

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

PRESENT

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

Dated this day of 18th January, 2024.

O.S.No.861/2022

Smt. Ramakka & Others : **Plaintiffs**

(Plts. - By Sri. V.S.N,
Advocate)

- **V/s.** -

Sri.Doddamunishamappa & Others : **Defendants**

(Def.1 - Sri G,C.R,
Def.2 - Exparte
(Def.3 - Sri.H.M.P.)

*_*_*_*_*

ORDER ON I.A. No.V FILED UNDER ORDER 7 RULE 11
R/w.Sec.151 OF C.P.C BY DEFENDANT No.3

The instant application has been filed by defendant No.3 for rejection of plaint .

2. In the affidavit accompanying the application, the defendant No.3 has sated that, the plaintiffs have filed the present suit seeking relief of partition and separate possession. The defendants No.2 and 3 made as parties to the suit and they are the subsequent purchasers of the suit property. The suit is not maintainable under law. The suit of the plaintiff is barred by limitation. The plaintiffs slept over their rights over a period of 29 years. The father of the plaintiffs executed registered Sale Deed dated 02-09-1993 in favour of defendant No.2. Accordingly, revenue entries were mutated. The suit by the aggrieved party to be filed within 3 years from the date of attaining majority or of 12 years from the date of sale of property. This is a groundless litigation. The suit is false, frivolous and vexatious. In Para No.3 of the plaint, the plaintiffs have stated that, they are absolute owners in lawful possession and enjoyment of the suit schedule properties. The plaintiffs have concealed the actual facts to defeat the rights of defendant No.3. The suit properties have been already sold by the father of the plaintiffs as kartha of the family for family benefits and necessities. The defendant No.2 in turn sold the same in favour of defendant No.3 and the defendant No.3 is in actual

possession over the same. As per the plaintiffs, they and defendant No.1 belong to the same family and they are governed by rules of Hindu Succession, which is false. The defendant No.1 as absolute owner sold the suit schedule property to defendant No.2. In order to become ancestral property, it should devolve from four generations of male lineage and should remain undivided. The suit properties are neither ancestral nor joint family properties. There is no cause of action for the suit. In Para No.11 of the plaint, the plaintiffs have pleaded that, they and the defendant No.1 are in joint possession of the suit schedule property and they have demanded for partition of the same on 10-07-2022. The suit properties are not the ancestral or joint family properties. The cause of action is not proper. Hence, prayed to allow the application.

3. The plaintiffs have filed objection to present application by reiterating the plaint averments and prayed to dismiss the application with cost.

4. **The brief averments of the Plaintiff's case are as follows:-**

This is a suit for Partition. The plaintiffs are lawful and absolute joint owners in possession and enjoyment of the suit properties. The plaintiffs and defendant No.1 belong to the same family headed by late Muniramu @ Muniyappa. They are Hindus by religion. The said Muniramu had only one son, who is the defendant No.1 in this suit. The plaintiffs No.1 to 4 are the children of defendant No.1. The defendant

No.2 is the subsequent purchaser. The said Muniramu died leaving behind the suit properties to his son and grand children. The suit properties became joint family properties of plaintiffs and defendant No.1. The defendant No.1 got entered his name in revenue records by colluding with revenue officials. He executed sale deed in favour of defendant No.2 behind the back of the plaintiffs. The plaintiffs approached the defendant No.1 to effect partition on 10-07-2022 and the defendant No.1 has denied the request. The plaintiffs came to know about entries made in the revenue documents in respect of suit schedule properties. Hence, the suit.

5. The defendant No.3 has mainly prayed for rejection of plaint on the following grounds:

- a. There is no cause of action to file the suit.
- b. The suit is barred by law of limitation as the alleged sale deed was executed in the year 1993.
- c. The suit properties are neither ancestral nor joint family properties.
- d. The suit is false, frivolous and vexatious.

6. Heard arguments.

7. The following points would arise for my consideration:

1. Whether the defendants No.3 has made out grounds to reject the plaint ?
2. What order?

8. 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

9. **Point No.1:-** As far as cause of action is concerned the plaintiff has clearly pleaded in para No.14 of the plaint that the cause of action to file the suit arose on 10-07-2022, the date when the plaintiffs demanded for partition. The defendant No.3 has specifically pleaded that there is no cause of action to file the suit. The entire cause of action of the plaintiff is based on the allegation that the suit schedule properties are the ancestral and joint family properties of them and the defendant No.1, which is not true. The suit properties were the absolute properties of defendant No.1 and for the family necessity he has sold the same in favour of defendant No.2 vide, registered Sale Deed dated 02-09-1993. The cause of action shown in the plaint does not exist and there is no cause of action to file the suit.

