section 8 of Hindu Succession Act comes into effect. It is settled law that partial rejection of plaint is not permissible. Thus, the court cannot reject the plaint in respect of some of the suit schedule properties.

11. The learned counsel for the defendant No.1 produced the following decisions:

1. (1997) 4 SCC 467
2. ILR 2022 KAR 2231
3. CRP No.180/2016 before Hon'ble High Court of Karnataka.
4. ILR 2019 KAR 4739

12. I have gone through the above decisions with due respect. The decisions are in respect of the duty of the trial court to reject the plaint on finding it as vexatious and merit less. It is also held in the above decisions that the plaint can be rejected based on limitation and if it is found that the



cause of action is illusory. However, the decision relied upon by the defendant No.1 are not applicable to the present set of facts. Under such circumstances, the issues involved in the present suit can only be decided after full-fledged trial. Accordingly, the defendant No.2 has failed to prove that there is no cause of action to file the suit and the suit is barred by law or law of limitation. Hence, I answer **Point No.1 in the Negative.**

13. **Point No.2:-** In view of the above findings, I proceed to pass the following:

ORDER

I.A. No.VI filed by defendant
No.2 U/o.VII Rule 11(a) and (d)
R/w.Sec.151 of C.P.C is hereby
rejected.

No order as to cost.

(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 11th Day of June, 2024).

Sd/-

(SRI. PRAVEEN NAYAK)
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.

*B.S.M.

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