10. The defendant No.3 has also taken a contention that, the suit is filed after lapse of 29 years without any cause of action. The defendant No.3 purchased the suit properties from defendant No.2 and he is in peaceful possession and enjoyment over the same. This is a groundless litigation to take advantage of judicial system.

11. As far as limitation is concerned, the defendant No.3 has contended that the sale deed is of the year 1993 and the plaintiffs have filed the suit in the year 2022 and the same is barred by article 58 of limitation act. It is further contended that, the plaintiffs ought to have filed the suit within 3 years from the date of attaining majority or 12 years from the date of alienation. It is pertinent to note that, the plaintiffs have sought for the relief of partition and it is their clear case that, as on the date of filing of the suit they and the defendant No.1 are in joint possession and enjoyment over the suit schedule properties. Again, the said aspect to be decided by holding a trail. The limitation is a mixed question of law and facts and it cannot be held at this stage that the suit is barred by limitation. Moreover, this court is of the opinion that at the threshold it cannot be held that the cause of action shown is imaginary. The cause of action is shown to be arose on 10-07-2022 and the plaintiffs have to be provided an opportunity to prove the alleged cause of action by leading the evidence. The reliance can be placed on decision of Hon'ble Apex court rendered in **2020 AIR**

(Supreme Court) 2721, Shakti Bhog Food Industries Ltd. Vs Central Bank of India And another

12. It is trite to mention here that while considering an application filed U/o.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 existence or non existence of cause of action. All the allegations made by the defendants in the application indicate that the defendants have attacked the alleged fact that the suit schedule property is a joint family property. It is stated in the application that, the defendant No.1 being the absolute owner of the suit schedule property has sold the same in favour of defendant No.2 for legal necessity of the family. The plaintiffs have alleged that, they are also having a share in the suit schedule properties and the defendant No.1 has executed the sale deed behind their back. In order to decide these aspects a trial is required. In this regard an issue is required to be framed and an opportunity shall be given to the defendant No.3 to prove the same. The said contention of the defendant No.3 is not sufficient for rejection of plaint at this stage. In **Smt. Geetha Murthy Vs Smt. Sarojamma and Others**, reported in **2022(2) AIR Kar R 247**, it is held that **“Rejection of Plaint-Plaint clearly disclosed a real cause of action which had to be established in trial- cannot be rejected either on the ground that the cause of action was unreal or was barred by limitation”**.

13. The learned counsel for the plaintiffs has relied upon the following decisions:

a.(2018) 6 SCC 422, Chhotaben & Another V/s. Kirtibhai Jalkrushna Bhai Thakkar & Another

b. AIR 2019 Gujrat - 167 - Prajapathi Rameshkumar Ghagawandas by LRs V/s. Thakore Jugaji Malaji

In the above decisions it is clearly held that, the contents of Written Statement are wholly irrelevant while deciding application under Order 7 Rule 11 of C.P.C. and limitation is a triable issue and the plaint cannot be rejected at the threshold and it is necessary to give an opportunity to prove the same.

14. The learned counsel for defendant No.3 has relied upon the following decisions:

a. Civil Appeal No.2582/2010, K.C. Lakshmana V/s. K.C. Chandrappa Gowda

b. RFA No.1309/2011, Smt. Sumana.M & Others V/s. Lokesh & Others.

15. I have gone through the above decisions with due respect. The question of limitation under Article 58 and Article 109 of Limitation Act and the aspect of family legal necessity have been discussed in the above case. However,

in this case, in order to decide the aspect of limitation the detailed trial is required. It is necessary to determine whether the defendant No.1 had absolute right to dispose of the suit schedule properties in favour of defendant No.2. As observed supra, there is no ground for rejection of plaint in this suit as the questions involved can only be decided by going through the trial. Under such circumstances, the decisions relied upon by the defendant No.3 are not applicable to the case on hand. Accordingly, the grounds raised by the defendant No.3 in seeking rejection of plaint fails. Hence I answer **Point No.1 In the Negative.**

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

ORDER

IA No.V filed by defendant
No.3 under Order 7 Rule 11
R/w.Sec.151 of C.P.C is hereby
rejected with cost of Rs.500/-.

(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 18th Day of January, 2024).

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